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

**REGULAR MEETING**

**February 13, 2001**

Paul Duran, Chairman  
Paul Campos  
Javier Gonzales  
Jack Sullivan  
Marcos Trujillo

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This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 4:35 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

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

**Members Present:**

- Commissioner Paul Duran, Chairman
- Commissioner Marcos Trujillo
- Commissioner Javier Gonzales
- Commissioner Paul Campos
- Commissioner Jack Sullivan

**Members Absent:**

None

**IV. INVOCATION**

An invocation was given by Ralph Jaramillo.

**V. APPROVAL OF THE AGENDA**

- A. Amendments**
- B. Tabled or withdrawn items**

MR. MONTROYA: Mr. Chairman, members of the Board. There is one amendment on today's agenda. It would be under Section VII. A. 1, Matters from the County Manager. The item would be to request authorization to enter into amendment number one to the MOA with St. Vincent Hospital for health care services. That is the only amendment on today's agenda.

There is one tabling, Mr. Chairman, which is under Section VIII. D. 11, which is

CDRC Case #Z 00-5900, the International Pond Supply. That is the only tabling for today, Mr. Chairman. I stand for any questions.

CHAIRMAN DURAN: Sam, but we are going to amend it to include the items listed on executive session for the January 30<sup>th</sup> meeting which we recessed and had earlier today.

MR. MONTOYA: Mr. Chairman, the item that we'd like to add to executive session would be discussion of pending or threatened litigation. That's all, Mr. Chairman.

CHAIRMAN DURAN: Any questions of Sam or any other changes to the agenda?

**Commissioner Trujillo moved to approve the agenda as amended and Commissioner Gonzales seconded. The motion passed by unanimous voice vote.**

MR. MONTOYA: Mr. Chairman.

CHAIRMAN DURAN: Sam.

MR. MONTOYA: Mr. Chairman, the Land Use Administrator has indicated to me that under Section VIII. D. 8, CDRC Case #A/V 00-5951, relative to Alan Weiss, the appeal/variance. I'm under the understanding that the agent, Ms. Vazquez would like to ask that this particular item be tabled today. I'm not sure if Ms. Vazquez is ready to request that tabling or not, but according to Mr. Lopez she would like your consideration for that.

COMMISSIONER TRUJILLO: What item is that, Sam?

MR. MONTOYA: Mr. Chairman, that is item VIII. D. 8, CDRC Case #A/V 00-5951.

CHAIRMAN DURAN: The chair will entertain a motion to table that.

**Commissioner Gonzales moved to table VIII. D. 8, CDRC Case #A/V 00-5951. Commissioner Trujillo seconded.**

CHAIRMAN DURAN: Any other discussion?

COMMISSIONER SULLIVAN: Just one thing. I believe in our last resolution on tablings, if they weren't tabled by the time of the meeting, that we were to be given a reason for the tabling.

MR. MONTOYA: Mr. Chairman, the agent is here to present that reason if the Board would like to hear it.

CHAIRMAN DURAN: Ms. Vazquez.

ROSANNA VAZQUEZ: Good afternoon, Commissioners, Mr. Chairman. I submitted a letter to the Land Use Office yesterday morning. It was faxed and hand-delivered. My client, Dr. Weiss lives in Los Angeles and had an emergency with regard to his work and was not able to travel this weekend to get here. I articulated that in the letter and it was, again, as I stated, faxed and hand-delivered to Mr. Wayne Dalton yesterday morning requesting that tabling.

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CHAIRMAN DURAN: Any other questions of Ms. Vazquez?

The motion passed by unanimous voice vote.

**VII. STAFF AND ELECTED OFFICIALS' ITEMS**

**A. Matters from the County Manager**

- 1. Request authorization to enter into amendment number one to the memorandum of agreement with St. Vincent Hospital for health care services**

MR. MONTROYA: Yes, Mr. Chairman, before you we have a memorandum of agreement, amendment number one, Mr. Chairman. The actual item is being handed out to the Board as we speak. [Exhibit 1] I might want to say a few words and introduce the concept, Mr. Chairman, then defer to the department director, Mr. Anaya. I want to point out, Mr. Chairman, that this is the second year that Santa Fe County has been working in cooperation with St. Vincent Hospital to provide a myriad of programs to the community relative to health and human service outreach.

Mr. Chairman, the amendment today basically will bring three different memorandums and one MOU into the fold of this particular agreement. We have had one MOU and two MOAs that relate to services that we have done jointly with St. Vincent Hospital. And this instrument, instead of having three separate instruments to deliver these programs will consolidate them into one, Mr. Chairman. And the issues relative to the type of program and projects that are being proposed will be delineated in specificity by either Mr. Anaya or one of the division directors. I want to point out that the major sections of the MOA deal with the fact that we are looking at planning and coordination relative to health and human services, resource development, advocacy and outreach, and assessment and evaluation.

We have also put into the MOA a new calendar for negotiations so that there is a systematic calendar for negotiation with St. Vincent for the pursuing years' MOA. Mr. Chairman, with that I want to point out that the spectrum of the scope of services is very comprehensive and goes to many different programs that I think will be an asset to the community and with that, I would defer to Mr. Anaya.

CHAIRMAN DURAN: Mr. Anaya, I have a question. Is this the same document that we discussed at our special meeting last week?

ROBERT ANAYA (CHEDD Director): Mr. Chairman, Commissioners, yes it is. The changes that Mr. Shepherd just passed out, if I could just highlight those for you to give you the difference between the document in your packet and the one Mr. Shepherd handed out. On page 3, under Section VI, we put some inclusionary language to include the first MOA into this agreement and the other change is on page 4, number 4, we added also inclusionary language to include the initial MOA amount disbursement to the County and added plus applicable gross receipts tax.

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Mr. Chairman, Commissioners other than those two changes, there are no other changes to the document that you have within your packet. And I stand for any specific questions on the document.

CHAIRMAN DURAN: What's the pleasure of the Board? Would you like for Robert to go over the document one more time?

COMMISSIONER TRUJILLO: I don't think so.

COMMISSIONER GONZALES: I don't think so, Mr. Chairman.

CHAIRMAN DURAN: Okay, are there any questions of Robert?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just one item in Section VI. At the special meeting on the 9<sup>th</sup>, we talked about having a outside member participating on the assessment and evaluation team to be designated by the Board of County Commissioners, and I notice that the way that it's worded, about half way in the middle of that paragraph, and a member that is not associated with either St. Vincent Hospital or Santa Fe County but approved by St. Vincent Hospital and the Santa Fe County Board of County Commissioners. I feel that that individual needs to be selected by the County Commission. I think for the near term, we would anticipate having someone that's familiar with the process but not necessarily involved with either of those two entities. I think we need to retain the right to appoint that person in the event, for example, we might decide that we want an auditor on that team. And that would be our decision and I don't envision that right at this point in time but nonetheless I would prefer that that phrase, "But approved by St. Vincent Hospital" be stricken from the agreement.

CHAIRMAN DURAN: Tell me where you are, Commissioner.

COMMISSIONER SULLIVAN: Sure. It's page 3, Section VI, line 7.

MR. ANAYA: Mr. Chairman, that's Section IV.

COMMISSIONER SULLIVAN: Four. I'm reading my Roman numerals backward. Section IV.

CHAIRMAN DURAN: You would like for that to read that this member would just be appointed by the Board of County Commissioners?

COMMISSIONER SULLIVAN: Right. So it would read, "And a member that is not associated with either St. Vincent Hospital or Santa Fe County and selected by the Santa Fe County Board of County Commissioners."

CHAIRMAN DURAN: I don't have a problem with that.

COMMISSIONER CAMPOS: I would move for the adoption of the memorandum of agreement amendment one with the language proposed by Commissioner Sullivan.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Okay. There's a motion and a second. Any further discussion?

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**The motion passed by unanimous voice vote.** [Commissioner Trujillo was not present for this action.]

CHAIRMAN DURAN: Thank you, Robert.

**VII. A. 2. Request approval of Sole Community Provider request for St. Vincent Hospital**

MR. ANAYA: Mr. Chairman, the memo within your packet depicts that we will request approval of dispersing payment for Sole Community in the amount of \$4,471,733. I stand for questions, Mr. Chairman, Commissioners.

CHAIRMAN DURAN: Any questions for Mr. Anaya?

**Commissioner Gonzales moved to approve the Sole Community Provider request and Commissioner Campos seconded. The motion passed by unanimous voice vote.**

**VI. APPROVAL OF MINUTES: February 6, 2001**

**Commissioner Campos moved to approve the minutes as submitted and Commissioner Gonzales seconded. The motion passed by unanimous voice vote.**

**VII. B. Matters of Public Concern – NON-ACTION ITEMS**

CHAIRMAN DURAN: Please come forward and state your name for the record.

ROY MCCAIG: Mr. Chairman, my name is Roy McCaig. I'm a resident of Piñon Hills and you have a lot split proposal before you some time this afternoon I believe. And if it's appropriate to speak at that time, I'd be delighted to speak then, but I don't want to miss an opportunity to speak if this is the last chance I'll get.

CHAIRMAN DURAN: You'll have an opportunity to speak when the Commission deals with that particular item. Is there anyone else that would like to address the Commission? Please come forward sir and state your name for the record.

ZANE SPIEGEL: Thank you for you approval of my request. My name is Zane Spiegel, hydrologist, and I appeared before this Commission a few months ago, and I made an error in procedure. I had with me an exhibit which I had intended to introduce formally but I ended up giving it to Mr. Trujillo because I think he indicated an interest in looking at it and I forgot to transmit it to the County Clerk first. So I would like to introduce that as an exhibit A, I've marked it, my name on top. It's already on there, as my exhibit. [Exhibit 2]

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It was a meeting on the master plan for the Community College district in November 1999. This might be an opportune point to introduce this because I think there's some new members who would not have been aware of this, of my reading some of it into the record at that time. That's all I have to say.

CHAIRMAN DURAN: Thank you, Mr. Spiegel. Is there anyone else out there that would like to address the Commission? Please come forward and state your name.

PATTY BURKS: Good evening Mr. Chairman and County Commissioners. My name is Patty Burks and I am from Valle Lindo Subdivision. We were before the Commission on October 10 in the case of Allsups and their liquor license transfer of #946 liquor license. At that time we got a unanimous denial for the liquor license transfer. Three months have transpired and January 24, the State Liquor Director overturned your ruling. We found some state statutes about liquor license transfers that I think would justify the idea that the state director should have upheld your decision that night, but instead he decided that he would not, he would overturn, overrule.

So we're trying to gather some information as to trying to make a protest or an appeal and there is a deadline of January 24 where the County Commission has an opportunity, or anybody is aggrieved by that decision the state made to make an appeal to the district court. We have some information that we're gathering right now. The County Attorney just was notified February 5 about that time that the state had made a ruling. Allsups was selling it a week before that without the County even knowing. The neighbors and I, we walked in to buy milk and we see that they are selling liquor and it was a total shock to us.

So we're going to pursue this with more evidence to support your decision and I think staff is going to be working on it and the County. We've talked to the County Attorney and I think that will be a matter that you guys will be discussing. And I just wanted to make record of it tonight.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: Just, Patty, when you came forward you had talked about the fact that you believed that Allsups hadn't been properly zoned to sell liquor. Have we determined definitively, Roman, that in fact that the zoning was given at the time that it was approved? And I guess I'm asking you this question too, because you said you had some papers that showed that it hadn't been approved. And that's really what the issue is here is that when Allsups first developed their master plan, they developed it with the intent on selling liquor. It was approved at that level, and then when the transfer was taking place in October the Commission denied it and it seems to me as a result of that the state overturned it because the property had already been zoned for liquor sales.

I think I recall you stating back in October that you had evidence or that you knew that it hadn't in fact been zoned for liquor sales. Did you say something to that effect? Or was it that Allsups had state it to you?

MS. BURKS: As neighbors of Allsups, we go back to 1989 beginning with the CDRC review committee and there was a zoning meeting at that point and there was adoption

of a use list at that point and no one seems to be turning up that use list.

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COMMISSIONER GONZALES: Oh, I see.

MS. BURKS: There was mention of one of the board members that night that he didn't like the idea of approving, giving the zoning if they were going to sell liquor. But now that's in the record. But as far as finding the exhibit, we have not found that yet. And so there's a controversy as far as that goes. But I've been doing some research as far as state statute is concerned and there are three items on which the liquor director can deny, or the local governing body can deny a liquor license transfer and I believe we've met number three, which says that if a liquor license transfer will have an impact on the community as far as public health, public safety and the moral character of the community, then it can be denied.

So you guys, the Commission denied it four to zero, and it's written in black and white that the state director could have ruled along with you, should have ruled along with you. So anyway, that's where we stand and I hope that before the 24<sup>th</sup>, there's some intense study that goes with this subject because I think you guys should uphold that for the community's sake. There was a lot of testimony that night, on October 10, and we made our case known that it's not going to fit in the community. It's not going to be good for the community as far as safety is concerned. There were a lot of submittals that night and hopefully we can gather all of that and you guys can make a decision as to whether you will uphold that for the community. Thank you.

CHAIRMAN DURAN: Commissioner Gonzales, is it okay if Steve addresses that first?

COMMISSIONER GONZALES: Sure.

MR. KOPELMAN: Mr. Chairman, members of the Commission, I was planning on bringing this matter to your attention in executive session. If you'd rather I discuss it in open session I'm happy to do that. It's really your call.

COMMISSIONER TRUJILLO: Why not?

CHAIRMAN DURAN: I don't see why not.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to hear it in open session.

MR. KOPELMAN: Okay. Mr. Chairman, members of the Commission, I know that Penny and Roman have searched all of the Commission minutes and have been unable to uncover anything indicating anything other than the fact that they do have zoning for the sale of alcoholic beverages. We've tried to turn up anything we could and I could maybe have Penny or Roman address that part of it since I haven't actually gone through the minutes myself.

CHAIRMAN DURAN: Well, I guess I have a question. If this Commission, obviously we voted unanimously to not approve the sale of liquor there. Is there anything we can do over and above what we've already done to oppose the sale of liquor there? Could we join the neighborhood in opposing the sale officially?

MR. KOPELMAN: Mr. Chairman, members of the Commission, we have three choices. One is we can send a letter to the director of Alcohol and Gaming asking for



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reconsideration of the decision. Two, is we can actually formally file an appeal of that decision to the district court. Or three is we can let the decision stand. I have done some research and we did find that there was a case back in 1991 and tomorrow we should be able to get all the documentation but there was an order that denied a liquor transfer, apparently at the same location that went to the district court, but I don't have all the documentation. I'll have that tomorrow.

As far as state statute goes, the state statute does say that the liquor director should follow the lead of the County Commission or the municipality, but unfortunately, and I have copies of the case law, the New Mexico Supreme Court, in a decision called *Southland Corporation v Monzagal* which was decided back—let me just see the year of the case—1994, and I read straight from the opinion. “We hold that under the Liquor Control Act, the director may approve a transfer of a license despite municipal disapproval. The director must so act if the governing body fails to submit evidence supporting its decision or if on its face the governing body's decision is not based on evidence pertaining to the specific prospective transfer or location.”

So the director made a determination that based on the record we sent to him that he didn't have enough to deny the license. What the New Mexico Supreme Court has pretty much said is if this particular location has been zoned, as Commissioner Gonzales had pointed out, if it's been zoned to allow for the sale of alcoholic beverages, you have to have very, very detailed and strong evidence to support a denial of a transfer of a license to that location. So at this point, we are trying to find out a little bit more about that 1991 case, but we haven't found anything in the minutes that contradict the fact that they do have zoning to sell alcoholic beverages at that location so as a practical matter, we certainly can file an appeal or request the director to reconsider. But whether we have much of a change of prevailing I think is really problematic.

CHAIRMAN DURAN: So the director has the right to approve it void of public input?

MR. KOPELMAN: Mr. Chairman, that's what the Supreme Court has said, notwithstanding the language in the statute, which seems to totally contradict that holding. So we're faced with case law that seems to be really stacked against us in this case, but it doesn't mean that—you still need to make that decision as to whether we should appeal it or request reconsideration.

CHAIRMAN DURAN: Any questions of Steve?

COMMISSIONER CAMPOS: Question for Mr. Kopelman. Mr. Kopelman, you had a chance to review the records submitted to ABC. What is your opinion of that record? Is it detailed enough? Does it have enough information? Apparently, Ms. Burks said that a lot of people testified that it was not good for the community, perhaps dangerous to the community. Have you read that record? How do you feel about that?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, I was at the meeting and I have reviewed the record and unfortunately, based on the case law, the New Mexico Supreme Court has approximately half a dozen cases dealing with these issues and the

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cards are really stacked against the local governing body to deny a liquor license transfer. I would say based on my reading of the cases, the chances of prevailing in an appeal are very, very slim. Even if you show that there's some danger, you have to have such detailed evidence. The City of Santa Fe recently had a case, the Santa Fe Brewpub case, I think it's the Woodward case, where they had documented evidence about traffic problems, etc., etc. The director of Alcohol and Gaming supported the municipality's decision. It went up to the Supreme Court. The briefing, it looked very favorable, and the City ended up losing it. And that seems to be the case every single time you bring a liquor license transfer case to the New Mexico Supreme Court.

So I'd say if we were looking at the statutory language as Ms. Burks did, I'd say, yes, it looks like we have a pretty decent chance but based on the rulings of the Supreme Court, I'd say we have a very small chance, unfortunately.

COMMISSIONER CAMPOS: Thank you.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: Just so we can move along in the meeting, maybe we can send some direction. It sounds to me like you've seen where the courts have actually denied a liquor license on this property. You're going to be getting more information on that. I think—I was opposed to this in the beginning but as I've talked to some of the neighborhoods and listened to you talk tonight, it seems to me that the prudent thing for the Commission to do would be to stand behind the decision we made in October and to question the ABC in overturning our decision by appealing this case, if in fact you don't find another route. So Mr. Chairman, I'd like to ask, if there's concurrence by the Commission that we appeal this case unless there's another route to go. But it seems to me, let's test it again and see if we might find a Supreme Court that's willing to stand by the local government's side now.

COMMISSIONER TRUJILLO: Commissioner Gonzales, Mr. Chairman, are you talking about appealing it through the judicial process or asking the ABC director to reconsider his decision?

COMMISSIONER GONZALES: I'd like to go through the court process. I think that's where we should test it.

CHAIRMAN DURAN: And have the courts overturn it.

COMMISSIONER GONZALES: Right.

CHAIRMAN DURAN: What's our risk?

MR. KOPELMAN: Mr. Chairman, members of the Commission, the risk is we just get thrown out of court.

CHAIRMAN DURAN: Sounds good to me.

COMMISSIONER TRUJILLO: It's worth a try.

MS. BURKS: I would like to make one other remark and that is that we have taken the time to meet with the state liquor director and he is telling us that if it true that the submittals that he received from the County were maybe incomplete, didn't have the evidence that we gave to you guys that night, that he would be willing to meet with the County Attorney

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and discuss how to proceed from there, given that maybe he didn't receive all the submittals which we did submit to the Commission that night. If that makes any sense. So that is an option, so that maybe it can be handled on that level.

COMMISSIONER GONZALES: Well maybe we can go both routes. Is that possible? Appeal to the director and also prepare to appeal it in district court?

MR. KOPELMAN: Mr. Chairman, Commissioners, what we can do is set up a meeting with the director and if the director then overturns his opinion, decides to reverse himself, then I think it would be Allsups who would be appealing that then to the district court. If the director decides not to overturn the decision, I'll take your direction on whether you want me to file an appeal then with the district court.

CHAIRMAN DURAN: I think the direction is we want you to file.

MR. KOPELMAN: Okay. So I'll make sure that we preserve our legal rights and we'll try to meet with the director first but we'll make sure that if we don't get satisfaction there we'll file a notice of appeal by the 30-day deadline.

COMMISSIONER CAMPOS: Question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Kopelman, you said that the chances of overturning the decision are very slight. How much time and effort will it take of your staff to pursue this appeal?

MR. KOPELMAN: Mr. Chairman, Commissioner, it's real hard for me to gauge that at this point, but again, there's always a chance that you may get a court to look favorably on the case and in terms of time, I'm sure it's going to be a substantial amount of time in order to go through the entire record and file the appropriate briefs. But again, we'll follow the direction of the Commission.

COMMISSIONER CAMPOS: Is there anyway of rehearing and supplementing the hearing?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, we can certainly try—we can make sure that the director got all the information that was submitted at the hearing. If there's additional information, we certainly can submit that with copies to Allsups to the director and maybe we can request an extension of the 30-day period pending the director's decision. I certainly can explore that option.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: Thank you very much.

MS. BURKS: Thank you for your help.

CHAIRMAN DURAN: Is there anyone else out there in the audience that would like to address the Commission on any matter.

MR. MONTOYA: Mr. Chairman.

CHAIRMAN DURAN: Sam.

MR. MONTOYA: Mr. Chairman, before we move on to Matters from the Commission, Mr. Chairman, I might want to ask the Commission to reconsider, or not necessarily reconsider, but go back to discussion relative to the amendment proposed by the

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Commission that relates to amending Section IV of the amendment that was discussed with St. Vincent. Mr. Chairman, Dr. Gonzales has brought forth a concern that the hospital did not have an opportunity to address the amendment, and Mr. Chairman, relative to that, if the chairman would indulge Dr. Gonzales, I would ask that you consider his issue relative to that amendment if you would.

CHAIRMAN DURAN: Dr. Gonzales.

DR. ARTURO GONZALES: Thank you, Mr. Chairman, for indulging us on this, what I think is an important point. I'm sorry I didn't get up at the point when the motion was made by Commissioner Sullivan to amend the assessment and evaluation section. This morning we received the document that I presented to my CEO was the document which was in the packet and had been reviewed by staff as well as your legal attorney, and I would assume that if that amendment—obviously the amendment has already been voted on but if it went through, that we would be resigning the document again with the amendment. In my discussions over the phone with our CEO and my Chief Financial Officer, that was not quite the understanding on Friday that we left with in terms of the appointment of this individual member.

I just want to understand the spirit or the intent of the amendment so that we can either live with it or raise the issue. And I certainly, St. Vincent is not in a position that it wants to hold back any kind of funds coming to the County or to the community because of some technicality. But I want to make sure that we understand or if this amendment goes through with the Board of County Commissioners making the appointment, I don't think we have a problem with that. The question becomes will we have any input or review of the candidates at least to give our input with respect to the appointment, even if you still have the final decision. That's the clarification or at least the spirit I want to make sure we understand before we're signing this thing tomorrow morning.

CHAIRMAN DURAN: I think that's fair to me but I'll leave it up, I'll let Commissioner Sullivan expound on his—

DR. GONZALES: Because I think we better deal with that now than get down the road six months and we haven't dealt with it and we have misperceptions of what was intended here.

COMMISSIONER SULLIVAN: Mr. Chairman, Dr. Gonzales, I think (a) I have no problem with St. Vincent's input in that and I think we would as a matter of course solicit that. But I do think that for the independence of that individual, that we would want the final decision. My understanding from the two-hour meeting we had on Friday over this was that, and I recall St. Vincent's comments were that it be somebody familiar with the health care field. And I brought an example of the engineers' and land surveyors' board where they had a public member who was not familiar with the engineering and land surveying field and served quite ably and was quite an asset to the board in bringing in the issues from the outside.

DR. GONZALES: Yes, I remember that.

COMMISSIONER SULLIVAN: And that's—and I recall discussion that that person would be appointed by the Board of County Commissioners and that's where it was left.

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But I have no problem, and I would anticipate that our staff would certainly consult with St. Vincent on that but in the end I think it's important that we retain that final authority for the appointment.

CHAIRMAN DURAN: Is that acceptable to you?

DR. GONZALES: I believe, from my vantage point, Mr. Chairman, I think as long as we had at least some review of the—we're not trying to be obstructive here, but if we had some review of the candidates to say, yes, this looks good or whatever, and then ultimately you make the decision. I think that would be acceptable if that's what I'm hearing.

CHAIRMAN DURAN: I think our goal is to work with you and I'm sure that our appointment wouldn't be someone that would be an obstructionist or create havoc with the process. But I can see your point.

DR. GONZALES: My point only is that we're trying to build a collaborative relationship with the County. We sign an agreement that we thought is what we understood and then the Commissioners change it to exclude St. Vincent Hospital so just by virtue of doing my job, I need to raise the issue that do we still have a collaborative relationship or is it going some way that we're not aware of.

CHAIRMAN DURAN: Well, I don't recall in that meeting that it was mentioned that St. Vincent had to approve that individual. I do recall that we had discussed us having the right—

DR. GONZALES: We discussed at least having some input.

CHAIRMAN DURAN: I think that's what we have agreed to right now.

DR. GONZALES: If that's—as long as that's the spirit, I think we can—I can convey to my superiors that we can probably live with that. Thank you for the clarification. I'm glad we're dealing with it now rather than later.

CHAIRMAN DURAN: Thank you for bringing it up.

COMMISSIONER GONZALES: Mr. Chairman, I need to ask the indulgence of the Commission. I have to leave to be in Washington tomorrow with members of the president's cabinet and my flight leaves at 6:30, and there's a couple of issues that I wanted to see if I could talk about with this Commission prior to me leaving. And one of them is item number two, which is a resolution creating a Santa Fe County Corrections Advisory Committee. I was wondering if I could address my issues under Matters from the Commission so that I may be excused.

CHAIRMAN DURAN: Sure. And number three, is that one that you wanted to discuss also?

COMMISSIONER GONZALES: Yes, number three, we're actually going to table and hold off on. Not table, but there's no discussion regarding that.

[Audience member asks if he can speak on Matters of Public Concern.]

CHAIRMAN DURAN: Well, why don't you let us finish what we're on, and I'll give you the opportunity to come up some time in the meeting. Maybe before we go into the land use issues, to come up and address the Commission. Is that okay? Okay,

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Commissioner Gonzales, we'll move to number two then and we'll just switch number one and number two and you say there's no discussion on number three?

COMMISSIONER GONZALES: Right. I've already had that—that's been answered for me by the Public Works Director.

CHAIRMAN DURAN: Is that okay with the Commission?

COMMISSIONER CAMPOS: Okay with me.

COMMISSIONER GONZALES: Mr. Chairman, item C. 2, Resolution 200-17 is a resolution that would create basically a jail advisory committee to assist the County Commission in trying to establish a better correctional facility. Mr. Chairman, what we're asking is that the Commission approve this resolution which would create a seven-member committee. This seven-member committee would consist of individuals who specialize in areas that we address in our jail, such as mental health, substance abuse, we would make room for a retired law enforcement officer, there'd be an at-large member, possibly a member of the clergy to address human rights issues, someone from our judicial sector and someone from the medical sector.

Mr. Chairman, it's my hopes through this advisory committee that we would be able to again, improve our systems of corrections on a continuous basis. I will add that I have been able to speak with Councilor Chavez who has taken an active interest from the City in how we pursue this and Councilor Chavez is asking this Commission to allow for a member, to allow the City Council to appoint a member to this advisory committee if the Commission so sees it necessary that we approve this committee. My discussion with Councilor Chavez went to the point that we have several users of our facility including the City, the City being the least of the users. I believe Rio Arriba and Taos counties are some of the larger users, Bernalillo County are large users of the facility and I guess the question to the Commission would be if you allow the City of Santa Fe to have an appointment, are you going to allow the counties of Rio Arriba, Taos, and Bernalillo County to have appointments as well, being as they are large users of the facility.

The other issue that I will point out to the Commission, as we know, we are in the process of going through an RFP for the selection of a new operator and so I'm asking the Commission, if you do approve this resolution that it does not become active until there's been a selection made or a determination made for that matter whether we will stay private or go public on the facility but this would actually become in effect at the time that we made that decision. I think the idea of supporting the resolution now, and why I bring it over this early, one is to honor a commitment I made to members of the community that have been asking that the Commission adopt this and two, is so that the staff, as they go through this RFP process, can keep in mind that there will be another layer of advisory to the County Commission when it comes to the operations of the facility. And I stand available for any questions.

CHAIRMAN DURAN: I have one questions. So you're saying that we would appoint this committee and it really wouldn't go into effect until September, which is when the contract with our existing operator expires?

COMMISSIONER GONZALES: I'm asking that we approve the resolution

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and appoint the committee sometime between now and the point that there's been a selection made. Not that a new contact begins. So that to me sounds like it's some time around May from what I understood from the County Manager, or June. I don't know when that selection is going to be made.

CHAIRMAN DURAN: I guess my only concern is why wait? What's the reason for waiting?

COMMISSIONER GONZALES: This was a discussion I had with the staff, Mr. Chairman. Correct me if I'm wrong, Sam, but I think that right now, we want to make sure that this process is as pure as possible, the RFP, and it seems to me like the staff would prefer that this jail advisory committee come in fresh whenever there's a new selection made as opposed to coming in now during this RFP process. Is that right, Sam?

MR. MONTROYA: Mr. Chairman, Commissioner Gonzales, two points. The first is that the RFP process has closed. We have received three vendors that met the specified deadline. Our intention is to bring a recommendation to the Board of County Commissioners the latter part of April. And I believe the current contract does not recognize the fact that there would be an advisory committee allowed to be appointed. And I think that is the point that Commissioner Gonzales is making that the vendor could reject the fact that we would like to have an advisory committee.

However, in the spirit of considering the new vendor, and should it be the same vendor or even a new vendor that then we would begin the process of appointing the members of the commission, appoint the members and that would begin the process of working that committee structure into the contractual agreement. So Mr. Chairman, I believe that as soon as we're done with the analysis of the vendors that have proposed, and that could be as early as April, maybe into May, mid-May, that the decision could be made shortly thereafter. So I believe Commissioner Gonzales is on the right track.

CHAIRMAN DURAN: What decision?

MR. MONTROYA: The members, the appointment of the actual members, the advisory members, should the Commission adopt the concept of the advisory jail committee.

CHAIRMAN DURAN: So we wouldn't go through the process of selecting until after the vendor has been selected.

MR. MONTROYA: Correct.

COMMISSIONER GONZALES: Well, we could even select, but they probably couldn't begin their official role as our advisory committee until we're into the new process. There's a whole lot that they can learn in the meantime without taking on the role, so all we'd be doing tonight is approving the resolution. At some point, when the chair calls for the appointment—tonight we can send out the message to all the community. They can begin the application process and we can begin to go through that process of seeing who we can appoint to these committees.

MR. MONTROYA: Mr. Chairman, that's correct. I think there are seven respective areas of concern and interest here, and we could, if the Board adopts the resolution to then notify the community that these appointments are available and people could nominate

themselves or interested parties and then the Commission could review those lists and make its determination for appointments at a later date.

CHAIRMAN DURAN: I just have one more and then I'll yield the floor, one more point. The members—the City has requested to participate in this process and I guess I don't really have a problem with that but I think I'd like for it to kind of mirror the same process that we have with St. Vincent. If they are involved in this, then that appointment be approved by a majority of the Board of County Commissioners.

COMMISSIONER GONZALES: That's great. And I would also remind the County Commission that the Commission has asked a member of the City Council to serve on the selection committee and to work on the new RFP. So the City's going to have a say in that as well. We've tried to reach out as much as we can as a Commission to the City to be involved in this process.

CHAIRMAN DURAN: Are there any questions?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Two things that I wanted to bring up. First, just to carry on on that discussion. Is my understanding what you're thinking about then there would be an eighth member and that eighth member would be appointed by the City of Santa Fe?

COMMISSIONER GONZALES: Sounds like it would be an eighth member and actually, if we followed what Commissioner Duran is encouraging us to, they would, the City would recommend a member to the Commission and the Commission would make the actual appointment.

COMMISSIONER SULLIVAN: So one slot, as it were, would be reserved for the City of Santa Fe in whatever capacity they wanted it to be.

COMMISSIONER GONZALES: Right. Right.

COMMISSIONER SULLIVAN: Okay. I understand.

CHAIRMAN DURAN: Again, ratified by this Commission.

COMMISSIONER SULLIVAN: Approved by the BCC. Okay. The two points that I had and the first is that I see there's a provision that we would review the performance of the committee every two years from the committee's inception. I would rather see us work under a sunset provision. I think as we form committees and I think maybe this has also happened with the City where they get to the point of forming so many committees that we lose the necessary staff to support those committees, because these committees do take staff support and staff time. They don't operate on their own. And we're considerably less staffed, of course, than the City by about 2/3.

So one of the mechanisms that the state uses for its many boards and commissions, because of the proliferation of those boards and commissions over the years, was to create an automatic sunset provision so that you create a commission or a committee that has a two-year life span, then it automatically comes back for review and it may be continued or it may be dropped, depending on whether the committee has served its purpose. After two years it may



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have done a good job and served its purpose and we don't see the need for it anymore or we may want to continue it or we may want to modify it.

I think that's better than just a performance review, sunseting. So I'd offer that as a first suggestion.

COMMISSIONER GONZALES: I'll accept that, Mr. Chairman.

COMMISSIONER SULLIVAN: And then the second one that I'd propose—the term “human rights advocate” kind of jumps out at me as one of the eight members. Human rights advocate/member of the clergy as one of the slots. I certainly have no problem with either of those people and I think that all of the eight people would be participating for purposes of human rights and for purposes of community service. To specify one person who is “the human rights advocate,” it sends not quite the right message. I think this isn't a witch hunt. This is a good faith attempt to work with the issues at the prison and to resolve the issues.

And for some reason that term just kind of jumps out at me. We do have an at-large member as one of the eight members, so that at-large member could be any member that the Commission desired to pick. But specifically naming one person as a human rights advocate kind of implying that the others are not human rights advocates, the language seems to be a little bit warped.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Sullivan, I appreciate that and when I sat down with the staff to talk about the number of appointees and where they would come from, one of the issues that kept coming up as we reviewed the last year has been the issue of many people coming forward, or some people in our community coming forward that in any correctional system you have to look at the treatment of inmates. We've been using, for lack of maybe a better word, a human rights issue, making sure that the conditions are clean, that they are treated properly, that there is no abuse that occurs in the facility, that nationals from another country that are here are afforded the proper treatment. All those things came to mind when we were talking about having a citizens' group that was looking at a multitude of issues.

So I'm open for changing the name of that or whatever it is, but we just wanted to make sure that the community understood that we would pull someone from the community that understood the issue of human rights and certainly what was important. And keep in mind, it's not just about making sure that they're in a clean environment and they're being properly treated but it is about making sure that they have proper access to legal services, that medically they're being properly taken care of, all those issues that keep coming up and that's where we just kind of put it all into that one individual.

So you're right in that every individual there should be looking out for human rights but we wanted someone to really especially keep a look on the big picture of how individuals in the facility are treated. And what I would say also is that people who end up in the County facility for the most part are people who, I believe 80 percent of the people are substance abusers who have been sent into the facility. So we need to make sure that we address all the concerns that we've been hearing throughout the past year. But let me just say that I hear these concerns

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around the country when I sit down with my peers and ask them how things are going on their facilities. Everything we've talked about here in Santa Fe they bring up there. So I think it's something that's going on and having a citizens' group that's focused on this would be good.

But to your point, Commissioner Sullivan, I'm all for seeing how we can change it, make it better, maybe incorporate it to the at-large member, whatever makes sense to the Commission, we're open for.

CHAIRMAN DURAN: I have an idea. What if we added a new "whereas" that would basically say that all the members need to take into consideration human rights and delete the human rights advocate member and replace it with the City member.

COMMISSIONER GONZALES: I'm okay with that. Sure. So that's part of their duties.

COMMISSIONER SULLIVAN: Sounds reasonable. So we're back at seven members.

CHAIRMAN DURAN: Seven members and then we'll just have another "whereas" dealing with the human rights, that all the members will be appointed with the understanding that this committee is being formed to maintain the human rights that the incarcerated all deserve.

COMMISSIONER SULLIVAN: We still retain—excuse me, Mr. Chairman. We've still retained the at-large member?

CHAIRMAN DURAN: Right.

COMMISSIONER TRUJILLO: Mr. Chairman, to the point that Commissioner Gonzales stated that Santa Fe is a user of the facility and so is Bernalillo and so is Rio Arriba and so is Taos, are we going to designate a member of those areas? Because to have the fair representation and voice in the council, in the committee, because they are also users of the facility.

CHAIRMAN DURAN: Well, what if we kept it at eight, and then we had those users appoint one person to represent all of them.

BERRON BRISCOE (Policy Analyst): Commissioner Duran.

CHAIRMAN DURAN: Berron.

MR. BRISCOE: Just for the edification of the council, each one of our contracts allows the ability for them to come in and do their own inspections and to have input and to check the jail for its conditions and that is inclusive of the City as well. So they already do have that right to come and make sure that the conditions of the contract are being maintained.

COMMISSIONER TRUJILLO: Mr. Chairman, Berron, this is a citizen committee.

MR. BRISCOE: Right. I understand that but because we were talking about the user agencies and their rights to look at it, and then designating user agencies as members of the citizens' committee, I just thought it was applicable to point out the fact that the user agencies do have the right to come and check on the conditions at the facility already. Do you see my line of thought there?

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COMMISSIONER TRUJILLO: I see your point but what I see this committee as doing as being a conduit with the community.

MR BRISCOE: Right. I understand.

COMMISSIONER TRUJILLO: To monitor—

MR. BRISCOE: Yes, I understand. Using citizens' participation from those different regions is what you're suggesting.

COMMISSIONER TRUJILLO: From those regions, right.

CHAIRMAN DURAN: You don't think one appointed by those regions would—

COMMISSIONER TRUJILLO: If they would all agree on one, that would be fine, but they would have some representation on the committee. I don't have any problem with the one.

COMMISSIONER GONZALES: Maybe, Mr. Chairman, the at-large member could be a member from a community outside of Santa Fe that uses the facility.

CHAIRMAN DURAN: We have time to perfect it. We're not going to really adopt it.

COMMISSIONER GONZALES: We are going to adopt it. We're just not going to make the appointments. Well, I don't know if we're going to adopt it but we're asking that you adopt it tonight and then—

CHAIRMAN DURAN: So why don't we move on it and if we need to amend it later, why don't we do that.

MR. MONTOYA: Mr. Chairman, what could happen if the Commissioners would consider this, we could adopt the seven-member board and you could at a later date amend it to add a member should you still believe that that would be a good addition. You could ponder that and then add it on later. But at the juncture that we are now, it seems that I understand that you want a new "whereas" that relates to human rights and that the human rights advocate member of the clergy be struck and that the City take that slot.

CHAIRMAN DURAN: Subject to our—

MR. MONTOYA: Subject to your, a nomination by the City and appointment by the BCC.

CHAIRMAN DURAN: I think that's great. Maybe what we could do is send a letter out to the other people who use the facility, the ones that Commissioner Trujillo was concerned about, and tell them that we're creating this committee and if they would like to offer some input as to how they could be better represented maybe they could come up with some idea, or explain to them this thought that we have that maybe one could represent all of them. Just on the committee. They still have, based on what Berron said, the right to inspect and make recommendations based on the contracts that they're under.

MR. MONTOYA: Shall do, Mr. Chairman.

CHAIRMAN DURAN: Okay. Are there any other questions?

COMMISSIONER SULLIVAN: Mr. Chairman, just wanted to clarify. And the other revision would be that it would have a two-year life sunset provision. Did you catch

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that, Sam? The two-year sunset was the other.

CHAIRMAN DURAN: We reappoint entirely after two years?

COMMISSIONER SULLIVAN: And if we do nothing, it sunsets. If we do nothing it sunsets. In other words, the committee has a two-year life period and then normally what happens is it comes back and they say here's what we've done. We recommend going on, and then we reappoint the whole committee or whoever we want.

COMMISSIONER GONZALES: Well the other issue is that this committee would be under the same rules and any other committee, so if they have two unexcused absences, that person is automatically removed and we reappoint someone else, which I think is real important.

MR. MONTOYA: Mr. Chairman, I might also recommend to the Board that you make the effective date of the committee June 1 or something like that, after April, May, where you consider the RFP. So that the sunset date that Commissioner Sullivan is recommending will have the appropriate time to run.

CHAIRMAN DURAN: Okay. Commissioner Campos, did you have something?

COMMISSIONER CAMPOS: Just a comment. I think we need to keep it as simple as possible. I think inviting organizations outside of the county just makes it more complicated. This is generally a Santa Fe County issue. Let's keep it simple. Let's keep it to the seven people. I think that's the most effective way of dealing with this problem. I think it could get out of hand with maybe three or four other counties wanting to have representation in what is our business, I think. So I would say let's think about that issue a little bit more before we contact the other counties. Otherwise, I think it looks good.

**Commissioner Gonzales moved to approve Resolution 2001-17 with all the aforementioned changes. Commissioner Trujillo seconded and the motion passed by unanimous voice vote.**

COMMISSIONER GONZALES: One other issue before I leave, Mr. Chairman. It relates to Public Works, and that's Mr. Herrera in the back that will be addressing this point whenever he gets a chance. I want to make sure that I go on record of asking Mr. Lujan—where are you, James? to set up a meeting with myself and members of this neighborhood in Remuda Ridge. They're wanting to come forward to create an assessment district and I believe that Mr. Herrera has signatures petitioning the Commission to begin that process. So can you begin that meeting with us and establish a time line so that we bring that before the Board so they can decide whether they want to create an assessment or not. And with that, Mr. Chairman, thank you very much and I'll see you guys on Thursday.

CHAIRMAN DURAN: Okay. Say hi to the president for us.

[Commissioner Gonzales leaves the meeting at this point.]

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**VII. C. 1. Resolution No. 2001-18. A resolution considering short and long term solutions to provide additional water supply for the Santa Fe Metro area**

MR. KOPELMAN: Thank you, Mr. Chairman, members of the Commission. This resolution that's been proposed is pretty simple and it's really consistent with a lot of the discussions that you've had already. Attached to the resolution is an executive summary really of what in the resolution is called the Santa Fe Community Water Collaborative, and it's the Water Needs Initiative. It sets forth certain very, very basic steps that the County would be recommending be taken in conjunction with the water shortage and looking at short and long term solutions to the problems, both in the city and in the county. I stand for any questions.

CHAIRMAN DURAN: Any questions of staff?

**Commissioner Trujillo moved to approve Resolution 2001-18. Chairman Duran seconded.**

CHAIRMAN DURAN: Any discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had one issue with this and we heard of course, a brief presentation from the TAP group here at the County Commission, and I also attended a longer, two-hour one at the Santuario. The words that I have problems with are down at the bottom in the last "whereas" where it refers to all these recommendations as being technically valid and financially responsible. I don't think, that's one reason why the City is currently poised to do a new study is that the past studies on which the TAP recommendations are based, need better technical input.

I'll just give you one brief example. The TAP representatives themselves mentioned that additional drilling that they recommended at the locations of the Buckman line lift stations, which is part of the recommendation, might not be technically feasible because, as Doug Sayre mentioned earlier, they may tap into the actual groundwater that's already declining on the Pueblo. So I'm not saying that they're not technically valid but I don't think that what TAP has presented, which is kind of a summary of both short and long range options, is necessarily technically valid. Some of the things are. Certainly a lot of the water conservation measures are good ones and usable. And "financially responsible" again, that's such a broad term.

So I certainly support looking at both the short term and long term water solutions and the Commission has been working hard at that. But I would just think that perhaps we could take those words out and it would just simply read that "immediate water conservation and water supply solutions for Santa Fe that appear to be consistent with long range efforts to create a sustainable, regional water plan."

CHAIRMAN DURAN: I think that's great.

COMMISSIONER SULLIVAN: Any problem with that?

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COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I think it's premature at this point to consider this. We're having a water summit on Thursday and we'll be discussing a lot of these issues and perhaps the better forum would be the Regional Planning Authority to discuss something like this. We're asked to endorse a lot of very specific things that we may or may not agree with, for example, the effluent that Las Campanas wants, La Cienega wants too. That's a major controversy.

Moreover, these issues are directed at powers that the City has, issues that the City has, not the County. So I think it's premature. I think we should discuss this more thoroughly at the RPA where we will have thorough City consideration. So I would be inclined to vote against it.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: What was the intent of staff to bring this forth today?

CHAIRMAN DURAN: Actually, I can answer that. I actually asked this to come forward based on the presentations made to us at the last meeting by TAP and this Water Consortium and Voices of Santa Fe. And based on the presentation made to us at the RPA and at the Board of County Commissioners meeting I felt that it was appropriate to support their efforts. I understand the amendments that Commissioner Sullivan has made to this and I agree with him entirely, but I don't think that it's too premature to make a decision or to make a statement that we need to work on some long term and short term solutions to our water problem. And if we don't make a commitment now, if you think it's going to be made at the Regional Planning Authority, I think it's good that we support this because then it could help the Regional Planning Authority make a decision as to whether or not they want to get behind this effort.

It also helps us in our efforts to get our funding from the state legislature for the efforts that we're asking them for on a collective basis. Going to the river to meet our short term needs and exploring the other long term solutions to our problems.

COMMISSIONER CAMPOS: Mr. Chairman, I agree generally. We need to move forward. We need to maybe even pass a resolution, but this endorses very specific ideas that we may not favor. And most of these issues are City issues that they have to address, not the County. They're asking—the big TAP issue, one of their big issues is use effluent for the golf courses, but La Cienega also wants that so it's quite a controversial issue. I just don't think—I think it's premature. I don't think it's the right forum.

CHAIRMAN DURAN: Well, I think it's time you make a decision whether or not you want to have Las Campanas use potable water or effluent.

COMMISSIONER CAMPOS: That's a City issue.

CHAIRMAN DURAN: It is a City issue, but this Commission has some—I wouldn't say say-so, but we do have some influence in whether or not they're going to go forward with taking them off effluent, I mean taking them off the potable and putting them on effluent.

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COMMISSIONER TRUJILLO: The potable water that is being used is a County issue. They're using County potable water to irrigate those golf courses. The issue on the effluent is City. I don't think that it's premature and my motion for approval still stands.

CHAIRMAN DURAN: Okay. There's a motion and a second. Any further discussion?

COMMISSIONER SULLIVAN: Would there be any way to—and certainly the effluent issue needs more discussion. Would there be any way to leave the effluent issue out of these “whereases?”

CHAIRMAN DURAN: The City is going to have to go to the table with Las Campanas and make the decision whether they're going to take them off potable water or not. I think what we're saying here is that we support the efforts of these citizens' groups in their desire to have this potable water released so we can use it to sustain our community rather than to sustain a golf course. I don't understand why there is a problem recognizing that we need to make a statement to that effect.

COMMISSIONER SULLIVAN: I can think of one reason and that is that the State Engineer is still reviewing the Shomaker study. Those results are going to come out fairly soon about what kind of effects the drilling, water use has on the aquifer and our staff will have a chance to review that. The issue of the effluent includes several thousand gallons a day of flow and I guess the unresolved issue is does or doesn't that affect the La Cienega aquifer and there's different technical opinions on that. I don't think we're ready to make a specific decision on that either, although certainly in terms of general policy it seems better policy to irrigate with effluent than to irrigate with potable water.

CHAIRMAN DURAN: I don't think that we're really making a decision because like Commissioner Campos said, it's the City's jurisdiction here. But I for one would like to see them take the golf course off potable water and I think that we need to start working on these issues. I'm not disregarding entirely the concerns the La Cienega community has but we need to get to the table and start talking about them. And if we don't make a commitment here, or at least make a decision that we want to pursue that, it's going to go on and on and on like it has.

COMMISSIONER SULLIVAN: Well, we do say in the “whereases” that it appears to be consistent and in the “now therefore” we say to support working with the City of Santa Fe to investigate and study the initiative. So that I think tells us that the initiative needs more study. That we're not buying it in total at this point. I think those may address some of Commissioner Campos's—but I understand, certainly where the concerns are that he's bringing up.

CHAIRMAN DURAN: And I understand them completely. Again, I don't think this is in total disregard of the La Cienega community's concerns relative to the effluent. I think it's just moving the process along at every opportunity that we can possibly move it along. Okay. There's a motion and a second. Those in favor signify by saying “aye.”  
[Commissioners Trujillo, Duran and Sullivan voted in the affirmative.] Opposed?  
[Commissioner Campos voted no.]

COMMISSIONER SULLIVAN: This is as amended, correct?  
CHAIRMAN DURAN: Yes. As amended.

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**VII. C. 3. Discussion regarding the Silverado Northside and Southside Assessment Districts**

CHAIRMAN DURAN: Did we table this? We did? I don't recall doing a formal tabling of that.

MR. MONTOYA: Mr. Chairman, Commissioner Gonzales instructed the Public Works Director to bring together the appropriate people to talk about it and that was where he wanted to leave it, I believe.

CHAIRMAN DURAN: I'll entertain a motion to table that.

**Commissioner Trujillo moved to table the discussion and Commissioner Campos seconded. The motion passed by unanimous voice vote.**

BECKY BUSTAMANTE (County Clerk): Mr. Chairman, just for a point of clarification. The Resolution 2001-18 passed as amended?

CHAIRMAN DURAN: Yes.

COMMISSIONER TRUJILLO: I've got a Matter from the Commission.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: It has to do with the zoning department requiring additional right-of-way when a property is being subdivided within a traditional community. Article III, Section 2.4.2.b3, Required Improvements. It reads as follows: "When a tract to be developed borders an existing road having the 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."

I would like to see this section excluded from traditional communities. It doesn't make sense that we require a 14-foot, 16-foot wide right-of-way going into a 12-foot wide County Road. The issue is that the County does not have the resources to buy the right-of-way to expand to make those County roads wider. And when ED requires  $\frac{3}{4}$  of an acre for septic tank and leach field, what we're doing by making the road wider, we're taking away from that  $\frac{3}{4}$  acre. Emergency response vehicles are still making the appropriate emergency response through the 12-foot wide road, so it doesn't make any sense that we require, in a traditional community, 15 and 16-foot roads connecting to 12-foot County roads.

So I would like to see this condition, this article excluded from traditional communities. And I'm open for discussion.



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CHAIRMAN DURAN: I guess I have a question. Would this be a Code change?

ROMAN ABEYTA (Deputy Land Use Administrator): Mr. Chairman, Commissioner Trujillo, yes. We would amend this section of the Code to exclude land within the traditional communities.

CHAIRMAN DURAN: And would it require public hearings?

MR. ABEYTA: Yes, Mr. Chairman.

COMMISSIONER TRUJILLO: So that's a direction then that I would like to follow.

CHAIRMAN DURAN: So you have to publish for summary title?

MR. ABEYTA: Yes. We can bring that forward at your next hearing. A request for authorization to publish title and general summary of that amendment.

CHAIRMAN DURAN: I can never get that right. Okay, does anybody have any questions?

COMMISSIONER CAMPOS: I have a question sir. Mr. Abeyta, what comment would you have to that proposal at this point?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, I believe staff would support that amendment, only because Commissioner Trujillo is correct. We have traditional communities, roads that the right-of-way is literally the road width, ten feet. And something like this really was meant, or the intent of this is for larger tracts or areas that we know there's going to be development and so we'd like to get the right-of-way as these developments come in. It really doesn't make sense to have this in traditional communities for the reason Commissioner Trujillo had mentioned.

CHAIRMAN DURAN: Commissioner Sullivan, any questions?

COMMISSIONER SULLIVAN: Is the idea then that the County would accept these roads for maintenance? No?

COMMISSIONER TRUJILLO: No, they're just right-of-ways to private lot split lands.

COMMISSIONER SULLIVAN: Oh, this is right-of-ways to private lot split lands, as opposed to dealing with existing roads.

COMMISSIONER TRUJILLO: Thank you, Rudy, for the research that you did on this.

CHAIRMAN DURAN: Okay, Roman. Thank you very much.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had two quick items under Matters from the Commission, and one was just a clarification regarding the planning work that's been ongoing in the Eldorado area. I met, just to brief the Commission, with Jack Kolkmeier for some time after the group had proposed the Contemporary Community Plan, and we came up with a schedule and a plan of action and the current schedule is to try to get something put together that would go to the March CDRC, which is right at the end of March. I think the 29<sup>th</sup>. So

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there's still quite a bit of time there.

As a part of that, Jack in his memo to us at the last meeting, mentioned the fact that he had met with individuals from the Eldorado Subdivision as well as persons outside the subdivision, and essentially the outcome of that was that the group would meet with the committee proposing the Contemporary Community status and decide how to approach recommending a larger boundary for the planning area. And the County staff offered to host that meeting on Wednesday, February 14 to resolve any issues and help them proceed forward. That was from Jack's memo. The 14<sup>th</sup> is tomorrow and I'm told that that meeting will take place from 1:00 until 4:00 in the Land Use Conference Room and that will be a number of items discussed. It's a wide open meeting. Anybody can discuss any Eldorado planning issues they want of course, but I think the focus of the meeting is to discuss the boundaries, the planning process, the schedule, the participation of everyone out there and try to get something put together by the end of March. So that's one issue. Just to clarify because there have been some calls to me about what that meeting was about.

CHAIRMAN DURAN: Could I just comment on that, just a little bit?

COMMISSIONER SULLIVAN: Yes sir.

CHAIRMAN DURAN: Because I also spoke to Jack. My conversation with him was how do we get the district plan for the Airport Road Development District. And he commented to me that there was a real push to get the planning done for Eldorado and his comment was that it's going to be a two-year project to plan Eldorado, to do the community planning for Eldorado and it would take up, it would be full time for him and Judy McGowan.

So at some point, maybe not at this meeting but at another meeting, we should probably sit down and figure out how we're going to deal with all of that. I understand the importance and the urgency of planning the Eldorado area but we also have to take into consideration our staff's time and our resources. And if we have to hire someone specifically to do that, I think that we should consider that in the next budget cycle.

COMMISSIONER SULLIVAN: That's a good point, Mr. Chairman. Of course I think Jack reported that within two months or so, the 285 Corridor Plan would be essentially completed and Judy McGowan's been working almost full time on that I think. So she would be available to switch over to Eldorado. But nonetheless, there might be a need for a temporary person on board or a consultant to go through that process because it's not going to be an easy process. There are diverse opinions there and probably two years is a good guestimate to move it through. So I think we're open to all those things, but that was about the meeting tomorrow so that people can understand that everyone can have an input to that meeting.

The other issue I wanted to bring up had to do with roads. It's been on everyone's mind lately and we're at the point where in the legislature we're only a couple days away from all bill submittals. The 15<sup>th</sup> is the final deadline. And I talked a little bit to Virginia Vigil, our lobbyist, about this idea and she said she could run it through our legislative representatives if the Commission thought it had some merit. And it was simply this: we need to take a long term look at roads and road priorities and our road issues and whether we accept roads or whether

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we don't. What the requirements should be on subdividers, how we catch up with our road improvement program, be it graveling, be it paving. And all of that requires money.

We're maxed out at gross receipts tax. We're maxed out at property tax right now. So where will the money come from? And every year, we go to the legislature and ask for money. My idea was at least floating the balloon and if we could get a legislator to do it, of a one-cent tax on gas in addition to the gasoline tax, to be used for road improvement work. This would be not only for the county but the roads that the City of Santa Fe has. It would be apportioned in whatever manner the tax is collected. It would probably be controversial because I imagine the oil and gas interests wouldn't necessarily favor another tax, but in all the ways, and there certainly may be others, that I can think of ways to fund that directly relate to usage, it seems like the gasoline tax is kind of a logical one to think about.

It would certainly start the discussion and the dialogue going. I don't know if we could get a sponsor at this late date but if you all think it's worth pursuing Virginia said that she can do that.

COMMISSIONER TRUJILLO: I think that would be a good idea.

CHAIRMAN DURAN: Great.

COMMISSIONER SULLIVAN: It's a long shot but I was always told if you don't ask you don't get. Could we have that just as a general direction?

CHAIRMAN DURAN: Why don't you get with Sam and Virginia and figure out how to do it.

COMMISSIONER SULLIVAN: It's going to be fairly difficult to say the least, but we thought we would at least try it and if it doesn't work this year, it might set the stage for it coming up the following year. That's all I had on that. If you got the direction on that, Sam.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: An item from the Commission. Mr. Montoya, I think a couple of meetings ago we discussed the County Development Review Committee and how it wasn't representing us geographically. Has staff done any thinking about this issue? Mr. Kopelman?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, I've met with land use staff and we are bringing forward for authorization to publish title and general summary of the ordinance at the next meeting. So that's underway and we'll have some options laid out.

COMMISSIONER CAMPOS: As far as membership?

MR. KOPELMAN: That's correct.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN DURAN: Any other issues that the Commission would like to bring forward? There was a gentleman out there that missed Matters from the Floor, or of Public Concern. Please come forward and state your name.

MIKE HERRERA: Thank you, Mr. Chairman, Commissioners. My name is Mike Herrera. I'm a landowner and I'm handcarrying a petition from a group of landowners that live in the—it's not really a subdivision or an area that is officially known. It's close to Remuda Ridge. I'm thinking of calling it Zoquete Hills because it's full of mud. But in any

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case it's on the western end of the Mutt Nelson Road area, for sake of knowing the immediate area.

I have been talking with Mr. Gonzales about the issue and the fact that it surfaced more so as a public safety issue now than just a request for acceptance of a non-County road, although I am following the format of the resolution 1998-119 for acceptance of non-County roads. However, it has come to the level that it's become again a condition of public safety and the road has exceeded in many cases passable standards, especially with the conditions. And I'm sure it's that way countywide but because of the fact that we know that the governor has declared four counties state of emergency, we were hoping that maybe there was a means that we could tap into those funds for assistance.

I really don't know the proper means of going about doing this business. Long term, the acceptance of non-County roads to County maintenance is one way but I'm looking at more of a short term fix to resolve a potential disaster or bodily harm that might happen or a house being burned down.

CHAIRMAN DURAN: Maybe you can get this petition to Mr. Lujan and he can help us out. Maybe you can give us some idea of what the process might be that we can follow.

JAMES LUJAN (Public Works Director): Mr. Chairman, members of the Commission, the question on using some of this disaster money—it is not for private roads, it is only for our public roads at this time. The declaration has allowed us to go work on private roads but we do not get any reimbursement for them.

CHAIRMAN DURAN: If it's a health and safety issue, or matter of emergency.

MR. LUJAN: We can go in, that's what allows us, this declaration does allow us to go in there on an emergency basis if there is a need for somebody to be pulled out, or if there's a health, safety and welfare issue we could go in there and address the issue, but to go in and fix the road on a means for the reasons of mud right now, we can't go into public roads. Only on a health, safety and welfare issue. That was discussed with the Manager and Finance as we met with state disaster.

CHAIRMAN DURAN: So what options are available to this gentleman?  
None?

MR. LUJAN: Right now, I don't have any options. As far as that, if there is a person who can't get in and out for health, safety and welfare issues, we can go in there and assist them.

CHAIRMAN DURAN: So we can't do an assessment?

MR. LUJAN: We can—that's another process, yes. Take in an assessment district and repair the road, yes.

CHAIRMAN DURAN: We can't send Public Works out there to evaluate whether or not there is a need for us to intervene.

MR. LUJAN: Sure. We can go out there and assess that. I just—the direction of what you want us to do. If people are mobilizing and moving in there right now, we have

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County roads like that all over right now and that's the issue of going in there and just addressing it. I cannot take County equipment in there at this time.

CHAIRMAN DURAN: Well, why don't you leave us your petition and the County Manager can check into it and get back to you and tell you what other people are doing. This is asking for acquisition of a non-County road?

MR. HERRERA: I want to clarify one point. I understand in the short term that the County can't go in and fix the whole road, and we understand that. There is a point in the road which is a hole. It has grown into a very dangerous hole in the middle of the road bed. It's the full width of the road, the 16 feet wide. If that one particular point in the road could be repaired, the rest of the road, we understand can follow in the long term process of following the resolution procedures identified in Resolution 1998-119, Acceptance of Non-County Roads.

There is just that one particular area and again, if you send somebody out there to do an assessment, they may find that there is in fact a specific area that needs to be fixed immediately, not the whole road. We understand that there's a lot of money, a lot of manpower, a lot of time to work that issue, but maybe by sending the Public Works out there to do an evaluation and an assessment, the state can justify the fact that there is an immediate need for that area that I'm talking about.

CHAIRMAN DURAN: I think that's a fair thing to do. What does the Commission think? Just to do an evaluation.

COMMISSIONER CAMPOS: It's an evaluation on a private road. You live in a subdivision?

MR. HERRERA: I don't know what the definition—it's not a subdivision by name. It's a lot of landowners that own between 2.5 to 500 acres of land down that particular road area. It continues to grow. The property owners continue to split their lots into 2.5-acre lots. There's approximately 30 to 40 residents out there that actually use that access route as the only means in and out of their residences.

COMMISSIONER CAMPOS: In the past, how have you repaired or maintained your roadway?

MR. HERRERA: We follow the County rules whenever there is a development of property that says that your easement has to meet County standards, but it's done over time, so as a property owner is required to develop that easement, we do that. But if it's not maintained, what was once basecourse now becomes mud or turns into whatever it may be. So every landowner has taken the responsibility of meeting the requirement of the County to bring the road or access route to County standard. Then, after that, the group of landowners get together and we have created a fund that's in a bank that we maintain that property by ourselves, or that road by ourselves.

It has been addressed and it's really Extraterritorial Zoning issues. And it has been addressed to the EZC about requesting takeover of the road, and it's gone back and forth and now the community has finally gotten together and is willing to speak as one voice and say that we have not gotten any support on the road maintenance issue but we want to move forward

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with whatever means necessary.

COMMISSIONER CAMPOS: But you have money in your fund to repair the road?

MR. HERRERA: No sir. What I'm going to do as spokesman for the community is I'm going to take whatever the Council or the Commission gives me, and I will write an information paper and walk to each and every individual landowner and say, they said it's going to cost x-amount of dollars. That's divided equally amongst the landowners, it will cost us x-amount of dollars. If we can afford it or not is something that is a serious concern to the landowners. It gets expensive and maybe there might be a self-help program initiated that says we have basecourse and gravel that if you can show that you're going to use it for the upgrade of that road that's available to the community members at no cost, so long as you meet certain guidelines and then the County doesn't have to do anything other than support the community with the basecourse. That would help.

People are willing to do the work, but there's got to be a happy medium. People are not very wealthy to be able to do a full-blown road maintenance project. It's expensive.

COMMISSIONER TRUJILLO: This is a situation that exists countywide. We've got a lot of roads out there that are non-County roads that communities want to dedicate to the County.

MR. HERRERA: I appreciate Commissioner Sullivan's request or thoughts on the particular issue that we know that it's happening. It's not going to go away. The county continues to split into smaller lots and people continue to move in. It's got to be addressed at a higher level, I think, or at a higher priority, at least. Fortunately, we've got a lot of water but there's an impact with all that water that we've received.

COMMISSIONER TRUJILLO: But these are roads that are non-County roads and there are certain regulations, statutes that we need to follow. If we expend manpower or material on non-County roads, then we're in non-conformance with the state statute, which is the Anti-Donation Clause. And the County's liable to get fined up to \$10,000 a day for not following that statute.

MR. HERRERA: I understand that and again the state emergency that the governor has placed, maybe we need to do a state emergency for non-supported road access routes for residents in the county. I don't know what the answer is. I'm just here to represent a small community that's really hurting.

CHAIRMAN DURAN: For years we've had these issues come up and our only answer is, sorry, that's not our problem. I know that Senator Rodriguez is working on some state funding to help some of her people, some of her constituents with some of their private roads. And they're getting the money for the state, and it's actually earmarked for private roads. And maybe what we should do at some point is to try and get the state to give us some funds that would be available for emergency cases such as this. Because this is about the fourth one that I can remember that we've gone home, we've sent taxpayers home with the answer to their problem is: It's not our problem. I think we should try to do something that's a little bit more—

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MR. HERRERA: Mr. Chairman, Commissioners, I thank you for your time and we will move forward on requesting the assessment to that particular portion of the road and again, I hope that maybe in the future we can come up with something that will help everybody out there.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Let me just clarify. There is a process, is there not, if the private road can be brought up to County standards, in terms of right-of-way width and basecoursing to six inches, depending on what the traffic volume is on it, and then—of course that's a substantial amount of money. You've got to assess yourselves to do that. If it can be brought up to County standards, my understanding is then you can make a request, an application to the Public Works Department, the Public Works Director, who reviews the issue and then makes a recommendation to the Board of County Commissioners whether the County should accept that road as a County road.

Now there's some criteria that I understand too, and they're not written down, I'm afraid, but they're priority-type criteria. For example, is it a through road? Through roads are used by a lot of people, not just the residents. So, but correct me, James, if I'm wrong. Is that not in place? Would that not be the next step that these homeowners could take?

MR. LUJAN: Mr. Chairman, Commissioner Sullivan, yes that is. But we do have a set of criteria for taking in roads.

COMMISSIONER SULLIVAN: So basically what you would need, sir, is a general idea, which I think James, you could give him, could you not?

MR. LUJAN: Correct.

COMMISSIONER SULLIVAN: As to what you all would need to do in your area. I don't know what the right-of-way is in that road but I think the County requires 60 feet for that type of road. I'm not sure.

MR. LUJAN: We have all those requirements.

COMMISSIONER SULLIVAN: And he could give you a rough idea of what six inches of gravel and some drainage structures, culverts would cost, and give you a rough idea and divide that by 40 homeowners, and let's say it was \$60,000 or \$80,000. It might be \$2,000 a homeowner. That might be something that over a period of time you all could afford.

And the County would consider then accepting the road for maintenance based on the Public Work Director's recommendation. So there is a process. It's not a cheap one and there's no free money, but I just want to be sure that you understood that that process could take place.

CHAIRMAN DURAN: I don't want you to go home with any false hope though. My understanding is that because we've had a flat budget for the last three years, we have not been adopting any new roads for County maintenance. Is that correct?

MR. LUJAN: Mr. Chairman, yes, we're trying to pick up on the roads that we do have, the current road miles, and going through the Road Advisory Committee and getting those roads basecoursed and up to standards. We have been running a program every year and we're trying our best to keep that with a budget that we can afford.

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MR. HERRERA: Did I understand you correct in saying that there's a moratorium, if that is the right word, on anybody submitting requests for County accepting County roads?

CHAIRMAN DURAN: It's not a moratorium, it's that in our budget cycle, we've had a flat budget and we haven't been able to adopt any new roads because of the cost involved in that.

MR. HERRERA: Isn't that kind of the same thing? If you're not accepting any new roads, then when will the County start considering that? Or is it a case by case basis?

CHAIRMAN DURAN: Maybe Robert can answer that.

ROBERT MARTINEZ (Deputy Public Works Director): Mr. Chairman, Commissioners, as you know, the town of Edgewood has annexed quite a bit of property in the southern part of the county, and the County inventory has been reduced by about 15 miles of road in the last two years. What we will be preparing for the Commission is a packet that will show how many road miles we can increase our current inventory to to bring this to what we were two years ago.

CHAIRMAN DURAN: Oh, great.

MR. MARTINEZ: That will provide each Commissioner with a certain amount of roads in their district that they could possibly consider for acceptance.

CHAIRMAN DURAN: Good. Make your application right away.

MR. HERRERA: Again, thank you for your time.

CHAIRMAN DURAN: Thank you. Thank you, Robert. Thank you, James. Next on the agenda is executive session. Do we want to go into executive session or do we want to do it at the end of the meeting?

MR. KOPELMAN: Mr. Chairman, we're certainly prepared to wait till the end of the meeting if that's what the Commission wants to do. It's two very short matters.

CHAIRMAN DURAN: We've had Matters of Public Concern already and I was allowing that gentleman to speak. Is there anyone—and sir, you've already spoken. Is there anyone else that would like to address the Commission? So I'll give you a few minutes please if you could make your point as quickly as possible.

MR. SPIEGEL: Zane Spiegel, hydrologist. Longevity has its advantages. I happen to remember that back around 1973 pertaining to the matter of the long term solutions to water supply, that there was one engineering study made by a prominent firm here, W.F. Turney, and then some years later, again, for the Public Service Company, the present operator of the water system. A very detailed study of the Rio Grande from Buckman to Otawi and San Ildefonso Pueblo, of numerous sites along the river for Raney-type collector wells. That second study was done by the Raney Western Company itself, which did extensive test borings, and there is a report available, and I think that that should be consulted by TAP and the County and the City before any further time and public money is expended on something that's already been beaten to death. Thank you.

CHAIRMAN DURAN: Thank you, Mr. Spiegel. Okay, so the Commission's okay with moving executive session to the end?



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COMMISSIONER TRUJILLO: Yes.

COMMISSIONER CAMPOS: I'm okay. Mr. Chairman.

COMMISSIONER CAMPOS: We have many land use items. Would the Board or chair considering moving those up or finding out how many people here are for the land use and how many here are for the ordinance and maybe take the ones that have the most people present so that we can let people go earlier.

CHAIRMAN DURAN: He wants to move the land use items in front of the public hearings for the ordinances.

COMMISSIONER CAMPOS: If there are indeed more people here for the land use items.

CHAIRMAN DURAN: Well, let me just make a couple comments here. I think the first ordinance, establishing the rules for the County open space, that should be a quick one, because this is the second meeting. B is going to be full of controversy. Why don't we move, why don't we do A and C real quick. Let's move B to the back of the land use items. Does that sound—actually, it doesn't matter to me.

COMMISSIONER CAMPOS: I don't think it would make a difference.

COMMISSIONER TRUJILLO: Let's just do all of them. All of the public hearings.

CHAIRMAN DURAN: Does that sound fair, just do them now?

COMMISSIONER SULLIVAN: Yes, let's just go through them and get them done.

## **VIII. PUBLIC HEARINGS**

### **A. Ordinance No. 2001-01. An ordinance establishing the rules and regulations for County parks, trails and open spaces (second public hearing)**

ALINA BOKDE (Planner): Mr. Chairman, Commissioners, the County has purchased ten properties protecting approximately 2400 acres through the Open Space Program. There properties are designed for inclusion of County parks and trails. With the acquisition of these properties, the issue of safety and enforcement are becoming more prominent. Staff has received many complaints about off-road vehicles, gun play and littering on some of these properties. The proposed ordinance will establish the rules and regulations for use on these open space properties.

The proposed ordinance establishes the rules for use on the open space properties including vandalism, firearms, camping, motor vehicles, domestic animals, signage, advertising, research, fire, commercial uses, alcohol use on premises, trash, closure areas, and penalty fees.

The first public hearing for this ordinance was held January 9, 2001 and tonight is the second public hearing. Staff has received and reviewed proposed changes to the ordinance. Staff-supported additions to the ordinance are underlined and deletions are stricken. Attached is

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a fax regarding a proposed change to the ordinance. Although some of the changes from the fax are incorporated into the ordinance, not all of the proposed recommendations are included.

These include allowing hunting and firearms in open space areas and trails. Staff does not recommend inclusion of these two items because the open space and trails program's intent is to protect the cultural, natural and recreational resources contained within these properties. The bond language also states that the monies used to purchase properties are for the preservation of historic and natural areas.

Hunting and firearms may damage the resources contained within the properties. Issues of liabilities arise if a person is harmed as a result of hunting or firearms. A number of the County's open space and trails properties are located near residential areas and are smaller in acreage and therefore hunting and firearms may pose a safety hazard to the nearby communities.

An additional staff-supported recommendation is also to allow grazing on properties that is based on an approved management plan and issuance of a special use permit. And this would be an added inclusion into Section 4 number 6 under Special Use Permit Criteria. Staff recommends the adoption of the ordinance with the proposed amendments included.

CHAIRMAN DURAN: I have a question, Alina. Section 8. C where they've taken out trails or areas inappropriate or unsafe for such use shall be so designated by the administrator. Why couldn't we keep trails or areas unsafe for such use shall be so designated by the administrator? Wouldn't we want to make sure that persons with disabilities and motorized vehicles were provided the information that they may be entering an unsafe area?

MS. BOKDE: Mr. Chairman, the reason that staff recommended the deletion of this proposed policy is that what we thought is when we development the management plans for the different open space properties is that we would actually create signage for areas that would allow, create signage that would allow for people with motorized vehicles for handicap uses to be able to use any part in the park and felt that if there were areas that were unsafe, that we wouldn't have to designate it as such. Staff felt that based on the management plan identifying the areas that could be used for handicapped persons would be signed that way rather than the opposite way. So to look at it more where people who have disabilities could maybe utilize the parks, rather than not utilizing the parks. So we were wanting to actually change the shift of how we approached the management on these areas.

So what we were recommending is that that person with disabilities would be allowed to enter into any of the parks or trails, and it wouldn't be in violation of the ordinance but they could use any area of the park or trail that they would be able to access. And in fact that would be based on a management plan rather than going and trying to piecemeal and designate areas that were not suitable.

CHAIRMAN DURAN: Well, I would think that if you said trails or areas unsafe for such use shall be so designated by the administrator would be in line with what the intent is. Maybe I see it differently.

MS. BOKDE: Mr. Chairman, staff's recommendation is just to look at it more from a management perspective rather than trying to piecemeal it. That we could, if the Board

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felt we could definitely use the signage to designate inappropriate or unsafe areas.

CHAIRMAN DURAN: Steve.

MR. KOPELMAN: Mr. Chairman, I think one of the concerns is that this ordinance takes effect and all of a sudden we have an incredible amount of land, and until we get around to actually posting those signs in some areas, maybe many, many months. And if we don't post the signs, arguably then we're in violation of our own ordinance; we haven't complied with it. So I think as Alina said, I think from a management standpoint, I think the intent is the same. But I think the idea was to really do it in a more systematic way.

CHAIRMAN DURAN: Okay. It took an attorney to get me to understand it. Sorry. Okay, any questions of Alina, staff? Is there anyone out there in the public that would like to address this issue? If not, what's the pleasure of the Board?

**Commissioner Trujillo moved to approve Ordinance 2001-01, Rules and Regulations for County Parks, Trails and Open Space Areas. Chairman Duran seconded.**

COMMISSIONER SULLIVAN: Mr. Chairman, I have a question.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: A couple of items. One that the staff has added and has to do with the collection of roots and herbs and so forth and in the staff's memo, they say the intent of the program is to protect the natural resources and I don't know that allowing people to collect roots and herbs and so forth protects those natural resources. It says, "under a duly authorized management plan." I don't know that anyone is going to want to do a management plan just to go out and collect some roots and so forth, but I just wondered why this came back into the ordinance. Or came into the ordinance at all.

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, this was a request made by some community members who are actively involved in developing a management plan for the Cerrillos Hills Park area. And one of the programmatic approaches that we want to take, that staff would like to take with the open space program is to look at farming opportunities, harvesting opportunities and agricultural uses on those properties. And it was our understanding in discussion with the members who brought this proposed change forward is that there might be certain areas within a property that would basically support an agricultural use. It wouldn't necessarily be cultivate farming but we would look at whether there is in fact the ability for a community member to harvest a certain herb or nut, like even piñon picking that would be also an activity that would be allowed.

A lot of these proposed policies that are coming forward are going to be based on a management plan that we develop with partners and community members and although, I agree it seems in general we would address this issue specifically within a management plan but it's something that in terms of looking at the future of this program, it would be something that would be incorporated as part of a potential agricultural use on the property.

COMMISSIONER SULLIVAN: It just seems to be a little bit contradictory in what your goals are. And I understood you to say that you were going to add—it's not in our

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copy here—under paragraph 6, that you were going to add that grazing is also an allowed use? I don't see that here now.

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, yes, that was something that came forward. Staff met with COLTPAC on Thursday to review the ordinance one final time and a COLTPAC member called me today and said he felt that the area where, number 4 where it talks about domestic animals, in some ways could be used to interpret the County, the intent that the County would not support grazing activities on these properties.

So what we had discussed is that in fact the County as part of the acquisition program has actually taken on some grazing leases and I think there's been some very preliminary discussions about again, allowing some form of grazing on open space properties based on a management plan and so it's basically, the intent is to clarify that based on a management plan, as well as a special use permit, that we would allow the potential for grazing to happen on these properties. So it's more to make sure that number 4 doesn't contradict that that intent exists within the program. So basically, staff's recommendation, and I did check with legal this afternoon on this is for number 6 is just to add the category grazing under special use permits, that grazing would be allowed with the adoption of a management plan that would look at carrying capacity issues as well as the issuance of a special use permit for grazing.

COMMISSIONER SULLIVAN: I just want to be clear that everyone knows that you're proposing grazing. I think that needs to be handled with extreme care, not just a permitted use without some consideration. The other question, the material in the packet is from Mr. Rick Dotson who is a new member of COLTPAC and had several suggestions, a couple of which I understand you've incorporated into the recommended ordinance. Two that I wanted to ask about. One is that in 4.b, about horses, you say that they must be under the physical control of a person, and Mr. Dotson said that that would not allow you to dismount and tie your horse up and have a picnic or do whatever you wanted. The horse is no longer physically under your control. What would be your comments on that?

MS. BOKDE: Mr. Chairman and Commissioner Sullivan, when we developed this policy, the intent was at this time that horses would be under the physical control of a person, whether they were riding the horse or they would have it holding on to the reins. In terms of tying up the horse, I guess we could amend the language to say that it must be under control. I guess the intent is that the horse be under the control of the person, so the person wouldn't be able to tie up the horse and leave the area and leave the horse unattended.

CHAIRMAN DURAN: Excuse me, Commissioner Sullivan. Rather than ask Alina to give us a ten-minute answer, couldn't you just suggest some amendment?

COMMISSIONER SULLIVAN: Sure. I would just suggest an amendment there and see what you all think about it. Instead of where it says "Horses shall be permitted only in designated areas and must be under the physical control of a person" we could say "Horses shall be permitted only in designated areas and must be adequately controlled at all times."

CHAIRMAN DURAN: Okay, why don't we make that change to the ordinance.

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COMMISSIONER SULLIVAN: So that seems to be—the other only changes, the parking issue on nine. Was that an issue? That vehicles shall be parked only in designated parking areas, and the recommendation was and accept as specifically authorized in camping areas.

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, we did add, under vehicle parking to incorporate “and in designated camping areas.”

COMMISSIONER SULLIVAN: That’s fine. And then the final one that I’m not necessarily going to propose here, but Mr. Dotson proposed was that hunting be allowed in these areas where again, that was part of a management plan. And Mr. Dotson is an equestrian and I believe a hunter and I understand your staff recommendation is not to allow that and in the related issue under the firearms is that no firearms are allowed in the open space lands. Is it possible, if there were lands adjacent to BLM lands or lands where hunting was permitted and someone—would someone be able to ride across them in order to get to a hunting area?

MS. BOKDE: Mr. Chairman, Commissioner Sullivan, I think if someone did have firearms and were going to hunt on an adjacent property, whether it’s forest service or BLM, if—I guess that would have to be the discretion of the park ranger. My understanding is that according to the ordinance, the ordinance would not allow any firearms or hunting on the property. So the way that, if the ordinance is adopted as is, if somebody did have a firearm on the property and even if they were going to an adjacent property and they were stopped and they had firearms, they would be in violation of the ordinance.

CHAIRMAN DURAN: I think that’s the way it should be. No firearms are allowed on the property and no hunting are allowed. If they want to go hunt on BLM land, they have to find another way of getting to it than our public parks.

MR. MONTROYA: Mr. Chairman, I would like to underline the importance of not allowing hunting and/or firearms on these properties. Mr. Chairman, I think that’s something we’re totally unprepared for and could lead to some disaster if it becomes kind of run of the mill. And I also want to point out, Mr. Chairman, if I might for a few seconds, that the passage of this ordinance is going to be a management issue that I think is going to be paramount to the County and also a budgetary issue that I think the Commission will see in the upcoming budget. There is going to be a need for some kind of review in terms of the Code restrictions. We’ve talked about hiring park rangers and/or working with the Sheriff’s Department to see if they would be willing to make certain that there are no Code enforcement violations and if there are, how do you approach these people and either write them a ticket and/or ask them to leave because they do have a firearm or they’re running some kind of issue that is not allowed on the property.

So I think the Commissioners will see in the future that we have some enforcement issues, that we have Code enforcement problems that we’ve not determined who is going to be responsible for doing that and eventually, we’ll have to have full time FTEs riding range, if you will, on these 2300 acres that will only get larger, because we’ve not spent

the additional \$8 million that's coming down the pike in the next fiscal year.

So, Mr. Chairman, if we could stay away from firearms and hunting, I think that would be important in the general scenario until we have some kind of formalized Code enforcement initiative. Thank you.

COMMISSIONER SULLIVAN: It's just that one amendment then, Mr. Chairman.

CHAIRMAN DURAN: Okay, any other amendments or questions of Alina? If there's no further discussion. There's a motion on the table. And that motion is to adopt Ordinance 2001-01 with the amendments as we discussed.

**The motion passed unanimously upon roll call vote, with Commissioners Campos, Duran, Sullivan and Duran all voting in favor.**

**VIII. B. Ordinance 2001-\_\_ . An ordinance amending and replacing Santa Fe County Ordinance 2000-14 and declaring a moratorium on new subdivisions, land divisions, and master plans for projects served by Eldorado Utilities, Inc. and encouraging conservation measures within the Eldorado Utilities, Inc. service area, which prohibits transfer of water from residential lots to commercial lots**

KATHERINE YUHAS (County Hydrologist): Mr. Chairman, Commissioners, an amendment to Santa Fe County Ordinance 2000-14 has been proposed to remove the provision to allow transfer of water from platted residential lots to commercial lots. A copy of Santa Fe County Ordinance 2000-14 and the proposed Ordinance 2001-\_\_ should be in your packets. And I'll stand for any questions of you have them.

CHAIRMAN DURAN: Any questions of Katherine? Okay, this is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Please come forward and state your name for the record.

NATHAN OCKMAN: Mr. Chairman, members of the Commission, my name is Nathan Ockman. I'm a retired physicist with a doctorate from the University of Michigan. I live in Eldorado on 9 Monte Alto Road. I am speaking to rescind the ordinance 2000-14. I am disputing the contention of Monte Alto Homes, Incorporated that the transfer of water rights to residential lots in Eldorado to their proposed project, Monte Alto Plaza, will be sufficient for their project. I'm also disputing their contention that the transfer of water rights from any residential lot in Eldorado is water-neutral.

I will deal first with Monte Alto Plaza project. I would like to give a condensed version of my presentation of November 14, 2000 before the Commissioners, since we now have two new Commissioners in Jack Sullivan and Paul Campos. I'm considering the parameters of the project which will include phases one and two, with a total footage of

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25,230 square feet. I'm considering an average office space of 400 square feet with two occupants per office, and that the water use per person will be 20 gallons per person per day, and that comes from Craig O'Hare's office in Santa Fe. I'm also considering four possible space configurations for the space.

The first one will be where all the space will be converted to professional offices, of which 63 will fit the square footage and the water use for that with these parameters will be two acre-feet per year. If one considers 59 offices, with one medical office, the water use would go up to 2.3 acre-feet per year. If one considers 59 offices with one dental office, it will go up to 2.4 acre-feet per year. And finally, if one considers 55 offices with one medical and one dental space, the usage would go up to 2.7 acre-feet per year.

I'd like to make some remarks with respect to these calculations. The first one, one can see from these numbers that the developer's allocation of 1.5 acre-feet, which is due to 1.25 acre-feet from the transfer of five residential lots, plus .25 acre-feet for Tract G itself, is insufficient for their usages. In fact, my values for the office usage is probably lower than what actually would be used for it does not include the water use of visitors and clients who would come to some of these offices.

The second remark I'd like to make is the master plan for Monte Alto Plaza determined the water use of one acre-foot per year based on single occupancy for the same type of offices. However, I contend that about \$20 per square foot for a lease, a 400 square foot office would lease for about \$8,000 a year. I question that there are many home businesses in Eldorado and vicinity that can afford this cost. In fact, even at two occupants per space, which I'm considering, the overhead would be \$4,000 per person.

The third remark I'd like to make concerning this data is that the project is based on initial approval of phase one, which is for 8,787 square feet of space. If only phase one of the project is built, they would have enough water, by transferring water from these five residential lots. However, if they build phase one, they do not have enough water for phase two. Now the developers a number of times have stated publicly that they require both phases one and two for the project to be economically viable. Where will the official water come from after they build phase one. The only possible source to me would be to draw from a new hook-up which has already been approved for phase one, and phase one is approved.

Now I'd like to discuss a more general proposition involving transfer of water from residential lots to commercial developments. This type of transfer is not water-neutral, because the average home in Eldorado does not use .25 acre-feet per year. The average home in Eldorado, from January 1999 to June of the year 2000 only used 5,000 gallons per month. And that transforms to .1 acre-feet per year. There is therefore less of a use for an average home of .07 acre-feet per year, which is 39 percent less per lot than would be allowed for commercial use through this transfer scheme. So it is not water-neutral.

My final comment has to do with the fact that there are six other tracts in Eldorado which could be potentially rezoned for commercial use if this amendment is not rescinded. Assuming each tract of land achieves a transfer of water from five residential lots, the

excess water use could amount to 2.45 acre-feet per year, or 800,000 gallons more than 30 homes would use if they were build on these lots. How can this amendment be water-neutral? The only way I can see it could be water-neutral is to rescind it. I thank you, Commissioners for your time.

CHAIRMAN DURAN: Thank you, sir. I would just like to say that we are not here to discuss the merits of any project. Monte Alto Homes has not been—has not come forward to this Commission with a proposal to develop their property. We are here this evening to discuss the merits of the ordinance so I'm going to let Monte Alto speak to what this gentleman has brought up but the rest of the testimony needs to be specific to the reasons why we should approve or not approve this ordinance. And I don't think it's fair to bring up a project that has not even come forward for us to consider.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I would think that we should consider all this testimony because it relates to how this ordinance may play out, so I think it's a significant issue.

CHAIRMAN DURAN: I'm chairing the meeting, Commissioner Campos, and I believe that we need to stay with the issue. The issue is not a development that has not even come forward for us to consider. You want to spend all night talking about a proposal that has never come before this Commission or any committee for approval. I don't think that's what we're here tonight to do. We're here to talk about this ordinance and not a specific project. So next speaker please.

COMMISSIONER TRUJILLO: Mr. Chairman, but I think that's what's driving this ordinance is the Monte Alto project. That's what's driving this ordinance. So in order to be fair to everybody, I think we need to consider what the impact of that project is on the water usage.

CHAIRMAN DURAN: But it hasn't even come before us to be heard. There hasn't even been a proposal. It's all hearsay. There is no public testimony.

COMMISSIONER TRUJILLO: That's why Monte Alto should be given the opportunity to rebut.

CHAIRMAN DURAN: I agree. I think they should have the right to rebut what this gentleman has said but I don't think that we should spend any more time on a project that has never even come before us to consider as a project. What we did when we approved this ordinance before was the idea of allowing residential lots to be—the water allocated to residential lots to be allocated to commercial lots. And if this Commission doesn't want that ordinance to stay in effect and amend it to not allow that to occur, whether or not this project that everyone is citing has enough water or not, has nothing to do with whether or not we want this ordinance to be amended. It has nothing to do with it. What about some of the other projects that are out there that haven't come forward for us to consider.

COMMISSIONER TRUJILLO: Well, the information that I got from this



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gentleman is that for commercial development from a broad perspective, these are the impacts.

CHAIRMAN DURAN: Right.

COMMISSIONER TRUJILLO: And I think that we should accept that sort of material, that information. Because they're viable, and they're I think quantitative numbers that we can use to make a decision on. So that sort of information I think is appropriate.

CHAIRMAN DURAN: I think relative to commercial use, I agree. But I think that just to cite what Monte Alto Homes is alleged to have brought forward for us to consider isn't appropriate.

COMMISSIONER SULLIVAN: Perhaps, Mr. Chairman, let me just make a suggestion. Perhaps I think certainly Monte Alto Homes was the driving force for this particular amendment to the ordinance that's being considered now for rescission. Perhaps we could ask people to direct their testimony towards the water components of it. There are people who, I understand, favor the project and think it would be good for the economy and people who do not favor this particular project and feel that it would be a traffic burden and these types of issues, and as you say, it hasn't come up as a project to us. But I think where the issue would deal with water, it would seem to me that that would be appropriate to discuss.

COMMISSIONER CAMPOS: I think it's critical. I think Mr. Ockman's testimony helps me understand the issue a lot better. I think this type of factual information is good.

CHAIRMAN DURAN: Factual information? How many gallons of water do you drink a day? Do you drink 20 gallons of water a day?

COMMISSIONER CAMPOS: It's up to the witness to make the allegation. We can accept it or reject it.

CHAIRMAN DURAN: Well, let's characterize the information as corrected. I wouldn't say that it's factual. Next speaker please.

MR. SPIEGEL: My name again is Zane Spiegel and I'm a hydrologist, and again I want to address on the basis of longevity. There probably aren't many people here who were around in 1969 when AMREP first proposed to the Commission, the predecessor to this Commission, a subdivision of 30,000 acres in Eldorado and another 24,000 for the south Galisteo Valley. I happened to be employed by the State Engineer Office at that time as a hydrologist. I had been there for a number of years.

At that time, the County did not have its own hydrologist. The State Engineer in his ultimate wisdom appointed me, with the approval of the Commission, as the County Hydrologist. And I reviewed from the very beginning to the very end every study that was made by AMREP by their own engineer and by five consulting hydrologists. I reviewed in writing every one of those, which included—I'm not sure of the exact number—twenty or so, or more test wells with pumping tests, etc. My recollection is, and I have between 40 and 80 page of documents that I made available to the editor of the newspaper, *Eldorado*

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*Sun* out there, which I believe he failed to use, demonstrating that it was my opinion that not one of those wells that was drilled and tested, lived up the prediction, would live up to the prediction that the various four of the five hydrologists predicted would occur as a result of using those wells. Every one of those wells, as it turned out, did fail, or failed to provide the water that was absolutely guaranteed time after time by the AMREP company.

Now, a bit of corroboration of my opinion at that time, or opinions: One of the five consultants was a man named Guttard Halbpenny. He was a very, very well known, internationally acclaimed hydrologist, based in Arizona but with professional engineering registration in New Mexico as well as Arizona and other states. And he submitted a letter or resignation from his position as hydrologist, submitted it to the Commission and the State Engineer, because he claimed that John Bliss one of the other four hydrologists, retained by AMREP had repeatedly pressured him to change his report to make it more favorable for AMREP.

Now that is a matter of public record. Letters are in your files somewhere, or were, in your archives. They're in the files of the State Engineer Office and they're in my files. And I'll be glad to make available those documents if you wish to copy them.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: There's a more recent hydrological report called the Shomaker Report that alleges that there is ostensibly an abundance of water in that area. Have you had the opportunity to review that report?

MR. SPIEGEL: No, I have not read the report. As I understand it, there was public announcement in the *Eldorado Sun* in January, that an executive summary of that report was available. But I had been led to understand that that executive summary has been withdrawn and is not available and that information was corrected in the February issue of the *Eldorado Sun*. And I have private information as to why it is not available. And I think I'm not at liberty to divulge what that is except that in my opinion, my opinion is still confirmed by events and I'll summarize what those events are.

There is still absolute certainty that there is not enough water for Eldorado to exist as a normal community water supply. And it is the responsibility, in my opinion, for the AMREP Company to upgrade their system if they have to truck it in from Albuquerque, the high plains or wherever. They made the commitment that they had enough water. They lied about it, but the residents of Eldorado ought to hold them to their promise. Now I'll go back a little bit.

From the very beginning, they lied to the Commission. They tried to represent the 24,000 acres in the Galisteo Valley as being suitable for subdivision. They presented some data that showed it was not, but they didn't say that. They just sort of put it on the table. They said we have water for 24,000 acres under this development plan of individual wells, but the data they presented was that most of the wells were dry or produced about one gallon a minute, and almost all of them had water that was unfit to drink because there are gypsum beds present in the subsurface, present in the surface. You can see the white strips

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to the east of Highway 285, south of the Galisteo River. Anyone if they would walk over there could determine that they are gypsum and they are very, very soluble. Gypsum is calcium sulfate. And if there's some magnesium in it, which there commonly is, it's something called Epsom salts. If you don't know what Epsom salts does to you when you drink it, try it some time.

So, the history is, and here again, most people that live out there have not been there since 1970 when the subdivision was approved, so they don't know this early history of attempted fraud by illegal and unethical pressure of a professional engineer, a former State Engineer, John Bliss—the late John Bliss, I must acknowledge—who unethically and illegally attempted to change the opinion of another engineer and that engineer was honest enough to reveal it and withdraw his services from the company at financial loss to him of course. But in the meantime, the history is that they have required the residents to use less and less water by adding many, many restrictions which make it very, very difficult for those people out there.

The people in Santa Fe have a problem with one year, maybe two years of drought emergency restrictions. They've had it for 30 years. Anybody go out there and drive around? How many trees do you see? How many plants? How many lawns? Don't people like plants and lawns and trees? Sure they do. They moved there thinking that they would have them and they have not had them, not been allowed to have them in 30 years.

Now does that fit what AMREP promised that they would have, an adequate water supply? Thank you.

CHAIRMAN DURAN: Thank you, Mr. Spiegel. Next speaker please.

NORTON BICOLL: Mr. Chairman, Commissioners, I'm Norton Bicoll. I'm a resident of Eldorado. I live across the street from Monte Alto Homes' proposed—I do appreciate, I really sincerely appreciate what you all do up there. Running for office and doing things that we private citizens don't make time for. Thank you very much for that. I do have a couple of questions and a couple of matters of concern. I'll be very brief.

I was really shocked at the meeting of your, or the Board of County Commissioners. It seemed to me at the last, at several meetings before, where you listened to what we had to say and you seemed to have your minds made up before we even said it.

That bothered me a lot, mainly because your own staff suggested that this should not happen, and as you know this water matter is leading directly to Monte Alto Homes placing all this large development. Your staff said no, it shouldn't happen. We had 1000 signatures, valid signatures, in a petition that said no, this shouldn't happen. Eighty percent of the residents of Eldorado had participated in a questionnaire that said no, it shouldn't happen. And Commissioner Anaya asked the people to raise their hands in this room who were against it and there were, I counted, about 60 hands, and I counted six for it.

In the face of all of that, you still voted to transfer the water rights. We all know what the reason is. We appreciate, Commissioner Duran, your comments about everything

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but this is all going to lead to something that you could stop right away. If you change this now and go back to what you had before and rescind that amendment, you'll have a lot of other things to deal with and you won't have to be dealing with Eldorado. Nobody wants this out there. It's a huge difference.

Let me ask you a question, Commissioner Duran. You'd mentioned, I remember hearing you saying, Well, AMREP said that there should be commercial nodes when they set this up. In the first paragraph of AMREP's statement about Eldorado and the commercial nodes, they also stated—

CHAIRMAN DURAN: Excuse me sir. I didn't say they were commercial nodes. I said the development was approved with non-residential uses designated.

DR. BICOLL: Okay. I stand corrected. But the purpose of your statement was that if that's the way AMREP said it, then that's the way it should be now. That's what I understood. Am I correct? That was my understanding of what you said.

CHAIRMAN DURAN: My comment was that when the development was approved, it was approved with non-residential uses, and that I felt, based on my knowledge of the area, that it was appropriate to allow non-residential uses to take place on these lots that were designated non-residential. The development was approved as a community, and you can't have a community without non-residential uses. And that is why I felt that allowing water from residential lots to be used for the non-residential uses was an appropriate thing to do. If the water usage was not any more intense than what was going to be used as a residential use. And that is why I voted for this ordinance change at the time that it came before this Commission.

DR. BICOLL: AMREP's statement, to paraphrase, in that first paragraph said, it is open to review. So they themselves have said that it's not cast in stone. There are 25 amendments to the US Constitution. That's my point here. Why can we not make amendments to what AMREP has said originally. Our own Constitution has that number of amendments to it. This ordinance is here this evening because of that. My point was of course that why was that even done. Anyway, I don't need an answer right now. I have several more questions.

CHAIRMAN DURAN: I already answered it for you. But the point of—we're not here to discuss why I voted for this thing at the last meeting. We're here to discuss the ordinance and why we want to change it. Not why it was amended the first time, but rather why you would want to amend it, why this Commission should consider changing the ordinance today.

DR. BICOLL: I understand.

CHAIRMAN DURAN: So please, could you not question my reasons for making the vote that I made at the time that it came before us and stick to the issue.

DR. BICOLL: Yes sir.

CHAIRMAN DURAN: Thank you.

DR. BICOLL: I'm a dentist and a previous meeting of this Commission I made some comments about the usage of water. There's an enormous usage of water and

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the attorney for Monte Alto said there wouldn't be any difference in the usage. You saw the uproar that occurred after that. I used to own a dental laboratory. The water usage was enormous with that. Not only that, we don't have sewers out in Eldorado. Because we don't have sewers, there will be water and wastewater and a lot of caustic chemicals from dental or medical offices or dental or medical laboratories that will seep into our groundwater. That is a sure thing. It may take five years to happen, but it's going to happen. Please consider that.

Another comment I have is I have several, in my practice, I have several State Representatives who made the comment to me more than once that they didn't hear enough from their constituents when there was a vote on something that was of importance to them. I mentioned this to Commissioner Sullivan. We're your constituents and we're saying to you something like this should not happen. We're saying to you, please rescind that amendment. Please let this die now so you have other things to attend to. It's been very obvious that so many people do not want this to happen. Thank you for your time and again, I do appreciate all that you do for us so we can get on with our lives.

CHAIRMAN DURAN: Thank you sir. Next speaker please. Dennis, why don't you come up and have a seat so you can jump right in.

MARY ANN HALE: Mr. Chairman, Commissioners, my name is Mary Ann Hale. I live at 42 Estambre Road. I guess you're supposed to give any qualifications, other than a concerned resident. I'm an accredited residential property manager and a licensed New Mexico real estate broker. And tell me if I'm discussing something that I'm not supposed to be discussing. It seems to me that the total instigation before the original amendment was passed and the rescission that was proposed is Monte Alto Homes, and therefore it is an issue. And since the development affecting the water, this affects more than anything the water moratorium. It is the underlying issue, is Monte Alto Homes and any future commercial development that would happen because the rescission would also happen.

I've attended each meeting and I've listened carefully to those of your comments, those of the public. They've been very thoughtful, but there seems to me to be some fundamental misconceptions and I do hope that I can clear a couple of them up. One of them that has consistently come up is these are commercial lots, these are commercial lots. In fact, they are residential lots according to the County. They are shown on the original Eldorado plats as possible commercial nodes. Original language by the developers mention that only time would tell what the community would need. And I think it's a question of what we need and needing also has to do with our future water rights and what we need.

The developers of Monte Alto knew these lots were zoned residential when they bought them. They were taking a risk that they're going to be able to do what they want to do, convert them to commercial zoning, which they would have to do if they get the right to transfer the residential water rights to these lots. The developers have stated they have a right to a return on their investment. If that's true, I have the right to sell my Lucent Technology stock for more than the \$40 I bought it for. Maybe even in excess of the \$80

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high it was, rather than the \$14 a share it was the last time I checked.

If you do feel, however, that they are somehow owed a return, allow them to have a zoning variation so they can divide this 4.8 acre parcel into three 1.5-acre residential lots, build three \$250,000 homes there and they'll have an excellent return. They are respected home builders and should have no trouble making a profit. And please remember the developers are applying to have water rights transferred, and then still must apply for a change in zoning. There are already areas adjacent to the Agora shopping center which are presently zoned commercial, have fully planned projects already approved and ready to build, pending lifting of the moratorium. Surely these approved plans are being delayed for a good reason. We cannot count on future water supplies, and this is the recommendation of your own staff.

Allowing these water right transfers could set an extremely dangerous precedent. Those with already approved plans should have the right to proceed with theirs first. And also it's been stated that we need this development, somehow that this would be an overriding principle here. I don't believe it. You may have our best interests at heart but you don't live in Eldorado. We think we should be the ones to decide what we need. And it's probably difficult for those of you who live in and near the city to understand how we could possibly want to be more than a minute away from grocery stores, movie theaters and Home Depot.

You've said how difficult it must be to live so far away, to have to drive so far, they need to have those services there, and therefore we should consider even risking out water use in order to provide this essential development? Well, we can live without this. We knew how far it was to town when we bought our home. I only have to drive five miles to our shopping center for groceries and pizza. Well, sometimes, I do have to drive into town and in return, I live in an open, rural setting with incredible night skies and mountain vistas, and this rural character was touted by the original developers as one of the great selling points in Eldorado. And this is why we are there, this is why we like it, why we live there. If we decide something else, if we can't stand it, we can move back to town.

In only two weekends, opponents, as you said collected over 1000 signatures and the other four months since there's been no groundswell of support by those who favor the project. I gather from comments made here and other meetings that there have been individual phone calls to your office saying the signatures were not valid or other complaints, but where are there 1000 signatures? I do hope this will help you in your deliberation, but I think your concern for what we need is not our concern. We know what we need and this is not it, and we are concerned about our future and our water rights. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker please.

DENNIS KENSIL: Mr. Chairman, Commissioners, my name is Dennis Kensil. I live at 635 Caminito del Sol. I am opposed to the ordinance as presented by Ms. Yugas. Commissioner Duran, I appreciate the opportunity to rebut testimony regarding the

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Monte Alto project and Mr. Spiegel's comments regarding the history of AMREP. That's not why I'm here tonight. I came prepared to discuss the amendment that's before you. In a meeting that I had with Commissioner Campos last Friday, he told me that if I had any ideas about modifying the Eldorado Utilities development moratorium I should prepare something in writing and bring it to today's meeting.

In the material you have just received, [Exhibit 3] there are three suggested amendments to the current ordinance. There is also a chronology of dates that show how the amendment was implemented last fall and how the rescission is being fast tracked now.

Please notice that public notice have not been published for this issue at this time. I'd like to address amendment number one first. One of the criticisms of ordinance 2000-14 is that it was too restrictive and only applies to the Eldorado at Santa Fe Subdivision. Amendment number one would rectify this limitation and allow the transfer of approved residential hook-ups to any approved or proposed commercial development within the EDU service area.

It would allow approved commercial developments to proceed by utilizing this amendment. It would reallocate unlimited residential rights to .25 acre-foot per lot for community services in an area of 6,000 residents and save water. In addition I propose that Ordinance 2000-14 be amended to allow commercial projects to pledge leased residential hook-ups towards its water budget. These vacant residential lots would then be set aside during the moratorium, be made subject to the same restrictions as required in the current ordinance, and accommodate commercial development within current water allocations.

Transferring and leasing water rights is a time-honored method of utilizing approved and allocated water in New Mexico and could be put to effective use under Ordinance 2000-14.

The second amendment proposal that I have was first suggested to the BCC in April of 1999 by then County Hydrologist Jack Frost. This proposal would permit approved or proposed residential and commercial projects within the EDU service area to proceed when adequate long-term water supply and water rights are dedicated by the developer to Eldorado Utilities. By requiring projects to supply wet water and paper rights in an amount equal to or greater than that required for the project, it encourages the private sector to search for new resources. Furthermore, when the State Engineer approves water rights which are then dedicated to the utility, it strengthens EDU at no cost to the existing customers.

The third amendment suggestion is another of Mr. Frost's suggestions from 1999. This proposal would allow an approved development or subdivision with current utility connections to reallocate approved water to a new commercial use on an approved list. This would facilitate a different commercial use without increasing water allocations for approved projects.

All these suggestions utilize water that is either, one, currently allocated by the County and approved by EDU, or two, draws on new resources approved by the State

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Engineer to strengthen the utility company. These proposals can be quickly and easily implemented to ease the County bias from no development in the EDU franchise area to a position where some development within certain parameters would be allowed. In light of the encouraging Eldorado groundwater study by John Shomaker, this is an appropriate time to consider such a change. Prior to making any decision on the EDU moratorium, I would encourage the Board of County Commissioners to direct staff to contact John Shomaker requesting a presentation to the BCC on the important work that he has performed. I believe it would also be appropriate to invite Eldorado Utilities to update the Board on the status of its new wells and water rights applications prior to any BCC decision regarding a moratorium.

Finally, I would like to respond to some comments that Commissioner Sullivan made at the January 9 BCC meeting about why this amendment should be rescinded. Regarding the issue of fairness, there are other property owners within the Eldorado Subdivision who could benefit from the ordinance as it is currently written. By adopting amendment one it would certainly benefit more landowners with development interests in the 285 corridor. From a public policy standpoint, I believe this is the fair and right position for the BCC to take.

Furthermore, why should commercial landowners be excluded from proceeding with the development when our residential neighbors can proceed without question. We made our commercial investments just like residential property owners did, relying on EDU as a service provider and the County to permit applications in approved subdivisions where water is allocated. Many of us have water meters on our properties. EDU has said they will serve us. Is this fair, or is this perhaps an equal protection question that the courts will have to decide?

The statement that 330,000 square feet of development has been master plan approved in the Eldorado area is incorrect. These numbers, provided to Commissioner Sullivan by the owner of the Agora shopping center are intended to have a chilling effect on new development. Does this Commission intend to encourage and protect monopolies, or will the Land Use Code be honored to protect all property owners that have business ideas that seek to serve the community? The statement that the water problem is severe in Eldorado and there is no immediate answer to it is also incorrect. Why not rely on current professional information from John Shomaker and Eldorado Utilities instead of perpetuating myths that undermine the community.

I challenge the statement that Eldorado at Santa Fe does not have a plan. What has unfolded over the last 30 years out there is the plan. All the homesites have sold. Roads, schools, fire stations and libraries constructed, 2500 homes have been built and half of the original non-residential sites developed. The only thing left to plan are three mixed-use intersections that qualify for neighborhood district status. Eldorado does not need more single family homesites. It needs more services and a Board of County Commissioners with the political courage to follow 30 years of precedent. By rescinding this ordinance or failing to broaden its scope to include properties outside Eldorado, the BCC is saying that



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water neutrality in development is undesirable. New local services can wait two to five years while yet another community plan is discussed and domestic wells for commercial development are the way for property owners to proceed.

Commissioners Sullivan and Campos, in your packages you will find statements you made to the League of Women Voters during the campaign about growth incentives and development within defined areas, how the County should discourage private domestic wells and encourage the use of community water while requiring developers to provide water rights for proposed developments. Ordinance 2000-14 incorporates all of these ideas. A vote rescinding this ordinance would therefore be at odds with your stated position during the campaign. Accountability is important and so my question is will your actions as Commissioners line up with your words as candidates?

Finally, the current EDU development moratorium has been in effect for almost five years. As a point of reference, that is longer than America's involvement in World War II. Is this issue really more formidable than defeating Germany and Japan? Prior to the water moratorium there were one to two years when Santa Fe County tabled new developments because of traffic concerns on 285. I bring this up to remind the Commissioners, old and new, that within the last seven years it has only been about six months when new subdivisions and commercial projects have been approved in the Eldorado area. Since the County chose to intervene five years ago by prohibiting new development because of water concerns, isn't there some responsibility on the County's part to be pro-active or creative in finding solutions to this problem. As a taxpaying landowner and a citizen of Santa Fe County, I would request that the BCC begin to take some action to either amend or lift the Eldorado water moratorium.

CHAIRMAN DURAN: Thank you Dennis. Is there anyone else out there that would like to speak to this issue?

STACY CROSSINGHAM: Hi, my name is Stacy Crossingham. I live at 8 Isidro Road in Eldorado. I am a business owner in Eldorado as well as a mortgage broker and have experience in real estate and mortgage financing. As a resident and business owner in the Eldorado community, I am quite tired of the ongoing politics in reference to the existing moratorium. Here we are five years down the road and nothing has changed. This has affected not only growth opportunity, but it has put a stigma on the real estate as well. It has affected employment opportunity to the area as well.

It's time for Eldorado to be free of the political stigma it has received. The City has its own water issues and yet, no moratorium. After hearing the Shomaker report, it leads me to believe that the citizens of Eldorado area are the ones not being only penalized by paralyzed by what I would call a political issue, not a water issue. We have a median age of 39 out in Eldorado and an average income of over \$70,000. That's quite a thriving community if you ask me, for Santa Fe. If you ask me, it's time to let Eldorado grow and prosper.

This transfer of water rights, although a small step, is a step in the right direction. This ordinance currently on the table would not only benefit Monte Alto Plaza but a

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portion of Sierra Plaza as well. I felt it would be even better extend it to all EDU property, not just units one, two and three of the Eldorado Subdivision. It would enable all of us to provide community services to the local area without continually burdening City roads and other facilities as well as the citizens of the community. I urge all of you on the Commission to reach out and understand what the majority wishes, not what the loud few want.

I think a lot of the people in Eldorado were in the process of investigating development on the Sierra Plaza project. My husband and I are new owners of that development. We have come across some opposition but generally more support. The most common responses we have received are people who are getting letters from their neighbors who are twisting the facts. Once they hear from the horse's mouth what's actually going on, they tend to understand and now are supporting us. I find that Eldorado is mixed with people who don't want to understand the truth and want to find a reason to fight without willing to accept change. We need to change, we need to grow. The community is strong and we need to pull together as a community and have our new Commissioner, Jack Sullivan, also behind to hear the 5,000 people who have not signed that petition, and also hear everyone else's words. Thank you.

CHAIRMAN DURAN: Thank you. Is there anyone else out there that would like to address the Commission?

PAT COUGHLIN: Mr. Chairman, I would just like a very brief moment here would like to just make a statement and ask a question. My name is Pat Coughlin. I am from Albuquerque. I have lived here for six of the last 19 years, although not currently. And I have developed property here and have two different projects that are currently on hold and have been for five years because of the water moratorium in Eldorado. I personally have used John Shomaker in some projects that I'm currently pursuing in Albuquerque and I believe that he's a very credible man.

Given what his report has said with the phases that may be available to us to cure this problem in the long term, I'm focusing on now. I guess what I would say is that I'm in agreement with that report. There are too many points of origin, of input that would agree with it. There has to be something changed. I recall the last meeting we had with regard to the last renewal of the moratorium in Eldorado, where there was some concern voiced from the chair and from the Commissioners in general that perhaps there was somehow we could assist in fixing this problem

And that's the question I would ask, is there anything on the table that you guys are looking at, you Commissioners and Mr. Chairman? But if there are issues or there are remedies perhaps that are being discussed at the County level so as to be able to provide service to that substantial amount of citizenry out there. Some people, I might just close with this, I know that some people who live out there don't really want any more growth and I understand. But I think what people are going to come to see is that if that isn't fixed, that their current property values will over a period of time begin to decline. So it's not just keeping out new people, if that's the attitude of some, but it's also protecting their

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own property rights which at some point will come to the fore.

Again, I would be interested to know if there is anything that is being considered as a remedy from the governmental standpoint.

CHAIRMAN DURAN: Well, funny you should ask. I actually have had an idea about this moratorium for quite some time, and it may not be the most popular one with the original developer. I agree with some comments that were made earlier that the County was sold a pig in a poke. They were told they had lots of water to sustain a community out there and our State Engineer has indicated to us several times that that's not true. And I think that's an issue that has been in court for quite some time. I actually think that what the County should do and the only way that we're going to get this moratorium set aside is to put AMREP's feet to the fire and find a way of finding a long term, sustainable water source for the community.

I don't know what that takes, but I do believe we need to be a little bit more proactive in how we deal with this issue. That's my thought.

COMMISSIONER SULLIVAN: Mr. Chairman, just to follow up on those comments, which I think make a lot of sense, and I'm not speaking either for or against—as a statement here. But just with regard for informational purposes, with regard to the Shomaker report. My understanding is that it's currently being reviewed by the State Engineer's Office and that it hasn't been finalized. I did attend a hearing, not a hearing, a meeting, where a presentation was made on the draft preliminary results. And my recollection of that is that around the particular wells, the 13 that are owned by EDU, that draw-downs were significant. I forget the numbers, but draw-downs were significant, so there was a question of the long term sustainability of those wells.

In terms of general water usage, I recall numbers on the order of about one-half to one foot a year of estimated and documented draw-down at the aquifer. And it was not Mr. Shomaker's intention or his charge in doing the hydrology report to say this is a good thing or development should occur, or this is a bad thing and development should not occur. He was simply putting the facts out there and saying to anyone who wanted to hear, if you think one foot a year of draw-down, mining the aquifer is acceptable, that's the rate that it's currently happening.

So those were some of the numbers that I recall from that, but we still have to wait for the final executive summary that's being reviewed by the State Engineer's Office, and also the final report, which hasn't been released either. So I think we need to be careful of the characterization of the report until we of course see it and evaluate it ourselves.

CHAIRMAN DURAN: Dennis, I think this gentleman was next.

MIKE BRANSFORD: Mr. Chairman, Commissioners, my name is Mike Bransford, and I'm unfortunate to own some land in Eldorado. I was here five years ago when they first voted to place this moratorium and we were told then, by Javier and Betty Platts at the time that as soon as the emergency was over that this moratorium would be quickly lifted because they knew it was hurting so many people. Well, I represent not only my family and my friends, several members of my family who have gotten together to buy

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some land out there years ago, and I would just like to see you guys lift this moratorium.

Santa Fe was having some serious water problems this summer and I didn't see any moratorium put on any development here. And of course, if Shomaker is correct, and by the way, a comment on Shomaker. He was testing it during a drought season. If we have a very, very wet season over the next year or two that will change. That fluctuates. The well in Lamy, I was told comes back as soon as we have some snows. So those things are not set in stone.

But I do want to say that this moratorium is hurting a lot of landowners out there and I know there's a lot of people that are going to complain. They don't want anybody else to move in because they are worried about the water. Now AMREP has done, or Eldorado Utilities has done, from what I can tell, very little to nothing over the last five years, since I've been sitting and waiting, and the County, I'm not sure they've done much else except do a little research. I hope that that changes over the next year or two so they can get some new sources of water or buy more water rights or correct this problem because there are many of us out there who have lost our property rights, really, to the people that were able to move in before us and we mortgaged our homes. We've borrowed money.

By the way, most of these people, in fact all of them, have been born and raised here. We pay taxes. We're citizens and we just want equal protection under the law. And I didn't come to speak about this other project, this commercial project, but not everybody's against it. Most people that I've talked to think it's a good idea. I know some people that are saying, Boy, I hate to drive to Santa Fe to rent an office space. It would cut my traffic, save me money and time. So there is some complainers out there and they have their voice and we have our voice too. And they don't speak for the majority. And I just thank you for your time and I ask you guys to help us find some long term solutions for this problem and let us enjoy the land that we have every right to develop.

It's about property rights. Thank you so much.

CHAIRMAN DURAN: Thank you, Mr. Bransford. Mr. Kensil.

MR. KENSIL: Commissioner Duran, Commissioner Sullivan, I was at the same meeting you were and I heard something very different from Mr. Shomaker, but rather than get into what I heard or what you heard, I would reiterate my request to the Board to direct staff to get Mr. Shomaker up here to speak for himself and talk about his own work rather than relying on what some people think they heard at a meeting.

CHAIRMAN DURAN: Maybe we can get Mr. Shomaker here for the next hearing on this issue. Is there anyone else out there that would like to address the Commission?

ELIZABETH Q. CLARK: My name is Elizabeth Q. Clark. I live on Monte Alto Circle in Eldorado. I would like you Commissioners before you leave tonight to remember how many of the population of Eldorado are against this project, and how disappointed we were when the ordinance was so hastily pushed through. We are asking

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that it be considered by you people to counter the ordinance, to take back—I have a question for Mr. Kensil.

CHAIRMAN DURAN: Ma'am, you need to address the Commission please.

MS. CLARK: Would you ask Mr. Kensil to repeat his statement that there is no property left in Eldorado? In his own ad in the Sunday paper he advertised property in Eldorado.

CHAIRMAN DURAN: We'll note that in the record.

MS. CLARK. Thank you. However, if there is one untruth, there may be other untruths to consider. I think that the ordinance was passed on statistics that were not accurate. I realize that you can make numbers do whatever you want. We're all aware of that. But I think that the numbers proposed in favor of the ordinance you passed were so different they totally underestimated the amount of water they're going to use. That was ludicrous.

They took their traffic report on July 13, I think. No school in session. Not a lot of people around traveling. I can't remember what else I had in my mind and I don't have any notes. I'm just speaking off the cuff. But please be aware that the majority of people that signed that petition, well all the people that signed that petition, all the people that sent back the survey, and those are the people who are interested, are against this project. The only people you've heard tonight speak in favor of the project are realtors who have maybe a vested interest. You yourself, Mr. Chairman, Commissioner Duran, are a realtor. Perhaps you also have vested interests. I understand that. Everybody—

CHAIRMAN DURAN: I don't think that's a very nice thing to say.

MS. CLARK: Oh, there were some very unpleasant things said at the other meeting.

CHAIRMAN DURAN: Again, ma'am, we're not talking about the project; we're talking about the ordinance.

MS. CLARK: No, I'm talking about rescinding it and the fact that your passage of it was based on statistics that were not accurate. And you didn't just vote for it, Mr. Duran, you proposed it, after we sat here for hours and hours that evening and listened to the proponents and perhaps ten minutes to the people who were against it.

That's why we were so disappointed that it was pushed through and we sincerely beg you, as people begged you at that meeting, to shelve it for a month so we would have time to speak together our forces against it. And I really plead with the Commissioners to be fair to the people in Eldorado. Look what it says up there. Protection of property. It's the majority of property owners who don't want this. There are empty offices available in Eldorado if you want to rent one. We don't need it. We don't want it. So please consider the wishes of the majority of people, you Commissioners.

CHAIRMAN DURAN: Thank you very much. Next speaker please. That concludes the public hearing. We have one more meeting concerning this ordinance amendment. Thank you all for coming. We're going to take a ten-minute break.

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[The Commission recessed from 7:45 to 8:00.]

**VIII. C. Ordinance No. 2001-\_\_.** An ordinance amending Santa Fe County Commission Chairperson Election Ordinance No. 1990-7 to provide for one-year terms for the chairperson and that the chairperson serves at the will of the Commission

CHAIRMAN DURAN: I know that Commissioner Campos had a question about it so I'll turn it over to him.

COMMISSIONER CAMPOS: Question, Mr. Kopelman. When we met last and discussed this, our main concern was having an ordinance that ran from January to the end of December so that any new Commission would have the opportunity in January at its first meeting to nominate and elect a chairman and that issue's not addressed in this edition.

MR. KOPELMAN: There's a couple of issues. That was one issue that actually was not addressed and would need to be amended from the floor. I apologize, I didn't draft this, but I apologize for not having it come forward. It would be in Section 3, the Election and the change would be: The election for chairman shall be conducted— instead of saying during the last regular Commission meeting of the incumbent chairman's term, it should be during the first meeting that a new Commission is seated or in January of each year. And I apologize for that not being in the packet.

In addition, Mr. Chairman, Commissioners, I think that the amendment needs to state that there'll be a Section 3 that will reflect the changes that we just discussed, and a Section 4 that would say the balance of the ordinance remains in full force and effect. Because the other sections dealing with procedure, failure to elect in successive terms, failure of incumbent and the effective date, I think you want to probably keep all of those valid.

COMMISSIONER CAMPOS: I think we need to have an interim chair. Let's say the chairman is not elected to the following, we need to have someone, perhaps at that last meeting, elect an interim chair to the first meeting, because that was an issue brought up, that someone needed to sign papers or warrants, something like that. Do you think that's taken care of by Section 4?

MR. KOPELMAN: Mr. Chairman, Commissioner, I think there's a few ways to deal with that. I'm not sure that it requires an ordinance amendment, because you have a vice chair. The vice chair certainly could be acting chair. The only problem becomes if both the chair and the vice chair are at the end of their tenure. And maybe what we can do is add a provision, say, allowing for appointment of an interim chairman in a situation where the term ends and we can add language to that effect also.

COMMISSIONER CAMPOS: I think that would work.

COMMISSIONER SULLIVAN: Mr. Chairman, it sounds like maybe we'd

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better get a redraft on this and make it a little bit clearer.

CHAIRMAN DURAN: Do you want to table it to the next meeting?

COMMISSIONER SULLIVAN: I'd move to table, yes.

CHAIRMAN DURAN: Okay. To table.

COMMISSIONER CAMPOS: Second.

**The motion to table consideration of an ordinance amending chairperson election procedures passed unanimously.**

**VIII. D. Land Use Department Items**

1. **EZ Case #DL 00-4770. Felix and Sadie DePaula. Paul Rodriguez, agent, Felix and Sadie DePaula request plat approval to divide 12.1 acres into four 3.0-acre tracts as well as a lot line adjustment between Lot 9B and Lot 10A. The described property is located off Calle Carla and Calle Suzana, within Section 25, Township 17 North, Range 9 East, in the Two-mile EZ District**

OLIVER GARCIA (Review Specialist): Thank you, Mr. Chairman. This case was previously heard and denied by the EZC on January 11, 2001. The EZC's decision was to recommend denial due to concerns regarding water availability issues. It is staff's position that the redivision of the lots within Piñon Hills Subdivision will diminish the performance of existing infrastructure by potentially doubling the density and therefore intensifying the non-conforming status.

Prior to allowing the creation of additional lots in Piñon Hills, the subdivision should be upgraded to current subdivision standards. With respect to the size and number of lots, an upgrade of Piñon Hills would require a fire protection plan and existing roads to be substantially improved. Therefore, staff recommends denial of this request as proposed.

If the BCC chooses to approve Felix and Sadie DePaula's request, staff recommends the following condition, which are from one to nine, to be entered into the record.

CHAIRMAN DURAN: We can enter those into the record.

[The conditions are as follows:]

1. Calle Carla and Calle Suzana must be developed meeting SFC common roadway standards prior to recording the plat of survey or the applicant must provide Santa Fe County with a certified engineer's cost estimate to develop the access. A financial guarantee acceptable to the County in the amount of the approved cost estimate must be included.
2. The applicant must record water restrictive covenants simultaneously with the plat

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- of survey imposing .25 acre-feet per year per tract. Water meters for each subject parcel must be installed to monitor water use. Annual water consumption reports must be submitted at the County's request if and when deemed appropriate.
3. The applicant must contact Rural Addressing for assignment of address for the proposed tracts. Addresses must be added to plat.
  4. EZO regulations require a solid waste fee be assessed for all newly created parcels. The fee for this subdivision is \$78.03.
  5. The applicant must prepare and submit covenants for the use and development of the property.
  6. Submit a school impact report.
  7. The applicant must obtain approval from NMED for the proposed liquid waste disposal plan.
  8. Compliance with Fire Marshal review.
  9. The applicant must address all minor corrections by the County Subdivision Engineer as shown on the plat of survey and terrain management plan. These plans may be picked up from Oliver E. Garcia, Development Review Specialist within the Land Use Department. These plans must be resubmitted with the mylar prior to recordation.
  10. No alteration to the property within the 100-year flood plain shall take place without County approval. [Added at time of the motion.]

CHAIRMAN DURAN: Are there any questions of Oliver?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Oliver, is this just a lot split? Is this a family transfer?

MR. GARCIA: It's a land division, Mr. Chairman.

COMMISSIONER TRUJILLO: It's a land division. It's not a family transfer.

MR. GARCIA: It's not a family transfer.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Garcia, you mentioned Piñon Hills Subdivision. Are there any covenants as far as splitting these lots? Any covenants that would prohibit the splitting of these lots?

MR. GARCIA: Mr. Chairman, Commissioner Campos. There is.

COMMISSIONER CAMPOS: There are covenants that say you should not split them?

MR. GARCIA: Oh, not to split them? I'm not too sure about that. In Piñon Hills, I have no idea, but I could find the answer.

CHAIRMAN DURAN: I don't think there are restrictions that prohibit division of those lots. There's been a number of lots that have been divided into smaller



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than the originally platted lot size.

COMMISSIONER TRUJILLO: Mr. Chairman, what's the minimum lot size in this area?

MR. GARCIA: Two and a half.

COMMISSIONER TRUJILLO: Two and a half acres, and the applicant is proposing a division of three acres?

MR. GARCIA: Mr. Chairman, Commissioner Trujillo, yes.

COMMISSIONER TRUJILLO: Do we have any idea in this area, Piñon Hills, if there are divisions less than 2.5 acres, like for example 1.25 on a family transfer?

MR. GARCIA: Mr. Chairman, Commissioner Trujillo, yes, there have been family transfers that were 1.25.

COMMISSIONER TRUJILLO: So we've got 1.25 to 2.5 acres to five acres, the whole gamut. Okay.

MR. GARCIA: Yes sir.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Garcia, if I can understand the staff's recommendation here, is that the staff is recommending that this is a non-conforming lot so then to subdivide it without them providing the proper road widths and other things that are required would then create four non-conforming lots. Is that one of the issues that staff has?

MR. GARCIA: Mr. Chairman, Commissioner Jack Sullivan, yes.

COMMISSIONER SULLIVAN: Okay, so that was one question. So the question is not just do we divide a lot that's allowed to be divided, but do we divide a non-conforming lot into more non-conforming lots when they have the opportunity to put improvements there that could conform. In other words, is there a possibility that these lots could be so divided and could conform?

MR. GARCIA: Hmm. That's a good question. I don't know. I would say that on a non-conforming subdivision like that, you're asking about the road, right?

COMMISSIONER SULLIVAN: Yes.

MR. GARCIA: Well, we do give them conditions of creating the road on their lots, what they're supposed to do. Is that what you're asking?

COMMISSIONER SULLIVAN: I guess what I'm asking, maybe I'm not making myself clear is the applicant just now wants to make four lots, one, two, three, four. Period. Just a paper transaction. If the applicant instead came back and could meet the requirements, the County requirements and make four conforming lots, because the size of the lots is three acres each. So the size is over the two-acre minimum. So could he, with some investment of money, obviously, or proposed, come back and make four conforming lot?. Is that physically possible?

MR. GARCIA: Yes he could. Mr. Chairman, Commissioner Sullivan, if he came back and did a family transfer he could do that.

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COMMISSIONER SULLIVAN: Okay, but aside from a family transfer, in terms of doing the physical improvements that would be needed, not a family transfer, but creating four lots that would meet the County's current Code, is that physically possible with the acreage that he has, the 12 acres?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: I think that it is, if the applicant would comply with the conditions that have been established if this is approved. There is a list of nine conditions that would make this project, the lots conform to the legal standards if you will. So if approved and the conditions are put in place, then it becomes a legal, conforming lot of record.

MR. GARCIA: Mr. Chairman, Commissioner Trujillo, you're right on that.

CHAIRMAN DURAN: Oliver, I have a question. In your summary, you say that the subdivision is a legal non-conforming subdivision and does not meet current subdivision standards for fire protection, roads, water and liquid waste. Does that mean that staff is requiring that the applicant improve all the roads in the subdivision so that they meet County standards?

TOM DOMINGUEZ (Subdivision Engineer): Mr. Chairman, I'll try and address that question and some of the others that were raised by Commissioner Sullivan and Commissioner Trujillo. What staff attempts to do by adding these conditions is we try to bring, if this is going to be approved by the Board of County Commission, we try to bring that portion within the property limits up to the County road standards and that's been consistent with what we've done in the past for anybody that comes in and requests this type of a land division. I think it would be financially or fiscally impossible for somebody to come in and split into two or four lots to improve the whole entire district, if you would, the entire subdivision. So we just try and get it within that property boundary.

CHAIRMAN DURAN: So the recommendations of the—is it CDRC?

MR. DOMINGUEZ: EZC.

CHAIRMAN DURAN: EZC was not to improve all roads? Part of their denial was not based on the fact that all the roads in the subdivision are below County standards?

MR. DOMINGUEZ: Mr. Chairman, I believe that the concern of the EZC on this particular case as it was discussed, their concern was the entire infrastructure of the subdivision. That would be correct. The way we address it on the conditions is just for the limits within the individual's property.

CHAIRMAN DURAN: Right.

MR. DOMINGUEZ: And the reason for that is because in the Code, it's hard to have off-site improvements for something of this caliber.

CHAIRMAN DURAN: Okay. Any other questions of staff?

COMMISSIONER SULLIVAN: Mr. Chairman, one other question. In the

minutes of the EZC, the questions that arose were water, the closeness of wells and septic systems in the area, the proximity of those. What would be the situation if it was divided into four lots?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, if I understand your question completely, that has always been a concern on behalf of the EZC is the environmental impacts that will be taking place within these land divisions. I guess the way I would respond to that is what we look at is on a larger scale subdivision, we try to get the proper infrastructure in place. On something that meets the land size or the lot size, in this case the minimum is 2.5, they're requesting three. ED, the Environment Department requires only a .75-acre parcel in order to get a septic system put on.

Again, this kind of answer would be the same answer, the same response to the last one concerning the roads. It's hard to have somebody coming in and asking for four lots or two lots to put in a community system, to bring the entire infrastructure up to the standards that would be required of an entire subdivision.

COMMISSIONER SULLIVAN: The one comment in the minutes that I didn't understand was "Commissioner Mier asked the staff for an update on the water shortage. Mr. Garcia said he has heard nothing new. Commissioner Mier expressed his reluctance to grant more lot splits in the absence of a plan." What plan would they be talking about there?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, if I recall the direction this took, when they were discussing the water shortage, Commissioner Mier had brought up a concern about the City having the water crisis that they did and this happened to be at the time that the City was posting the conservation measures and he just wanted to know if we had any comments or if we had heard any kind of an update, what was taking place. This was in regard to the City reservoirs and all of that and I believe that Mr. Garcia at that time had just mentioned that we didn't have an update on the City's water issues.

COMMISSIONER SULLIVAN: So the plan he's referring to a City of Santa Fe plan.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, that's correct, because he asked if we had taken any measures, if the County had and basically what we did because our water system didn't really impact this area or the areas that the City does, we had mentioned that on wells, it's hard to control anything with any kind of a County ordinance. So what we had done is we had, I believe and Estevan might be able to answer this if this isn't correct. What we had done is we just adopted the City's conservation plans or concurred with them.

ESTEVAN LOPEZ (Land Use Administrator): Thank you, Mr. Chairman, Commissioner Sullivan. That's generally correct. The County did adopt measures similar to the City's with respect to the County's water service territory. But this area, as Mr. Dominguez mentioned, is not served by either the City or the County water systems, so relative to this area, the only thing that the County had enacted was a resolution adopting

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voluntary conservation measures, but no ordinance to that effect.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: So this thing was denied based on some non-existent plan that a member of the EZC thought should be in place?

MR. GARCIA: Mr. Chairman, that's correct.

CHAIRMAN DURAN: They're not asking for a variance, right? They have every right to ask for us to consider subdividing this lot into three-acre tracts, because the minimum size is 2.5.

MR. DOMINGUEZ: Mr. Chairman, the reason that this case is before you, it went through EZC and comes to BCC is because this is a prior approved BCC subdivision. Generally, well, that's the reason it's here before you, because it was a prior approved.

CHAIRMAN DURAN: But you didn't answer my question.

MR. DOMINGUEZ: I'm sorry. Mr. Chairman, this is not a variance. This is within the minimum lot sizes. Normally it would go through Consent Calendar and then on to EZA.

CHAIRMAN DURAN: Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman, and it's because the water is provided by individual wells, then going to the State Engineer and getting the well permit would be the protocol to follow right? Because there's not any existing infrastructure in that area, in that community.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, that's correct.

CHAIRMAN DURAN: If there's no other questions of Oliver—  
Commissioner Campos.

COMMISSIONER CAMPOS: I have a question for Mr. Garcia. How many lots in the Piñon Subdivision?

MR. GARCIA: How many lots in that subdivision?

COMMISSIONER CAMPOS: In that subdivision, total?

MR. GARCIA: I really don't know. There's a few there, I know that, that have come forward for family transfers and land divisions but I really don't know how many there is out there.

COMMISSIONER CAMPOS: Okay. Page 2, environmental review. The soils are classified as moderate to severe. A 100-year flood hazard zone crosses the middle of the property. What does that mean?

MR. GARCIA: Mr. Chairman, Commissioner Campos, there's an arroyo that goes right by it, across the property, right there, right along the lots. And we went out there and we looked it and it's just an arroyo but there are buildable areas.

COMMISSIONER CAMPOS: Outside of the floodplain?

MR. GARCIA: Yes sir.

COMMISSIONER CAMPOS: Your staff conclusion is that the four lots

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would diminish the performance of existing infrastructure? I'd like to ask Mr. Dominguez what he means by that and what staff means by that. How it would diminish the performance of existing infrastructure? On page 3, top paragraph, second sentence.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, when staff looks at the overall picture, we have a concern with, I guess for lack of a better way to describe it, maybe a piecemeal subdivision, piecemeal infrastructure, and that's where our deep concern comes from, that we'd like to have the proper infrastructure in place. Being that this was, however, a preapproved BCC subdivision, that is why we come forward with a recommendation of at least trying to get the upgrades within the property limits. But our concern comes from that, that as we increase—for example if you look at bigger subdivisions, you like certain road standards, certain infrastructure in place.

If this were a big subdivision coming in we would look at community water systems, community sewer systems, etc. Because this is proliferating the number of lots and it's increasing in a piecemeal fashion, that's our concern.

COMMISSIONER CAMPOS: What authority does the County have to deal, or let's say making a requirement that there be upgrades to this existing subdivision if any?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, I think the way I would probably attempt to answer this is what has been practiced in the past would be like through a special assessment district which just requires the assessment of the properties in order to bring infrastructure up to County Code.

COMMISSIONER CAMPOS: Can the County require a special assessment district? Isn't it up to the taxpayers to ask for that.

MR. DOMINGUEZ: I'd like to defer to legal if I could.

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, there actually is a mechanism in state statute to allow for assessment districts. There are two different methods. There is petition method, which required, I believe, 2/3 of the property owners to agree to it. There's also called the provisional method which gives the Board of County Commissioners the authority to actually begin the process and establish an assessment district, if the health and safety concerns are paramount.

COMMISSIONER CAMPOS: Well, under these circumstances, are we to the point where health and safety are such a concern that we should go in and look at the assessment aspect of it?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, I would probably need to, I think we need to probably defer to James Lujan in the Public Works Department to maybe look at that issue, maybe report back to the Commission on that.

CHAIRMAN DURAN: The roads aren't that bad out there.

COMMISSIONER TRUJILLO: And on a yearly basis, we get some allocations from the state legislature to pave some of those roads. The County's trying to address the infrastructure needs on the basis of available finances and they're doing it. They're doing it on a continuous basis.

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COMMISSIONER CAMPOS: Question for Commissioner Trujillo.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Are there public roads, County roads, within the subdivision?

COMMISSIONER TRUJILLO: There are County roads. There's County Road 70, Calle Carla, Calle Suzana, all of those are maintained by the County and are County dedicated roads.

COMMISSIONER CAMPOS: As far as the needed infrastructure, what are you looking at? Water system, wastewater system?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, when you look at the Code, somebody asked a question about how many lots we had in there and we can't pinpoint the number but we know it's over 25 and less than 100, which there's a category for that range. And for the 2.5 to 10-acre tract size. The concern there is a community water system. The other things that have been an interest to us or that are of concern to us would be fire protection as well as the roads and the roads are County maintained within the subdivision.

COMMISSIONER CAMPOS: Is there fire protection presently?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Campos, I don't believe that there is an actual fire protection system in this subdivision.

COMMISSIONER TRUJILLO: There's a volunteer fire department in Agua Fria that covers that area.

MR. DOMINGUEZ: Mr. Chairman, Commissioner, that is correct and it's within a couple miles from this.

COMMISSIONER CAMPOS: But do they have access to water in the subdivision?

MR. DOMINGUEZ: Mr. Chairman, Commissioner, I could not answer that right now with any—

COMMISSIONER CAMPOS: Last comment. These kind of subdivisions that just start sprawling and growing without adequate infrastructure usually turn out to be disasters. And maybe we should consider a special assessment district to address the water system, fire protection, so that people who buy into these lots actually have something.

COMMISSIONER TRUJILLO: Commissioner Campos, if we're going to require or think about implementing a special assessment district in Piñon Hills, we're going to have to look at one big assessment district across Santa Fe County, because the same situation exists in many other communities across the county. And we're trying to deal with that, as I said, through state allocations, through other funding sources, through the water company, paving projects and things like that. But this is a situation that exists countywide.

CHAIRMAN DURAN: Is the applicant here? Could you please come forward.

[Duly sworn, Paul Rodriguez testified as follows:]

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PAUL RODRIGUEZ: Paul Rodriguez, 1151 Cerro Gordo. I would just like to add that we have done a reconnaissance report on the water availability and it does support the four lot that we are creating. Basically, I'm here to entertain any questions that you might have for us.

CHAIRMAN DURAN: Is it your understanding that the reconnaissance report—it's the same process that takes place in that area where other 2.5-acre lots have been approved. If I had ten acres, I could go down to 2.5 acres and staff would allow, rather than a geo-hydro, a reconnaissance study. Is that correct?

MR. RODRIGUEZ: I believe that is correct.

MR. LOPEZ: I believe that's correct.

CHAIRMAN DURAN: Okay. Are there any questions of the applicant? If not, this is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Please step forward.

[Duly sworn, Roy McCaig testified as follows:]

ROY MCCAIG: My name is Roy McCaig. I live at 21 Calle Enrique, which is within the Piñon Hills subdivision we're talking about. There are approximately 80 lots in Piñon Hills. Piñon Hills is adjacent to Alameda Ranchettes, which is to the east of Piñon Hills subdivision. It's all in one section of land, number 25.

There has been about eight lots splits that have come before the Commission in the last, oh, I'd say six years. I've lived there for about 17 years. All these other lot splits that came before the Commission, many of them were family transfers. They were even actually legitimate, real, genuine family transfers as opposed to artificial family transfers. The last one that came up, I guess was a family that had been there 20 years or more and the children of this family were building on that same lot.

One person came before you and asked for, claimed hardship and they wanted to subdivide because the only way they could stay in Santa Fe County was to sell off half of their lot. This applicant doesn't even pretend to claim a hardship or to be transferring any land to family, they're just subdividing within a subdivision. The proposal says there's 12 acres that we want to split into four three-acre lots and that's sounds pretty good. But if you look at the map that's no doubt in your file, this map here, you'll see that about half of the property is in an arroyo. So there is a scarcity of land available to be built upon and for liquid waste systems.

In fact, there's so much arroyo in this property that the owners have started to fill in these waterways that are on the property. I guess it makes a better area for selling off these proposed small lots if they fill in some of the waterways. Of course they didn't attempt to obtain the approval of the County Land Use Department before they started to fill these waterways in. So they just filled up one, anyway. And filling those waterways up is probably helping them to promote the sale of those properties, but unfortunately, it causes problems to the roadway, which is right adjacent to the area they're filling in, and it also might cause problems for the landowners downstream. I understand that's why you go to the County Land Use folks before you start filling in arroyos.

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I guess I'm a property owner there in the subdivision and I understand that the water table is limited and the City of Santa Fe is drawing down on the water table in that area. They are all individual wells. There is no community water system. There is no source of water for the fire department, the Agua Fria volunteer fire department. Every new straw in that water table draws down the well and my well is 400 feet deep, and of course it's kind of expensive to drill a deeper well, especially at that depth.

The roads were put in with a low-density subdivision in mind. They're all five-acre lots or they were originally. Five or six acres depending on how much arroyo you have on your lot. So the roads weren't built for a high-density subdivision, but it's rapidly becoming a high-density subdivision I guess. I would ask you to think about the sixty families that are living on those 80 lots right now and not create more traffic problems that cause us to worry about our water supply, worry about fire protection. There's one road, one entry way into this subdivision. There's not a lot of different accesses for fire equipment to come in and out.

So the more people that are there the more problems there are going to be with roads and traffic. So we would ask you to think about the 60 residents that are there, rather than this one person who bought two lots to split them into four lots and make some money. I think this person has owned the property since about December of last year. If you have any questions I'd be happy to tell you what I think about it.

CHAIRMAN DURAN: Thank you sir. Next speaker please.

[Duly sworn, Ruth Marian Noble testified as follows:]

RUTH MARIAN NOBLE: My name is Ruth Marian Noble. I live at 30 Calle Carla in Piñon Hills. Good evening Mr. Chairman and Commissioners. Mr. Campos, you asked if there were covenants. When we bought our property back in 1970, we got a sheet of paper that said Covenants. And the paper said each lot could have one house and one guesthouse. We assumed when we bought that five-acre lot, that that's what it meant. It turns out that that did not protect us. Nowhere did it say that the lots could not be split. So we were naïve. We did not think that construction could be put on it.

So it's a very rural subdivision and we knew it. The roads are wash-boardy three days after they're graded. Peoples cars—people have to get new cars. But we moved out there because we like the way it was. Now this property does have problems because of this big arroyo. The arroyo is about 12 feet deep on one side and the walls are very steep and they do sheer off. It doesn't flood there very often but it does flood and the walls just sheer off. I don't know what he's going to be able to do to protect that property on that side.

Because it was a rural subdivision and there were not apparently Codes in place, the houses are in different positions on all the lots, which makes it very difficult for the fire and police protection. They've had to locate where the houses are. Everything gets slowed down, fire protection, medical emergencies, because it wasn't set up as a new subdivision.

On the plat, the six acres that's going to be divided in half looks very neat, but the



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arroyo runs through it, so he is also going to have to make a driveway back up there to get to each of these properties which will of course cut off more of that three acres. So I don't know if you can a property that has three acres and a huge proportion is the arroyo and another proportion is going to be the driveway. And I'm just wondering, with the septic tanks, they're going to be kind of around where that arroyo runs through. And the leach field. I know they say  $\frac{3}{4}$ . Somebody else told me the Environmental Protection Agency said two or 2.5 acres to put in a septic tank and a leach field so that the neighbor's water is not contaminated.

This arroyo also goes through the County recreation area. So if there was a flood, and the water got contaminated, it would flow down into the County recreation area. I think that covers what I have to say and I would just ask you to really consider the difficult location of this platted area and not approve the subdivision. Thank you.

CHAIRMAN DURAN: Thank you. Next speaker please.

[Duly sworn, George Ancona testified as follows:]

GEORGE ANCONA: My name is George Ancona and I'm a resident of Piñon Hills. I'm concerned about the splitting of the property. We've been there ten years and we've seen three of our neighbors' houses burn down to the ground while the firefighters stood around helplessly because they couldn't get water. That's one issue. When I went there, I like the idea of living on five acres. There's space, and I was concerned about water. Now the subdivision is a little—it's stressing.

I think it's stressing the ground, the water, and I'm also concerned about the rubble that's being put into the arroyo. We live just above the arroyo and when that arroyo fills up, the roads are cut and you can't get in. I can look out the window in my house and see that water roiling. What's going to happen when the arroyo is filled in? I'm concerned. And the subdivision is already substandard. Are we going to make another division, a smaller subdivision that will be substandard also? I don't see the logic of it. These are my concerns. I hope that you deny this. Thank you.

CHAIRMAN DURAN: Thank you sir. Next speaker please.

[Duly sworn, Patrick Holmes testified as follows:]

PATRICK HOLMES: Patrick Holmes, 302 Navajo Drive. Mr. Chairman, members of the Commission, I'd like to state for the record that this split isn't just for—the gentleman before had spoke about splitting up and making some money. Well, as you know, I'm, or yourselves, a lot of you guys here are natives of Santa Fe, have been here a long time. I've hardly seen a lot of us split these lands and make a lot of money. I understand that when you call it a family transfer, from what I have understood it and the County will explain to me that it is done down to a daughter, granddaughter, grandson or son. And I'm not in that position, but at the same time, I am splitting for the purpose of my family, whether it's called a family transfer or not, but I'd like to be able to—this is my grandfather's property and he's not in the position to sell. Otherwise he'd sell the land for his own use to make the money. He's doing it for us so that I can have a piece of property, my brother can have a piece of property, my aunt, his daughter-in-law can have

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a piece of property and those are the intentions of this land.

Also on another note, we are complying with County standards. Today, I was out at the property with Mark Lujan of the County and Ray Kavanaugh. You probably know who they are already. They have been very cooperative in helping me get the property organized as far as making sure that it's all up to standard in every way, roads, driveways getting in and complying. If I'm not complying they show me what I need to do, what I don't need to do and they've been very cooperative. At the same time, we've done everything they've asked, complying with the lot size, the water situation, the geo-hydro, the reconnaissance and also as far as roads, driveways going in and out and they are working on me and we are complying with again, County standards and what the County wants us to do and not what we want to do.

That's it. I thank you.

CHAIRMAN DURAN: Thank you sir. Is there anyone else out there that would like to address the Commission?

[Duly sworn, Steve Ortega testified as follows:]

STEVE ORTEGA: My name is Steve Ortega and I own some property next to Patrick. I don't see any problems in them doing that split. I've talked to four of the neighbors around there and they surround that property and they're all for it. They don't have a problem.

CHAIRMAN DURAN: Thank you very much. Anyone else out there that would like to address the Commission? Please step forward.

[Duly sworn, Laura Cecilia Ulibarri Vigil testified as follows:]

LAURA CECILIA ULIBARRI VIGIL: My name is Laura Cecilia Ulibarri Vigil and I am related to Pat Holmes. And as far as I can see, I can understand the concerns of the neighbors not wanting additional homes going into the area because they do like a rural setting. But they also have to understand that people have to live. Everyone is entitled to a piece of land, if you can get it on this earth, to build a home on. I've lived in a mobile home all my life. I want roots. I want a home. And I am working towards that.

This is not something that is going to be given to me. This is something that I am going to earn. In my late age, I am finally beginning to set roots. We just want to be given the opportunity to have what everybody else has. A gentleman said he had the blessing of being on that land for 17 years. I have to start somewhere. We all have to start somewhere. And I can say that as long as we are following the ordinance of the County, we should be allowed to go into this development. I have ideas that I would like to utilize for this land. I would like two septic tanks, one for refuse and one for graywater and rainwater collection so that I can recycle my own water. I would like to also utilize the solar that we have and make use of our resources.

Now, how many of the 60 residents that are there are doing just that? I would like to implement these ideas because I am getting older and I don't want to have to depend on all the water facilities that we have as it goes into the City. I don't want to have to overuse the water and I don't want to have to overuse PNM and other sources for my resources.

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So in saying this, I would like to be allowed to live somewhere. Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: We have one more individual.

[Duly sworn, Zane Spiegel testified as follows:]

ZANE SPIEGEL: Zane Spiegel, P.O. Box 1541, Santa Fe. I sympathize with people that don't have any land or water, but those people ought to sympathize with people that do have land and water, whose water they want to steal by putting an individual well under this mandated requirement of a 1933 law in New Mexico that requires the State Engineer to approve an application for a minimal fee of, it used to be five, I think it's ten dollars, forever.

And I have previously advised this Commission, and have today provided—I guess I put it in the wrong place again today. I'm sorry about that. My statement that in effect states that every one of those wells that the legislature stipulated must be approved by the State Engineer steals water from the community of La Cienega, Cieneguilla and Cerrillos, which are in this part of Santa Fe County. If they're up north, it steals water from users on the Rio Grande, the pueblos and a number of community acequias. I suggest that you get together with your attorney and your staff and the State Engineer and try to find a solution to this problem that does not involve stealing somebody else's water. Thank you.

CHAIRMAN DURAN: Thank you. Please.

MR. HOLMES: I'd just like to say one more thing. Like everybody else, I'd like to be able to come into my home with good feelings. I have no intentions of stealing water or anything else in my neighborhood. I was contacted by the neighborhood association and it wasn't too friendly but when you see that word neighborhood or neighbor or neighborly, it's supposed to mean something so I appreciate the people that do, like Mr. Ortega himself that when I moved on the property instead of saying, Hey, let me see what you're going to do wrong. Take one step so I can just see what you're going to do wrong. Instead he asked me if I needed backhoe work or if I needed something.

And I appreciate that and I hope that—people want to see a lot of changes in as far as the community as water and fire protection. A lot of things, I think maybe one of the first things you should change is hopefully just being more neighborly, getting along and helping each other out and I think we could do anything we want, kind of like the staff that has helped me here at the County. You basically ask them, Hey, what do I need to do and this is what you need to do and they walk you through the steps and that's the way it is. And like I said, if I could change anything, we could change our attitude toward each other and then I think we can work on fire and water and environment and that kind of thing. So again, I thank you, Mr. Chairman and Commissioners. Thank you.

CHAIRMAN DURAN: Thank you. Anyone else out there like to address the Commission? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: I will make a motion to approve EZ Case

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DL 00-4770 on the basis that it conforms with the Code, with the rules and regulations of land use and land development in Santa Fe County. If we're going to talk about quality of life and natural resources, I think that is a responsibility of local government to bring in and work with communities to implement the appropriate infrastructure, roads, water, in those communities. To castigate an individual, punish them from being able to split a piece of land for use by themselves or by somebody else is not the role of this Commission.

CHAIRMAN DURAN: Is there a second? I'll second it.

COMMISSIONER SULLIVAN: Discussion, Mr. Chairman?

CHAIRMAN DURAN: Discussion.

COMMISSIONER SULLIVAN: I'm concerned about the testimony regarding the filling of the arroyo. That of course is not within the terrain management standards and it's also detrimental to the carrying capacity of the arroyo for flood work and I would ask the staff if it would be appropriate to include a condition that would read as follows: No alteration to the property within the 100-year flood plain shall take place without County approval.

CHAIRMAN DURAN: Can we add that as a condition?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, we can if you'd like. We can add it as a condition. That is already state law. That's through the Army Corps of Engineers. You would have to get a 404 permit. I can address a little better the concern that was raised. I talked with Roman. There was a hole in the property, a lot spot and they were doing some work. It was around the bank of the arroyo but it was permitted. We did have Our Permits And Inspection Division go out and inspect it and it was a permitted work. But we can add this condition if you'd like.

CHAIRMAN DURAN: So Tom, there are no Code violations that exist on this property that have been as a result of actions performed by the applicant.

MR. DOMINGUEZ: Mr. Chairman, I believe the testimony that was given was that somebody had seen them working, they came in and they obtained the proper permits.

CHAIRMAN DURAN: Thank you.

COMMISSIONER CAMPOS: Question, Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Does the motion, Commissioner Trujillo, include the nine conditions?

COMMISSIONER TRUJILLO: Yes it does. Yes it does.

CHAIRMAN DURAN: Okay, if there's no further discussion, those in favor of the motion signify by saying "aye." [Commissioners Trujillo, Duran and Sullivan voted in favor.] Opposed? [Commissioner Campos voted no.] Motion carries.

COMMISSIONER SULLIVAN: I just want to clarify, Mr. Chairman, that this is not a variance, is that correct?

CHAIRMAN DURAN: That is correct. It is not a variance.

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- VIII. D. 2. **EZ Case #S 00-4890. Estancia Real at Las Campanas. Las Campanas Limited Partnership (Michael Baird, Vice President), applicant, is requesting final plat/development plan approval for a 12-lot residential subdivision phase on 27.2 acres in accordance with the approved master plan, and a variance of the minimum road standards to permit a finished road grade exceeding three percent for 100 feet from the intersection. The property is located off Las Campanas Drive, within the five-mile Extraterritorial District, Sections 11 and 12, Township 17 North, Range 8 East**

JOE CATANACH (Review Specialist); Thank you, Mr. Chairman, Commissioners. On November 9, 2000, the EZC recommended approval. Please note that the EZC granted master plan approval in 1992 for 1,419 residential lots to be developed in phases, not including Estates I and II. It included two golf courses with club complex, tennis and equestrian center and related accessory facilities on 3,549 acres. My staff report outlines the subdivision phases that have been granted final approval by BCC. The proposed lots for this 12-lot phase range in size from 1.3 acres to 3.4 acres.

Road and Access—Three short cul-de-sac roads will intersect off the existing Clubhouse Drive for access into the subdivision. The roads will have a paved asphalt surface.

Water/Wastewater—The existing water and sewer system will be utilized. A main house and guest house are proposed for each lot and subject to a water restriction of .50 acre-feet. A minimum six acre-feet has been approved by the State Engineer to support this subdivision phase.

The development plan has been reviewed for terrain, landscaping, open space and archeology. The homeowners association—the homeowner documents address use and development of the lots including water restrictions, solid waste removal, ownership and maintenance of the roads, common areas and facilities.

Variance: The requested variance is to permit a finished road grade exceeding three percent for 100 feet from the intersection. The proposed road grade is 5.7 percent for one intersection. The applicant has submitted a letter responding to the variance criteria. The EZC/BCC shall determine if the applicant has justified the variance criteria.

The proposed subdivision phase is in conformance with the approved master plan and the Extraterritorial Subdivision Regulations and the County Land Development Code. Staff considers the requested variance to be a minimum easing of the road standards and recommends preliminary and final plat development plan approval with the variance subject to the listed conditions. And as I mentioned, the EZC also recommended approval.

Thank you, Mr. Chairman.

CHAIRMAN DURAN: Okay. We can enter those conditions into the record.

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[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
  - a. State Engineer
  - b. State Environment Department
  - c. Soil & Water District
  - d. State Highway Department
  - e. Santa Fe County Water Company
  - f. County Hydrologist
  - g. County Development Review Director
  - h. County Fire Marshal
  - i. County Public Works
2. Final plat to include but not be limited to the following:
  - a. Compliance with plat checklist
  - b. Approval of rural address and street names
  - c. The terrain management plan that is required as part of the submittal for a residential building permit must provide for an additional 180 cubic feet of detention for drainage from road construction.
  - d. A guest house is allowed on each of these lots.
3. Final homeowner documents (covenants, by-laws, articles of incorporation, disclosure statement) subject to approval by staff, and shall include but not be limited to:
  - a. County water conservation measures
  - b. Updated property report
  - c. County disclosure not included in property report
  - d. Construction of swimming pools on these lots shall comply with current regulations of the Santa Fe County Land Development Code that are in effect at the time a development permit is requested for construction. This includes the regulations during drought conditions.
4. Remaining balance of density as approved for Las Campanas master plan shall be established at 290 lots/units, not including guest houses, which is based on available water rights.

CHAIRMAN DURAN: Are there any questions of Mr. Catanach? Is the applicant here?

[Duly sworn, Clif Walbridge testified as follows:]

CLIF WALBRIDGE: Clif Walbridge, 1421 Luisa Street, Santa Fe. Mr. Chairman, members of the Commission, we're in agreement with all the conditions. We have one minor clarification. The last condition regarding the number of lots remaining—our figures are showing 296 as opposed to 290, so we'll get together with Joe and go over the discrepancy.

CHAIRMAN DURAN: Okay. Any questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

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CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I need a clarification. In the City of Santa Fe's review, that was done by Mr. Bill Landin, they say Las Campanas has used 671.3 acre-feet from the Buckman system. And on the charts that you've presented, you show that Las Campanas has 576.851 acre-feet. Could you explain that discrepancy or that difference?

MR. WALBRIDGE: I think I'm going to have to either ask staff to go over that or Mickey Baird is here with Las Campanas. I know the numbers from the State Engineer have been gone over with staff.

[Duly sworn, Mickey Baird testified as follows:]

MICKEY BAIRD: My name is Mickey Baird. My address is 53 Dayflower in Santa Fe. Mr. Chairman, Commissioners, sorry, Commissioner Sullivan, if you could repeat the question.

COMMISSIONER SULLIVAN: Sure. The review letter by the City of Santa Fe, Bill Landin, a professional engineer the director of the Sangre de Cristo Water Company says Las Campanas has used 671.3 acre-feet out of 3,831.9 acre-feet from the Buckman system, 17.5 percent of the total production. Mr. Landin was responding to a question of whether Las Campanas was operating within its requirement of 50 percent of the capacity of Buckman wells 3, 4, 5 and 6, and 25 percent of the Buckman transmission line. And he concluded that you were. But in that conclusion, he mentions that you're using 671.3 acre-feet and I saw on the chart that you provided, a summary of your water rights that you have purchased, the total of 576 acre-feet. So I wondered, are you short of water rights?

MR. BAIRD: No. Not at all. The answer is Las Campanas has two different sources of water rights. The first source is the one we retained back in 1986 and that's a lease of 1600 acre-feet of San Juan-Chama rights from the City of Albuquerque. At the same time we entered into the lease agreement with PNM, which later became owned by the City, for the lease of the capacity of the wells and 25 percent of the capacity of the pipeline. And on top of that, in 1993, we entered into the master plan development agreement with the County, which has subsequently been amended, but we said that we would obtain 576 acre-feet purely for domestic use, and that means not golf course, and for any commercial uses that are out there.

So the 576 acre-feet is for households and that's permanently committed; 1600 acre-feet is intended for golf course and other uses.

COMMISSIONER SULLIVAN: And what you're currently using is 671.3 for both domestic and golf course?

MR. BAIRD: I can't verify the number but it sounds like it's approximately correct.

COMMISSIONER SULLIVAN: Okay, then one other question that I had, Mr. Chairman, was that the State Engineer in his review—and we have several State Engineer reviews in here—says thus the developer currently has sufficient water rights for

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the development. So the State Engineer's review is that you have sufficient water rights, but I couldn't understand that difference in the numbers.

In another letter from the State Engineer, a different office of the State Engineer, they mention that Las Campanas is not in conformance and I assume that you cannot sustain a 100-year water supply, and I assume that that is because it relies on the San Juan-Chama water rights which only go until the year 2016. Is that your understanding of the basis of what the State Engineer is saying there?

MR. BAIRD: No, it's not.

COMMISSIONER SULLIVAN: Okay. How does that work? What am I reading here?

MR. BAIRD: I think the difference is, the State Engineer is talking about domestic rights again. If we can take the 1600 acre-feet, which is the San Juan-Chama rights for the City of Albuquerque, that's dedicated, that was intended for golf course use. And whether or not that has a 100-year supply is really not an issue because if we don't have water for the golf course it will die and go away. I think what the State Engineer is talking about is having wells and a pipeline in place for a 100-year supply for the domestic system.

COMMISSIONER SULLIVAN: Oh, which you don't have. You have a bond to do that. Is that—with the County?

MR. BAIRD: Exactly.

COMMISSIONER SULLIVAN: And he's disagreeing with that procedure that the County enacted with you to provide that bond to do those additional improvements.

MR. BAIRD: And that's what I'm saying. The County Attorney may have an opinion on that but basically it's that. If there's not a pipeline in place that we own right now, and there's not a well or diversion that we own, then that's the issue on the 100 years.

COMMISSIONER SULLIVAN: And is that bond adequate to do new improvements that will eventually get you a 100-year water supply?

MR. BAIRD: It was based on engineering estimates that were done at the time and they have been increased over time. It's over seven million dollars now.

COMMISSIONER SULLIVAN: I see. Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Mr. Baird, we just heard the last case about a community that was concerned about digging four wells that would impact the water table. Las Campanas continues to use potable water to irrigate golf courses and I understand that they made a commitment years back that they would change over to effluent to irrigate those golf courses, but the continue to use potable water, which is having a disparate impact, not only in the immediate area but to La Cienega and everywhere else. What do you plan on doing in regard to this major aberration in an arid



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environment?

MR. BAIRD: That's a key question, Commissioner Trujillo. The original agreement that Las Campanas made and it's reflected in the approvals is that Las Campanas would use the effluent that it has available on the golf courses. I think there's always been some confusion over that. The assertion was never that Las Campanas would irrigate its golf courses completely with effluent that it produces internally, but that it would take the effluent that it does produce and put it on the course, which we are doing. Right now there are approximately 300 homes which are completed in Las Campanas. Some of them are occupied part time. There is not enough effluent that is generated by those homes to irrigate the courses and when there's final build-out, there probably will not be enough effluent to irrigate the courses.

We are concerned about it and as you're well aware, we entered into lengthy discussions with the City of Santa Fe last year in order to try to purchase enough effluent from the City in order to do exactly that. We think that getting off of potable water is the only thing, the only right thing to do and we intend to pursue it with the City if we can. I know that earlier in the meeting there was a discussion on the resolution to adopt a plan that had been proposed by TAP and by other groups. I know that Commissioner Campos raised the issue about La Cienega, which is the issue that was raised during our negotiations with the City.

We have said and we stand open and ready to talk to them whenever they want to come back to us and to address those community-wide concerns. We will do that. In the meantime, we're also pursuing other alternatives and looking at obtaining water from the Rio Grande for that. There's an agreement that was entered into in 1994, the same agreement discussed with Commissioner Sullivan, where we would go down and build our own system so that we would be able to wean ourselves and finally get completely off of the City of Santa Fe's system. Long term goals, but we will do that.

CHAIRMAN DURAN: Any other questions of the applicant? It's a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Mr. Spiegel. Let me remind you that you are still under oath.

MR. SPIEGEL: I am. I am under oath. And I am simply going to provide some information which I think is accurate. But I will qualify it; it's probably subject to change. It's something that I think the County should be discussing with the City. One of the problems with the Buckman field, well field, is that there has been a determination that the effect of the wells is depleting the surface water supplies in Tesuque and Pojoaque and on the main stem Rio Grande, all of which have some prior rights. Because they have prior rights, Buckman field's owner, whoever it is, the City or previously the Public Service Company, have to offset those adverse effects on those resources that I just mentioned by purchasing water rights.

But it is my understanding that the Pueblos, the Tesuque and Pojoaque, have decided they don't want to sell any of their water rights. And the private rights on both of those streams are very limited and most of those owners don't want to sell them either.

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This is my understanding. They haven't told me this but it is my understanding further that the State Engineer has become concerned that the City has not fulfilled its obligation to buy water rights, for whatever reason. And it is also what I believe at this point, it isn't really a rumor, but I am telling you what I understand, so I'm not lying if it's not right, okay? And that is that the City is beginning to think that they'd better give up the Buckman well field.

So I suggest that the Commission, the County Commission, or Board of County Commissioners, try to establish what is the truth because and before they make any decision that may depend on either stealing somebody else's water or getting in trouble with the State Engineer, that they find out what the truth is, and get a commitment that the City either will provide water to Las Campanas, not five years from now, but now, in the near future, whether or not Las Campanas goes forward with its commitment to get its own system. It's going to take Las Campanas a few years to drill some wells if they can't use the Buckman wells, or their percentage of certain wells, if they can't use a percentage of the pipeline because there isn't anything going through the pipeline in a few years, they might not be able to get the water that they need to provide for additional uses beyond what they already have.

COMMISSIONER TRUJILLO: Thank you, Mr. Spiegel. Anybody else want from the public want to talk to this case? If not then, what is the desire of the Commission?

COMMISSIONER CAMPOS: I have a question for legal staff. Mr. Kopelman, there's a letter in the packet dated November 20, 2000 from Patrick Romero to Brian Wilson within the New Mexico Office of State Engineer. And the third paragraph reads: "The County should note that the agreement made is not in accordance with state law, which mandates a course of action when the State Engineer does not offer a positive opinion on a subdivision." Could you tell me what that means?

MR. KOPELMAN: Mr. Chairman, Commissioner, I think he's actually incorrect in his assertion here. What he's saying is that if there's a hydrologic issue, that we will look at the applicable provision in the Code, if there's a hydrologic issue, and the State Engineer under those circumstances issues a negative opinion, then it triggers a series of public hearings and getting experts to testify. In this case, I don't believe that it's triggered because it really doesn't fulfill those conditions.

I think the issue here is that Las Campanas has committed water through 2027 through the City. They have bonded, they have a \$7 million bond to build a replacement system and in researching this issue back in, I believe it was 1991, the Board of County Commissioners actually entered into an agreement with Las Campanas basically saying and agreeing that Las Campanas would not be required to do anything further in terms of proving up water or showing water. And my concern is that I think the County is probably bound by that agreement, and at this point, I don't think there is any serious issues about Las Campanas not having the water down the road unless the City of Santa Fe also doesn't have water and I don't think that's—hopefully, that's not a likely story.

But again, going back to this provision, I think that he misspeaks when he refers to that state statute.

COMMISSIONER CAMPOS: The comment is made in two places. Another letter dated October 19, 2000 to Mr. Catanach from Brian Wilson, the last paragraph and it refers to the probability won't be available until the County's new diversion facilities can actually be constructed and tested. So that it doesn't meet the 100-year test. It doesn't meet the County standards and it seems to reiterate that position.

MR. KOPELMAN: Mr. Chairman, Commissioner, again, we were concerned with the issue also. We did some research on it and the whole arrangement that the County entered into, and this is several Commissions ago, in order to ensure that there was a water supply, because Las Campanas clearly has the water rights. That's not at issue at all. One of the requirements was that Las Campanas post a substantial bond in order to ensure that a replacement system could be built. It's very, very likely that Las Campanas will need to get river—water from a diversion project down the road, but again, I think the situation is can any subdivision then be approved that's on City water in light of this opinion?

And again, I think the County has some issues because I think the County is bound by that prior agreement that was entered into. I think that there are some legal issues with that. The other thing is that the State Engineer is now saying that there are some issues with the County's water system itself. And I think the bottom line is some diversion is going to have to happen over the next five or ten years, but again, under these circumstances, I think staff's position was that Las Campanas has satisfied the requirements under these circumstances.

COMMISSIONER CAMPOS: Does the County have an obligation under that contract to build a diversion system?

MR. KOPELMAN: Mr. Chairman, Commissioner Campos, the County has the option of actually coming in and doing it, and that is probably something that will be the source of at least some discussion on Thursday and down the road also.

COMMISSIONER CAMPOS: Is it only an option?

MR. KOPELMAN: Mr. Chairman, Commissioner, there's a time frame, and so that if—and I believe it's 2004—but if by 2004, Las Campanas doesn't have that alternative source, then the County has an absolute right to go in and do it.

COMMISSIONER CAMPOS: We're not obligated to do it?

MR. KOPELMAN: Mr. Chairman, Commissioner, I didn't think we were obligated. I'd have to double-check that. I don't have the agreement in front of me. But I certainly can get that information back to you. And probably Mickey Baird knows that off the top of his head.

COMMISSIONER CAMPOS: Mr. Baird?

MR. BAIRD: Mr. Kopelman is exactly correct. There's a right but not an obligation to call on bond and then construct the system.

COMMISSIONER CAMPOS: So if the County doesn't do it, you have to

do it.

MR. BAIRD: We have to do it or we forfeit the bond.

COMMISSIONER CAMPOS: Okay. Let's say you don't do it and you forfeit the bond. If the County's unwilling to build that diversion or it's very expensive to build that diversion, how is that addressed?

MR. BAIRD: It's not addressed in the agreement.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN DURAN: Okay. What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Well, Mr. Chairman, I understand this is for 12 lots. Let me just summarize some things. It's for 12 lots, is that correct? And it's part of the existing master plan, and it's recommended by the staff. And the variance that's being requested is the slope at an intersection. Is that correct? Am I summarizing this? So I would move for approval with the conditions as recommended by staff.

CHAIRMAN DURAN: Is there a second? I will second the motion for discussion. I have a question, Steve. Is it your assessment that we could experience considerable risk if we deny this project because of concern that it may not have enough water?

MR. KOPELMAN: Mr. Chairman, I think that in all likelihood we would end up in court over that issue and whether the agreement that was entered into back in 1992 is a valid one and whether we were bound by it, there's that agreement. There is a letter from the County Attorney that makes certain representations. So I would be somewhat concerned.

CHAIRMAN DURAN: Okay. Any more discussion? Those in favor of the motion signify by saying "aye." [Commissioner Sullivan and Chairman Duran voted in favor] Those opposed? [Commissioner Trujillo voted against.]

COMMISSIONER CAMPOS: I would abstain.

CHAIRMAN DURAN: The motion carries.

[See page 102 for further action on this motion.]

- VIII. D. 3. **CDRC Case #V 00-5945. Agustin Roybal Variance. Agustin Roybal, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow for the placement of a second home on 5.34 acres. The property is located at 88 Willow Road in the South Fork area, within Section 31, Township 15 North, Range 9 East**

WAYNE DALTON (Review Specialist): Thank you, Mr. Chairman, Commissioners. There is currently one home and one septic system on the property. The property is served by an on-site well, which serves the existing home. The applicant intends to move the second home on the property for his father and mother. The applicant states that his father's health is not good, and his mother does not drive. The applicant

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feels that having his father close to him will allow him to help his father and watch over him.

Recommendation: Staff recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 50 acres per dwelling unit. The decision of the CDRC was to recommend approval of the variance to allow a second home on 5.34 acres subject to the following conditions. Mr. Chairman, may I enter those conditions into the record?

CHAIRMAN DURAN: That's fine.

[The conditions are as follows:]

1. A temporary permit will be issued for a period of three years, to be approved for consecutive three-year period by County staff. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to .25 acre-feet per dwelling per year during the time the two homes exist. When the second dwelling is removed the this restriction will no longer apply. Applicant shall install a water meter for both homes. Water restrictions shall be recorded and annual water meter readings shall be submitted to the County Hydrologist by January 31 each year.
3. The applicant must submit a revised ED liquid waste permit showing both homes and correct lot size.
4. No additional permanent structures to be erected on site to support second dwelling unit.
5. The mobile home is not to be placed on a permanent foundation.
6. No additional driveways shall be installed.
7. The applicant must comply with all other building permit requirements including construction of a retention/detention pond.
8. Failure to comply with all conditions shall result in administrative revocation of the variance.
9. Applicant shall sign a "temporary density/area variance conditions of approval" affidavit accepting the conditions of approval as set forth by the County Development Review Committee.

CHAIRMAN DURAN: Any questions of staff? Actually, I have a question. Isn't this the same area that—I don't think we've ever approved a variance out there, have we? For minimum size lot.

MR. DALTON: Can you repeat the question, Mr. Chairman?

CHAIRMAN DURAN: Have we ever approved any variances out there for minimum sized lots, in this particular area? Oh, that's right. You just started. Let me just make a comment. I don't think we've approved many variances out there for lot splits.

COMMISSIONER SULLIVAN: Mr. Chairman, didn't we just approve one at the last BCC meeting in this same area?

CHAIRMAN DURAN: I don't think so. There was a real question about

water availability out there. Penny probably knows better.

MR. DOMINGUEZ: Mr. Chairman, it's been brought to my attention, I believe that there was one approved last meeting in this area and I believe that there have been others in the past that have been approved based on the variance criteria.

CHAIRMAN DURAN: Okay, I stand corrected. Is the applicant here? Please come forward and state your name for the record.

[Duly sworn, Agustin Roybal testified as follows:]

AGUSTIN ROYBAL: Agustin Roybal, 88 Willow.

CHAIRMAN DURAN: Are you in agreement with staff's—actually, they're recommending denial. Are there any questions of the applicant? Any of the Commissioners have any questions?

COMMISSIONER SULLIVAN: Just a minute, Mr. Chairman. I had a question that the CDRC had brought up and I'm trying to locate it. If anyone else wants to go ahead.

CHAIRMAN DURAN: We'll take a few minutes.

COMMISSIONER TRUJILLO: I have a question for staff though. What's the minimum lot size in that area? Fifty acres?

MR. DALTON: That's correct.

COMMISSIONER TRUJILLO: Okay. Thank you.

COMMISSIONER SULLIVAN: I think I found the—

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, one of the issues brought up in the CDRC meeting was if the applicant, because of the hardship that the applicant was testifying to, if he were willing to accept a temporary permit for the mobile home, as opposed to a lot split. And the minutes say that he readily agreed and stated he just wanted to help his parents. So is that an option here, a temporary permit, rather than a lot split?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, that is one of the conditions. We brought it forward to you with the stated conditions of the CDRC. I believe it's condition number nine.

COMMISSIONER SULLIVAN: Explain to me what that means. What does a temporary permit issued for a period of three years mean? He will put a mobile home on the property and then what will happen after three years? It's kind of hard to evict people, isn't it?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, what has been prior practice or what has been passed by prior boards and Commissions is that after the three-year period, in this case it would be that the applicant has to come in and continue to prove the hardship still exists, i.e., that the parents are still in bad health and all of that, but it's incumbent upon the applicant to come in.

COMMISSIONER SULLIVAN: I understand. So the applicant cannot split the lot? He's not recording a separate lot?

CHAIRMAN DURAN: Right.

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COMMISSIONER SULLIVAN: Or transfer here. He's simply getting a temporary permit to install a mobile home and move his parents in. Is that my understanding?

MR. DALTON: Mr. Chairman, Commissioner, that is correct.

CHAIRMAN DURAN: So that would be an option we could pursue rather than grant a lot split.

COMMISSIONER SULLIVAN: That seems to be what the staff is recommending in the conditions here.

CHAIRMAN DURAN: Okay, any other questions of the applicant, or of staff? Is there anyone out there that would like to address the Commission concerning this issue? Okay. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Based on the hardship issue and this lot will not be split, and one of the conditions, condition number nine reflects that it's going to be a temporary permit, I will make a motion to approve CDRC Case #V 00-5945, Agustin Roybal Variance.

CHAIRMAN DURAN: There's a motion. Is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous.] Opposed? Motion carries.

- VIII. D. 4. **CDRC Case #V 00-5680. Miguel Coblentz Variance. Miguel Coblentz, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow for a land division of 2.65 acres into two lots. The property is located at the southwest corner of the intersection of Quail Run and Juniper Street within the South Fork area, Section 31, Township 15 North, Range 9 East**

FRANK WHITE (Review Specialist): Thank you, Mr. Chairman, Commissioners. The property is located within the basin fringe hydrologic zone. Article III, Section 10 of the Land Development Code states that the minimum size lot in this zone is 50 acres per dwelling unit, and with proven water, 12.5-acre lots can be created. However, with a small-lot family transfer, one half of the standard minimum lot size is allowed, which in this case would be 6.25.

The property is already smaller than one half the minimum lot size. The applicant states that he wishes to transfer 1.23 acres to his son, Miguel Coblentz, Jr. who is a senior in high school with a girl friend that is expecting a child. The applicant states that he has three other children and feels that it is impossible to financially support his son's extended

family.

Recommendation: The decision of the CDRC was to approve a small-lot family transfer land division, subject to the following condition. There's one condition:

1. The applicant shall comply with all Code requirements for the small-lot family transfer.

CHAIRMAN DURAN: Any questions of staff? Is the applicant here? Please come forward and state your name for the record.

[Duly sworn, Miguel Coblentz testified as follows:]

MIGUEL COBLENTZ: My name is Miguel Coblentz. I live at #50 Juniper.

CHAIRMAN DURAN: Any questions of the applicant? Do you have anything to add to your request?

MR. COBLENTZ: Basically, we're in genuine need of doing this for my son, my grandchild and my extended daughter-in-law to be. And aside from trying to help them by giving him the property to get him started in life, he's also going to be joining the Marines in June of this year, which is going to make it even rougher for him, but it's going to be a living that he's going to have to learn to earn. That's about all I can say.

CHAIRMAN DURAN: Have you had any discussion with the—tell me again, what did the AFDRC recommend? Did they recommend approval? CDRC and the AFDRC recommended approval, right? Any questions of the applicant?

COMMISSIONER TRUJILLO: Yes.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: This is the—the total land size of this is a little over five acres, or no? It's 2.65 acres into two 1.32-acre lots. Is this going to require individual wells and individual septic tanks on each of the lots?

MR. COBLENTZ: I have gone before the septic tank, where you apply for the permit, and they've given me a permit for the split of the second piece of land. And discussion hadn't arisen regarding the water. I know we have plenty of water there. We could either put a meter and give water from our well to that house or put another well on a separate piece of property if you guys grant approval.

COMMISSIONER TRUJILLO: I understand that you have to do some sort of study to show that there's water there. Is that right? Has that been done?

MR. COBLENTZ: Yes sir. We've been living on the property for about eight years now. [inaudible]

COMMISSIONER TRUJILLO: But the minimum lot size in that area is 50 acres per dwelling. However, with a small lot transfer, one half of the standard minimum lot size is allowed, which in this case would be 6.25 acres. The property is already smaller than one half of the minimum lot size. So there's no requirement that they have to do any sort of special study to show water availability?

MR. WHITE: Mr. Chairman, Commissioner Trujillo, this is a family



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transfer so—

COMMISSIONER TRUJILLO: Within a traditional community it's okay.

MR. WHITE: Right. During the small-lot family transfer of course, you're going to go through signing a water restriction, possibly a shared well agreements, access, metering the well and so forth.

COMMISSIONER TRUJILLO: Okay. Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Is this a traditional community? South Fork's in a traditional community?

CHAIRMAN DURAN: No, we're talking about—we're talking about—

COMMISSIONER SULLIVAN: Miguel Coblenz, that's another one in South Fork.

COMMISSIONER TRUJILLO: Oh, South Fork area. That's not a traditional community.

CHAIRMAN DURAN: Oh, you know what. I'm looking at the wrong one. I thought—

COMMISSIONER SULLIVAN: This is another one in South Fork.

CHAIRMAN DURAN: Excuse me. My fault. So I'll yield the floor back to your question, Commissioner.

COMMISSIONER TRUJILLO: I guess I got the answer that there's no requirement to show water availability in this regard.

COMMISSIONER SULLIVAN: Mr. Chairman, the issue of the lot sizes came up in the last BCC meeting on South Fork and I asked why, if the minimum lot size is 50 acres there are so many homes out there that are clearly much, much less than that and the staff's response was they're all non-conforming, pre-Code lots out there and there are a bunch of them. The other question that I had, it's my understanding that you've already placed a second trailer on the property. Is that correct sir?

MR. COBLENTZ: Yes sir.

COMMISSIONER SULLIVAN: And according to the CDRC minutes, you thought this thing would go a little faster than it did and you went ahead and put the trailer on, thinking that it would get approved before it did.

MR. COBLENTZ: I apologize for my ignorance.

COMMISSIONER SULLIVAN: Yes, I understand. Now, they also asked at that time whether the temporary permit route which we discussed with the previous applicant was a possibility and you said that you would be willing to consider that option and the minutes read that "Mr. White reminded the committee that the request was for a lot split, not the placement of a second dwelling." But the second dwelling is already there, right?

MR. COBLENTZ: Correct.

COMMISSIONER SULLIVAN: So I would ask you what your thoughts

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are about a temporary permit. This is for your son and his wife. Is that correct?

MR. COBLENTZ: Correct.

COMMISSIONER SULLIVAN: So do you have any—have you given any more thought to the temporary permit option, since that meeting?

MR. COBLENTZ: No sir, I haven't, because they said it basically wasn't an option at that point. That it wouldn't apply to a family transfer, which I'm not only transferring the property in his name, but I'm putting it in trust into their child's name.

COMMISSIONER SULLIVAN: No, the temporary permit wouldn't allow you to transfer the property, that's correct. It would simply allow you to have a legally acceptable mobile home on the property. Because otherwise, as it says in the report, that second dwelling is now in violation of the Code.

MR. COBLENTZ: Yes sir.

COMMISSIONER SULLIVAN: And it would have to be taken off at considerable expense to you and of course hardship to your family. But I throw that out as an option for the discussion by the Commission.

COMMISSIONER TRUJILLO: Any discussion? You're proceeding on this on the basis of family transfer. If you want to split the lot and convey a piece of land to one of your offspring, one of your sons.

MR. COBLENTZ: Correct. But if there is a problem with that and we need to consider a temporary permit, we'd be willing to consider that also.

COMMISSIONER TRUJILLO: But you want to convey this piece of land in perpetuity so that your son can live in that area forever, if you will.

MR. COBLENTZ: This is correct. Yes sir.

COMMISSIONER TRUJILLO: And this is a family that's going to be your neighbor for a long time.

MR. COBLENTZ: Yes sir.

COMMISSIONER TRUJILLO: And if you do a temporary transfer you're going to have to come before us every three years or another Commission and justify the hardship and substantiate why you want to extend that three-year, temporary permit.

MR. COBLENTZ: Right. So we would hope for the land transfer and if not, we'll leave it up to you, your decision.

COMMISSIONER SULLIVAN: Mr. Chairman, I recall on the one previously in South Fork that was approved for a split the property was considerably larger. I think the split was at least 2.5 acres or two acres or so, than this one. This one is 1.32 and that's beginning to become fairly tight.

MR. COBLENTZ: Commissioner Sullivan, if I could also add my next door neighbor Sam has a piece of property the same size and he has deeded half of it to his daughter and his granddaughter.

COMMISSIONER SULLIVAN: And that was done last year?

MR. COBLENTZ: About two years ago.

COMMISSIONER SULLIVAN: Two years ago. As a family transfer?

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MR. COBLENTZ: Yes sir.

COMMISSIONER SULLIVAN: Have any of your neighbors opposed this?

MR. COBLENTZ: Not to my knowledge sir.

COMMISSIONER SULLIVAN: That's all the questions I have, Mr.

Chairman.

CHAIRMAN DURAN: Any other questions of the applicant?

COMMISSIONER CAMPOS: I have a question.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Have you studied the quality of the water that you're drinking?

MR. COBLENTZ: As far as having somebody do samples of the water? No sir, we had Geyser Drilling put the well in shortly after we moved out there.

COMMISSIONER CAMPOS: How long ago?

MR. COBLENTZ: About seven years ago. And everybody has been drinking from the water. I'm sure he did whatever was necessary to get the proper permitting, because he was a bona fide licensed outfit when he sank the well, and we've been drinking water ever since and never had any problems.

COMMISSIONER CAMPOS: How close are the septic tanks and the leach fields from your well.

MR. COBLENTZ: I would say that my septic tank right now is about 100, maybe 125 feet away from the well.

COMMISSIONER CAMPOS: And others? Are there neighbors that have septic tanks and leach fields that are close to your well?

MR. COBLENTZ: No sir.

CHAIRMAN DURAN: So you would be able to meet the State EID requirements for distance between well and septic?

MR. COBLENTZ: Yes sir.

CHAIRMAN DURAN: Okay, it's a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for approval of the variance of Article III in CDRC V 00-5680, Miguel Coblentz Variance.

CHAIRMAN DURAN: There's a motion to approve CDRC Case 00-5680. Is there a second?

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a second. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Sullivan and Duran voted with the motion. Opposed? [Commissioner Campos voted against the motion.]

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**VIII. D. 5. AFDRC Case #V 00=5710. Lázaro Mata Variance. Lázaro Mata, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow for the placement of a second dwelling on 1.44 acres. The property is located within the traditional community of Agua Fria, Section 31, Township 17 North, Range 9 East**

MR. DALTON: Thank you, Mr. Chairman. There is currently one home and one septic system on the property. The property is served by an off-site community well which currently serves the existing residence. The Agua Fria Village manages the well. He states that his property is 1.44 acres and is only .06 acres short of the County's required 1.5 acres to place two dwellings in a traditional community.

Recommendation: Staff recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 0.75 acres per dwelling unit. The decision of the SFCRC was to recommend approval of the variance to allow a second home on 1.44 acres subject to the following conditions. Mr. Chairman, may I enter those conditions into the record?

CHAIRMAN DURAN: Yes, that's fine.

[The conditions are as follows:]

1. The existing driveway will serve both homes.
2. In the event of a lot split there is to be no additional dwelling units to be placed on the property.
3. Failure to comply with all conditions shall result in an administrative revocation of the variance.

CHAIRMAN DURAN: Any questions of Wayne? Is the applicant here? Please come forward and state your name for the record.

[Duly sworn, Victor Montoya testified as follows:]

VICTOR MONTOYA: Mr. Chairman, my name is Victor Montoya. I live at 5 Villa Magdalen in Santa Fe. I'm here to primarily assist Jesus Mata and Lázaro Mata. They speak only Spanish. They understand some English and I guess with that I'll stand for any questions or if I can make a short presentation for them.

CHAIRMAN DURAN: Is the applicant in agreement with all the recommendations?

MR. MONTOYA: Mr. Chairman, yes they are. They purchased the property together. They're father and son and the father currently resides there. Lázaro Mata currently owns a mobile home. His current rental just went up to \$450 a month, so it's causing him some concern because he's got a piece of property that he co-owns with his father and he's having to pay \$450 a month in trailer space rent. The other item is he's got two small children and if he's able to move in to the property, he would be very close to his parents and his children would have access to babysitting services and he wouldn't

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have to take them out in the cold and stuff because they're pretty small.

A few of the things that I'd like to mention is the Agua Fria Community Water Association has approved water for a second mobile home and the EID has approved a septic permit using a new system, whatever that is. We can provide that information if it's required, Mr. Chairman. With that I'll stand for any questions.

COMMISSIONER TRUJILLO: Mr. Chairman, in Agua Fria, there's not a centralized liquid waste system? Or are all the properties there served by individual septic tanks and leach fields?

MR. MONTOYA: Mr. Chairman, I believe they're served by individual septic tanks or leach fields.

COMMISSIONER TRUJILLO: And if I remember correctly, in the traditional community of Agua Fria, the minimum lot size is  $\frac{3}{4}$  acres, but there are a lot of lots that are non-conforming legal lots of record that are way below the  $\frac{3}{4}$ -acre lot. Is that correct?

MR. MONTOYA: That's what I understand, Mr. Chairman. This particularly lot is only—

COMMISSIONER TRUJILLO: Six tenths—

MR. MONTOYA: Six hundredths.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Maybe this is for staff. This is not a request for a lot split. This is a request for placement of a second dwelling on the property. If that request is approved, does that carry in perpetuity.

MR. DALTON: Mr. Chairman, Commissioner Sullivan, that's correct.

COMMISSIONER SULLIVAN: And my second question was, one of the conditions recommended in the discussion by the AFDRC was a condition that a connection be made to the City sewer system when it came within 200 feet of the property line. I understand it's working its way down there now. It hasn't reached Agua Fria yet. And that condition was debated and not included. It would seem that we would always want to encourage and in fact require connections when the sewer is that close. What was the—do you know what the circumstances of that were?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Sullivan, if I remember correctly, the discussion that ensued at the AFDRC, this applicant happens to be the furthest property from Agua Fria Road and basically the discussion that took place is that if they require this applicant to hook up, he would have to bring the sewer line from Agua Fria all the way to the furthest extent of this property and there many property owners in between. And they felt that the burden of installation would be on this applicant.

COMMISSIONER SULLIVAN: That certainly wouldn't be fair but the condition I was reading was a requirement that they be hooked up to sewer when it was within 200 feet of the property line. Its on page 4 of the minutes of the AFDRC down

near the bottom. And certainly he couldn't sewer all of Agua Fria. That wouldn't be appropriate.

CHAIRMAN DURAN: Maybe I could offer, shed a little light on that. We are in the middle of, we just finished planning Phase 2 of the Agua Fria sewer project, and there are a lot of little roads that cut off Agua Fria that service homes. The project only has funding to allow for sewer taps at the point of intersection so that in the future, whenever the homes that are on that little, whatever road that is have found the money to do so, they could hook up to that tap. Senator Rodriguez is trying to get state funding to help the people in the village to get the money to do that. She's working on it this session. She worked on it last session and hopefully, in the next several years to come that we could get everybody in the village off of septic systems and on to the sewer system. But there are taps planned for each point where these roads intersect when they service one or more homes.

MR. DOMINGUEZ: Mr. Chairman, that is correct. I'd like to add one more thing as I look at the minutes. The conversation that ensued also, Chair Pike at that meeting also said since they've already got prior ED approval, they already have the approval for both septic permits. That's why he said he wasn't prepared to add that condition on.

COMMISSIONER SULLIVAN: Commissioner Duran, when the sewer does come, when we do get those funds, will the people be required to hook in?

CHAIRMAN DURAN: There's no requirement, no. If they can't do it because of financial constraints then there is nothing to require them to, although actually what we're trying to do is get the money so that they wouldn't have to come out of pocket for that. So I guess we could put a requirement that if the funds become available through other sources—

COMMISSIONER SULLIVAN: I don't think—if there's no requirement of others in the area to hook up. I mean it's a fairly requirement that within 200 feet, that's for example a requirement of the Community College District now under the plan. If they're within 200 feet you have to hook up. But if there's no requirement of other people in the Agua Fria traditional community then I don't think we should impose that on this applicant. That's all the questions I had.

CHAIRMAN DURAN: Are there any other questions of the applicant. Okay, this is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue. Please come forward and state your name for the record and let the County Clerk swear you in.

[Duly sworn, Dennis Hernandez testified as follows:]

DENNIS HERNANDEZ: My name's Dennis Hernandez. My address is 2227 Rumbo al Sur. Mr. Chairman, members of the Commission, I'm a lifetime resident of Agua Fria, the village and I'm here to speak in behalf of Mr. and Mrs. Mata that have recently purchased the property next to mine and have made a lot of improvements to their mobile home and their land by maintaining it. I am proud to have them as my neighbors.

The work they've done has brought up their property value as well as mine. They're a very hard working family and have proven to be good neighbors. Being such a close family, they request permission to have their son, Lázaro Mata, move his mobile home into their land so that they can live close to each other. I do not feel that another mobile home on the 1.44 acres would cause hardship to the community. I would also like to mention, and I think it's been mentioned before, that the Agua Fria Water Association has granted them water for the use of the mobile home. I am grateful that you let me speak in behalf of the Mata family and I hope that you vote in their favor. Thank you.

CHAIRMAN DURAN: Thank you sir. Is there anyone else out there that would like to address the Commission? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for approval of AFDRC Case V 00-5710, Lázaro Mata Variance.

CHAIRMAN DURAN: I'll second that motion. Any further discussion?

COMMISSIONER SULLIVAN: With conditions?

COMMISSIONER TRUJILLO: With the conditions

CHAIRMAN DURAN: With conditions. Those in favor, signify by saying "aye." [Unanimous.] Opposed? Motion carries. Thank you.

**VIII. D. 6. CDRC Case #V 00-5860. Barbara Zavada Variance. Barbara Zavada, applicant, requests a variance of Article III, Sections 4.1 and 4.2, (Types and Locations of Commercial Districts) of the Land Development Code to allow commercial zoning outside a potential commercial district on her 0.90-acre piece of property. The property is located at 24 Meyers Road in Arroyo Seco, within Section 30, Township 20 North, Range 9 East**

MR. DALTON: Article III, Section 4.1 of the Code states that commercial and industrial non-residential uses are permitted only in zoned districts. There are several reasons why commercial districts are established. The primary reason is to avoid strip commercial patterns of development along highways. Commercial districts are allowed at qualifying intersections and are specifically not allowed to develop as strips along the highway. The subject property is not within a potential commercial district.

The applicant states that there are currently several properties in the area that are commercial. These properties include Leon's RV Repair, Showcase Mobile Homes, Meyers Steel, an electrical shop, a daycare center and the Santa Fe Winery. The nearest qualifying intersection is Highway 285 and County Road 88, which is a community center district, and is 1700 feet in radius. The applicant's property is approximately two miles

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away from this commercial node.

Recommendation: Staff's position is that this application is not in accordance with Article III, Section 4.1 of the Land Development Code, and in granting this variance, the purpose of the Code to stop strip development would be violated. Therefore staff recommends denial of the requested variance. The decision of the CDRC was to recommend approval of the variance to allow commercial zoning outside of a potential commercial district on .90 acres subject to the following condition. Mr. Chairman, may I enter that condition into the record?

CHAIRMAN DURAN: Please. That's fine.

[The condition is as follows:]

1. The use list shall include professional office space or gallery and owner of the business shall occupy the business.

CHAIRMAN DURAN: Any questions of Wayne?

COMMISSIONER TRUJILLO: Wayne, what is the access to this property? Is it right off of State Road or Highway 84/285, or does the access go through a residential area in front of Meyers Steel into the property?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, the access is right off of 285, and then it goes on to Meyers Road. You turn on to Meyers Road from 285.

COMMISSIONER TRUJILLO: But you drive through a residential area to access the property and it's not directly connected to 285 from the property.

MR. DALTON: That is correct.

CHAIRMAN DURAN: Okay, any other questions of Wayne? Is the applicant here? Could you please come forward and state your name for the record and let the Clerk swear you in.

[Duly sworn, Barbara Zavada testified as follows:]

BARBARA ZAVADA: I am Barbara Zavada. I live on 24 Meyers Road, Arroyo Seco. The mailing address is Española.

CHAIRMAN DURAN: Okay are you in—do you have anything to add to what Wayne has stated?

MS. ZAVADA: Yes, Mr. Chairman. I've lived there for a number of years, about three and a half years. I live and work out of my studio. It's a very small house, 400 square feet. I already have a license, a fine arts studio and I work with toxic materials, acrylic paints and pastels and it is not healthful to live and sleep in the same area that I would be working. Last year I planned on adding a studio and I have the addition approved and I became very ill for most of the summer and I gave up part to build on my own [inaudible] I've just had a lot of problems with building. For instance it took my two months just to get a door hung and the work, the plastering, I had a guarantee and the work wasn't done right and they did not honor their guarantee.

So I decided that the best thing to do was just leave and find a space where I would have living quarters separate from a work space. And when I started to look around, I was



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not able to sell it for the simple reason nobody wanted to live on a property on a residential basis with three easements. It was just too chopped up. The last meeting the neighbors came out and they spoke about the pristine beauty of the area, which is true. It's for the neighbors in back of me who have the BLM land and the arroyos and the Sangre de Cristo Mountains.

What I am faced with, I have the property right by the highway. I see the traffic. I have the pollution and just in front of my house, in front of my window I have a telephone pole with many wires hanging from it. A neighbor has a dead old tree there, and then I have barbed wire fences, these tall, wooded fences. There is a storage area to my east, which is many times the size of my small house. In other words, I just couldn't find anyone interested in the property on a residential basis and it was made apparent to me that I should be selling it commercially.

Furthermore, it's like a Lovers Lane, Meyers Road. People are dropping their beer cans, their whiskey bottles and all kinds of trash. I'm the only one that picks up all this trash. And the neighbor adjacent to the south side, when I first moved to the area he mentioned also that someday he would like to start a business and as well, the neighbor immediately to my north had also wanted a business but he does not own the property right on to the highway. I just feel that in order to find a buyer for this, it would need to be on a commercial basis.

I know that there have been objections. For instance Mrs. Meyers of Meyers Steel, I called her and she was offended by the fact that I did not consult her, yet I only needed to consult a number of people in a certain distance from my home. But we worked through all the points, one by one, and at the end, she gave me her blessings and she said she would help me.

COMMISSIONER TRUJILLO: We've got a letter here, Mr. Chairman.  
[Exhibits 4, 5 and 6.]

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: I think from the Meyers that opposes the development.

MS. ZAVADA: Yes, she stated that in the beginning. She owns a business, but yet she still felt that she did not want another business there, yet there is a real estate office at the end of Meyers Road. Her traffic is passing my door all the time. I have three easements going through the property, which means I'm sitting in a little corner with no privacy at all and I just see her traffic. She was worried, she was concerned, there were rumors that I would be selling it to some big commercial plan. At this point, I don't know if I'm going to move and where I would be moving to and I've had a number of people confront me but there's just nothing definite yet. I have not made definite plans.

COMMISSIONER TRUJILLO: Do you know that whole area, Mr. Chairman, that the Arroyo Seco corridor from the Pojoaque Corridor, where they redesign in that area, there's a potential that it will be redesigned so that this property that you're talking about will become a frontage road. So to designate it commercial now will be

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short term. It will go away because that whole area will be redesigned and the infrastructure will include frontage roads, so that property will no longer be available, if you will, for any sort of commercial and/or residential development.

MS. ZAVADA: I don't quite understand. What about all the other businesses?

COMMISSIONER TRUJILLO: They're going to be affected too. The existing businesses will go away, the ones that are close to 285 when the road is re-engineered and the frontage infrastructure is put in place.

MS. ZAVADA: Are you saying that when they widen the road—

COMMISSIONER TRUJILLO: When it's redesigned.

MS. ZAVADA: Yes, but it will become less desirable to have residential property there if the road is being enlarged.

COMMISSIONER TRUJILLO: What I'm saying is that property that you're talking about will be impacted by the redesign of the road. Whether it's designated residential or commercial is neither here nor there. It's going to go away. It's close enough to the highway. Is that—Tom, am I right there?

MS. ZAVADA: Did you see a map of the lay-out of the house, of the property?

COMMISSIONER TRUJILLO: I've seen it, yes. It's right adjacent to 285.

CHAIRMAN DURAN: Are you suggesting that through condemnation she may lose her property whether it's zoned—

COMMISSIONER TRUJILLO: Whether it's zoned residential or—

MS. ZAVADA: You mean the whole property is going to be lost?

MR. DOMINGUEZ: Mr. Chairman, we just had a meeting, or I attended a meeting with the Highway Department, Louis Berger considering the Pojoaque Corridor expansion. Right now they have a couple different alternatives. In front of this property, I do not know exactly the extent of property they'll be taking from you. They have two alternatives on an interchange or actually a grade-separated intersection. So how it fits in relation to this, I'm sure it will be affected but I don't know to what extent and I could not answer that with any accuracy right now. But it will be affected.

MS. ZAVADA: Mr. Chairman, as I understand it the property west of Highway 285 is owned by the road condition, I don't know, the state or city, and I have been told that it would not affect this one side, but they would rather build on to the other side of 285 since that property is already owned by the Highway Department.

CHAIRMAN DURAN: Well, that makes some sense. I was wondering, the condition that the CDRC placed on your property would be that it would be professional office space or gallery, and that the owner of the property would reside there. Is that your understanding? so if you got approval for this—

MS. ZAVADA: Yes, I would think that a small office, and perhaps enlarge it to some extent because it's too small. The 400 square feet is just too small for someone to live and work at the same. But it would be a small concern that it would be commercial

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because it really lends itself very well to it and I've already had inquiries about it.

CHAIRMAN DURAN: I have a question for you, Tom. What's the requirement for home occupation? Couldn't this qualify for home occupation? It seems like what they are suggesting here, what the CDRC is suggesting is home occupation?

MR. DOMINGUEZ: MR. CHAIRMAN, she currently is a home occupation. She is before you now with this request so that she can sell her wares, but she currently is a home occupation.

CHAIRMAN DURAN: So what's the difference between home occupation and what the CDRC recommended as a condition?

MR. DOMINGUEZ: I believe that the intent of the condition that the CDRC put was that that would be noted on there so that it would maintain the aspect that she's asking for. She's already currently got the home occupation. She just wants to be zoned commercial so she could go into sales, and I think they wanted it to remain that way. So it wouldn't just be that she could sell it as a commercial property outright, but there would be that restriction but that the owner of that commercial use live on the property.

CHAIRMAN DURAN: Was there a restriction that prevents her from having sales out of her home occupation?

MR. DOMINGUEZ: Mr. Chairman, I'd like to defer to Penny. She could answer that precisely for you.

PENNY ELLIS-GREEN (Review Specialist): Mr. Chairman, Commissioners, home occupation is a very small business. You can only use 50 percent of your house for the business and retail sales are usually not permitted by home occupations. What the CDRC did through their discussion, my understanding is that they would allow a commercial type use of more office space within that building. So not meeting the home occupation standards but still requiring whoever ran the business to live on the property. More like an owner-occupied business rather than our home occupation.

CHAIRMAN DURAN: The owner wouldn't have to run the business, but rather the person that's living there would have to be the owner of the business.

MS. ELLIS-GREEN: That was my understanding, yes.

CHAIRMAN DURAN: So I could rent from her and have my business there, as long as I lived there.

MS. ELLIS-GREEN: Yes. That was my understanding.

CHAIRMAN DURAN: I don't think that is what this says. Oh no, I guess it does say that. Okay. Never mind.

MS. ZAVADA: I don't quite understand why a person exactly has to live right on the property that they're working out of.

CHAIRMAN DURAN: Well, I don't understand it either.

MR. DOMINGUEZ: Mr. Chairman, the way it's presented before you was the way the CDRC asked that we bring it before you.

CHAIRMAN DURAN: Well, I have one more question and then I'll

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relinquish the floor. It seems to me that a professional office space or gallery—how big is this? Are we putting size requirements on this? Is there a certain size that you had in mind for your improvements?

MS. ZAVADA: Well, for the improvements, I was going to double the space, double it. Put another 400 square foot on the studio, but I couldn't go ahead with it because I just wasn't well and I lost faith.

CHAIRMAN DURAN: So that would be less than 1000 square feet?

MS. ZAVADA: Yes. The plans had already been approved and I just felt I couldn't do it, because I want to work with my art rather than become a builder. I'm just not knowledgeable enough. I just felt I didn't want to do this building business. So I felt it would be best for me to find a place where I can live and work too, where I have a space separate from my studio. I shouldn't live in it and sleep in it because of the toxic materials I'm working with.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: The concern that I've received from the community, because I've gotten some calls on this issue, is that it will, the professional building that you're talking about, because it doesn't have direct connection, direct access from 285, you have to get to the building by driving through a residential community, that it will augment traffic in that residential community and impact health and safety and quality of life. Those are the concerns that the community is expressing to me, whereas, all the other existing businesses in that area are directly connected to 285 and they don't have to traverse through an existing residential community to get to the commercial area or location.

MS. ZAVADA: Mr. Commissioner, it is true what you're saying, but the traffic is passing, going past my house, both from the real estate office as well as from the steel. The steel trucks are passing all the time. There is a possibility from the Highway 285, if that was necessary, to go directly to the property, to make a road in it that could make an amendment. But I already have a lot of the traffic passing my house and I have two easements on each side of me, plus the easement right in front and I'm sitting in a little triangle and it's really not suitable for residential living. It's very unattractive. I'm the only one that's ever picking up all the trash.

The neighbors, they live in the pristine beauty as they call it, but they are not facing the property.

COMMISSIONER TRUJILLO: You bought the land, when you bought it, for residential usage, right?

MS. ZAVADA: Well, I moved here first and I was going to fix it up and I did and I worked very hard on it and when I became ill I just felt I couldn't continue doing what I have been doing.

COMMISSIONER TRUJILLO: It's a matter, I think of intensity, traffic intensity. The real estate office doesn't have that much intensity. The Meyers Steel, that's

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not just much traffic to the entrance to the highway.

MS. ZAVADA: Yes, but they're still passing because it's the turn-around. It goes from one end right through to the other end and those trucks are passing all the time. Apparently, they're discarding their trash too and all the nails drop from the truck. I'm constantly picking up the nails to make sure that it doesn't go into the tires. There's already a lot of commercial and I don't think if it was a small office that it would be that much harm. I create very little traffic. As a matter of fact, I travel a great deal. I have exhibits at museums out of state. I give workshops out of state. So I'm really a very quiet neighbor.

CHAIRMAN DURAN: I have one more question. So if you were granted approval, what is the total square footage that would be allocated to your gallery or office space where the public could come?

MS. ZAVADA: Right now it's 400 square feet. Maybe somebody would like to make it the other 400 square foot that I had requested, that I had approved already. Maybe less. I've heard people say, Well, you just want an office, but you want it to be commercial.

CHAIRMAN DURAN: So you could live with a 400 foot increase and that additional 400 feet, the maximum allowed for your professional office or gallery use would be 400 square feet. That would be okay?

MS. ZAVADA: Right. Yes.

CHAIRMAN DURAN: Any other questions of the applicant? Okay, thank you. It's a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Please step forward and give us your name for the record.

[Duly sworn, Ted Griffith testified as follows:]

TED GRIFFITH: My name is Ted Griffith and I live south of the residence that's trying to go to commercial. As stated in the previous hearings, I am vehemently opposed to the change in this neighborhood property to commercial zone. Highway 84/285 is about a hundred yards away running parallel to the old piece of highway that bisects my property as well. This length of old highway is privately owned by the adjacent property owners and is not maintained by the state or the County. At the north and south end of the old highway are two businesses that primary access their business directly on and off the highway, not up and down the side road.

If this property had more traffic it would become more hazardous to the families who live along this road. Addition security lighting at a commercial venture would further diminish our dark skies. The semi trucks, by the way, cannot make the sharp turn out of the south end of the highway due to the sharp turn and the steepness coming off the cattle guard there. Thank you for your time.

CHAIRMAN DURAN: Thank you sir. Is there anyone else out there that would like to address the Commission?

[Duly sworn, Ken Salazar testified as follows:]

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**KEN SALAZAR:** My name is Ken Salazar. I live in Arroyo Seco. My address is Route 1, Box 213-A. We were here for the last CDRC hearing and I think the reason why they said that the owner of the business or the resident had to live there was in order to keep it a low impact business and if the person lived there, that would hopefully make it so that it would make it a low impact business. My wife and my neighbors and a lot of neighbors on the road are all against this because they don't want to open the door to a commercial entity, especially since Ms. Zavada is intent on selling. She's had a for-sale sign up for close to a year now and she'll get commercial zoning, if she does get commercial zoning and then moves, what recourse do we have after that? I mean, right now, she has her owner occupancy license and she's operating her gallery, but it is a small business and she is a quiet neighbor.

One thing that was not brought out at the last hearing at the CDRC was that the road itself was reverted back to the property owners. This was the original highway between Pojoaque and Española. The asphalt there is very old and it's disintegrating. Since it is owned by the property owners with easements through all these properties, I don't think any of us are going to want to spend money to re-asphalt the place. We never get any kind of snow removal or any kind of help from the County to maintain the road. So if a commercial business comes in, and they need parking, I don't know where they're going to park because this road is covered with overgrowth from chamisas, from elm trees. There's large cracks. There's potholes. There's basically seven properties on the stretch that are utilizing this road and probably only three to four, maybe five if you count Ms. Zavada's, is being the ones that use the middle part of this road because they need a good access to their properties.

I think we had sent a letter to protest this so I'm not just going to read the letter again, but let it just be said that most everybody on the road is against it, as you can see. The opposition is there and I don't see any other support for her. So I hope you consider that. Thank you.

**CHAIRMAN DURAN:** Is there anyone else out there that would like to address the Commission?

**MS. ZAVADA:** There were two neighbors that I contacted and they were in favor of it. They are not here and also, I spoke with Mrs. Meyers and she also, as I explained the reasoning to her, she was in agreement with me. So that makes three neighbors out of that street, but again, they are not here. Thank you.

**CHAIRMAN DURAN:** Thank you. What's the pleasure of the Board?

**COMMISSIONER TRUJILLO:** Mr. Chairman.

**CHAIRMAN DURAN:** Commissioner Trujillo.

**COMMISSIONER TRUJILLO:** Based on the input from the community and the potential impact of the traffic, I make a motion to deny CDRC Case V 00-5860, Barbara Zavada variance.

**COMMISSIONER CAMPOS:** Second.

**CHAIRMAN DURAN:** There's a motion. There's a second. Any further

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discussion?

COMMISSIONER SULLIVAN: Mr. Chairman, I'd just like to add that we need to remember that the variance criteria, one of the variance criteria is that it not be done just for the purpose of commercial betterment of the property. That doesn't necessarily indicate a hardship. I don't think with the applicant not intending to move into it that the case of hardship has been demonstrated.

CHAIRMAN DURAN: Okay. Any further discussion. Those in favor, signify by saying "aye." [Unanimous.] Opposed? Motion carries.

**VIII. D. 7. CDRC Case #V 00-5600. AT&T Wireless. Reconsideration of application by AT&T Wireless for a variance of Article III, Section 4.4.4.c (Maximum Height) of the Land Development Code to allow for the 12 cellular antennas and a microwave dish to be mounted 150 feet high on an existing lattice tower. The property is owned by the Bureau of Land Management and is located off the I-25 frontage road, near the rest area, within Section 24, Township 15 North, Range 7 East**

MR. WHITE: Thank you, Mr. Chairman, Commissioners. On November 14, 2000, the BCC denied this request. On December 28, 2000, the BCC authorized staff to schedule a public hearing to rehear this variance request. The applicant is requesting a variance of Article III, Section 4.4.4.c of the Land Development Code to allow the antennas and microwave dish to be mounted over 24 feet in height. The applicant states that the antennas will not add height to the tower and will be mounted in a manner to be as unobtrusive as possible.

Recommendation: The decision of the CDRC was to recommend approval of the variance request to allow the antennas and microwave dish to be mounted at a height of 150 feet. Thank you.

CHAIRMAN DURAN: Any questions of Frank? Okay, is the applicant here? Would you please come forward and state your name for the record and let the Clerk swear you in, please.

[Duly sworn, Michelle Henry testified as follows:]

MICHELLE HENRY: Michelle Henry. I'm from the law firm of Rodey, Dickason, Sloan, Akin and Robb. The Santa Fe office is located on 123 Marcy Street and the Albuquerque office which is where my desk is is 201 Third Street Northwest. Mr. Chairman, Commissioners, I do have a short presentation if you will allow me and then I am happy to stand for questions. I also have representatives here tonight from American Tower, which is the owner of the tower, as well as AT&T Wireless, who is the applicant, who actually put the antennas and the microwave on the tower.

CHAIRMAN DURAN: I'd actually like to ask legal one question. Could

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you explain to us the reasons why this was allowed to come back for reconsideration?

MR. KOPELMAN: Mr. Chairman, members of the Commission, we did have an executive session on this matter and I think the concern expressed was that under the Federal Telecommunications Act I think the applicant has a pretty good argument that they really complied with the terms of the federal act, that in terms of the variance, I think the Commission should carefully consider the fact that there's a pre-existing tower there already, that this is a co-location issue. And in addition to that, I believe there was a lawsuit filed in federal court, which is now on hold pending the outcome of this matter.

CHAIRMAN DURAN: Okay. Thank you Steve. Ms. Henry.

MS. HENRY: Thank you sir. The tower, we call the La Cienega Tower and it is located, as Mr. White said, near the rest area on I-25. This is Judy Mattson from American Tower. I have some exhibits just to show background locations and I realize some of you are familiar with this but I did want to make sure everyone was familiar. The property as you can see from the picture is mostly undeveloped and the surrounding property is owned by the State Land Office and the BLM. From the tower itself, which is actually on the picture, but it's very, very hard to see and I'll point it out to you in a minute, the only structure visible that I'm aware of is the rest area, which is about a mile away from the structure.

The tower is about a mile off of the road. Currently surrounding land uses are grazing, to my knowledge. The tower is a 150-foot existing tower, and Mr. White mentioned. It is lattice style. The tower was erected some time ago and the original lease that I have in my file is from 1962 which is nearly 40 years. The tower is unlighted and it would remain unlighted. In addition, the tower has been painted red and white, alternating. Despite the red and white and the fact that the tower is very big, 150 feet, it is really not noticeably visible unless you know it's there for the most part.

In the first picture I gave you, I realize not that had I taken the picture with the sun shining on the tower it would be a little bit easier to see. But it is there, tucked against the hill, and if you see the telephone pole about in the middle of the picture, it's right behind that. You can see the red and white on the tower. And there is a building underneath the tower as well and sometimes you can see the façade of the building.

I do want to distinguish, this is not the blue tower that is owned by Milagro Wireless, which is very near to the interstate, and AT&T is not interested in including that tower in its network. So we are not a part of that at all and we'd like to distinguish ourselves from that. The proposal that we have—now Exhibit 2 was picture of the tower—let me back up for a second—about six months ago, which is when we first put in our application for the site plan review and for the variance. At that time there were these very large, we call them cornucopia antennas, big triangle things on the tower.

Exhibit number 3 that Judy just passed out is a photo-simulation of our proposal. It's not an actual photo of the tower now. It's an artist's rendition of doctoring up Exhibit 2 to look like what we were proposing six months ago. And basically, the first part of the proposal was to remove those very large cornucopia antennas, which was done last



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September. Those are no longer on the tower. In addition, two of the microwave dishes, and those are the round things that you see in both of the pictures, now two of those dishes have been removed and to be honest, I'm not sure which ones they were and our photo-simulation shows three dishes and that's not exactly correct. But there's one there now.

In the photo-simulation, so one of those microwaves would be ours but the other thing is you can see on the top of the tower there's some lines drawn in and that was the artist's representation of how the antennas would look. And that is fairly close to how they would look. They're long and skinny. They're about four feet tall, about six inches wide and about—actually six inches deep and maybe two inches wide, however you want to phrase it. So they're like fingers. They're long and skinny.

Exhibit 4 is something that I drew and I'm not an engineer. I did this to try to explain things a little bit better than I thought the photo-simulation did. What you see in this picture is just the side of the tower, the tower being 150 feet at the top and the top being where the top of the antennas are is also where the top of the tower itself would be. There was some—staff wanted us to clarify early on that the antennas would not exceed 150 feet, and the way that we're going to do that is actually mount the antennas at 148 feet, so they stick up two feet above the mounting to a top maximum height of 150 feet and they'll stick two feet below the mounting. That's what you see up here. They'll be mounted at 148 feet. The top of the antennas and the top of the tower will be 150.

In addition, when we first turned in our proposal, which was six month ago, we had not fully got the network in place and we are much closer now. So the proposal has evolved somewhat. We had originally proposed to put the microwave up here at 150 feet. We can now drop it down and in addition we can reduce the size of the microwave. We had initially, I think requested a 36-inch microwave. We can pull that down into a 24-inch microwave, so we're trying to get things a little smaller.

So in the end, the two things that are of concern to this Commission right now are the 12 antennas on top, and the one microwave at 60 feet. And in addition, I remind you, there is still a microwave on the tower so the end result will be the antennas on top, a microwave at 60 feet and another microwave somewhere. I wish I knew exactly where.

The building, the way this things work is the antennas up here send and receive radio waves. And those then get carried down through cables, which are here along the legs of the tower. They come over across this little bridge and then they send those signals into equipment which is housed in the building that's now next to the tower. So we would not actually be making a new building or mucking up the ground or making a new tower or anything like that. The proposal is to put antennas and a microwave on an existing tower, and to put our equipment in the existing building.

I wanted to quickly explain to you how this site, which AT&T calls Site #205, fits into the AT&T network. What I'm passing out are propagation maps, and I apologize because there—I don't like to pop all this technical stuff on you at this late hour and ask you to interpret it. So let me do my best to tell you what these are. The way that, as you probably know, the way that the cellular networks operate is that, they operate through a

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system of overlapping cells. And a cell is basically that area of ground that surrounds an antenna. So you have an antenna up high, perhaps, and then usually you have sort of a circular scope where the radio waves have some influence. And the idea is to get those cells, that's the area where the radio waves actually have effect, to overlap. So for example say, a car or a person who is moving from one cell to the next can continue to be able to talk on the phone, otherwise the calls get dropped.

So the idea is the overlapping networks. Now, on that propagation map, you'll see Site 205 pretty much in the center. There's 204 also and 206. And the way to read these things—okay, the green corresponds to the best type of coverage. That's where if you are in a building or in a car you can still make a phone call. If you have a cell phone you know that sometimes in a building, say for example in an elevator, you can't make a call. In the green coverage, even though you're in a building, you can make a call. In the area that is labeled yellow, that's where you could make a call in your car, but not in a building. And the area that's labeled red is where you would have to be standing outside. The car actually has enough boundaries to the radio frequency that you wouldn't be able to make the call.

On Exhibit 5 which is called Site 205 on, that would be locating those antennas at 150 feet. And you can see the green and the yellow area is pretty much consistent from 205 and the red line here is I-25. So as you follow it up 204 is the top of La Bajada Hill. 205 is there at the rest area, the La Cienega tower that we're proposing, then as you follow the interstate up to 206, that is the TV station Channel 11 which is near the prison and the racetrack where Site #206 would be. So at 150 feet what this diagram shows is that we would have the overlapping cells for the coverage that AT&T is trying to achieve.

If you then look at Exhibit 6, this is with no site at La Cienega. So no antennas there. And you can see 204 is La Bajada. You can see how it drops off. 206 again is up at the TV station, but 295 is the red area which means in some places you could make a call if you were outside of your car, but for the most part there would be no coverage.

And so what these maps are intended to represent to you is that this is a very important site to AT&T's network. Basically, if they don't go on the La Cienega tower they need to find another way to compensate for that gap and the only ways to do it would be something like going on the Milagro tower, which AT&T has stated it does not want to do. It's worried about the permitting process with that and does not want to be involved with something that the County disputes, basically.

So AT&T's option, alternative, would be to try to build several smaller towers, because remember, the higher the tower is, the larger the cell is going to be. And if here in the County where our height limitation is capped at 24 feet, you would have much smaller cells so the way to make the coverage would have to be two or three—I'm supposing. I don't actually know, but several smaller antennas to fill that gap.

What I've just passed out to you, Exhibit 7, is the same sort of diagram we just went through. The colors are different because a different person made it for me. But this represents what happens if AT&T's antennas go at 24 feet, which is what has been

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permitted at this point in time. So we're looking at the difference between 24 feet and the variance request that we have which is 150 feet, which you just saw. Now the way to read this is the light green and the dark green correspond to the green on the other map, again that's your best coverage. And you see 205 right here in the center. The blue corresponds to the yellow on your other map, so the very dark blue is where you would get coverage in a car. And then the turquoise blue out here corresponds to standing outside and using the phone.

So here again we have the red line of Interstate 25 and you see that there's only a very small portion of Interstate 25 that would have coverage in a car. There might be coverage standing outside, but realistically, AT&T would have to compensate for that lost coverage by finding some location between La Bajada Hill and the rest area as well as one, possibly two locations between the rest area and the TV station, Channel 11.

So that's why we're back here asking you for, to grant the variance and allow us 150 feet. The 24 feet does not meet AT&T's needs and therefore creates a hardship for them. I did want to talk about the variance request very briefly, because it is very important. I went through the Code and checked on the requirements for a variance and the criteria for a variance. According to the Code, strict compliance with Code requirements will result in an extraordinary hardship to the applicant because of unusual topography or other such non-self-inflicted condition, then they may qualify for a variance.

Or another possibility is if the conditions would result in inhibiting the achievement of the purposes of the Code. Now, what we have here is AT&T is facing at 24 feet would have to come up with other sites, possibly build additional towers in order to get the coverage that they need to build out this area. And I should have mentioned that AT&T does have the FCC license and the requirements to build out the system between El Paso and Raton. They are now working on the area between Albuquerque and Santa Fe and trying to get this infrastructure in place. AT&T does not currently have service in the Santa Fe area. So this is a brand new thing that AT&T would be bringing into the market.

So what, the hardship that AT&T finds is that it would significantly increase its cost and would also thereby reduce its ability to compete with other wireless providers which is important. This is a very competitive market and the federal government has done things like created the Federal Telecommunications Act to try to increase competition among the providers to try to drive the cost of wireless and other technology down. And this, the system that AT&T is putting in is not just voice, it's also the data systems, things like wireless internet, these things that are new to the market would be part of this system.

Going back to the variance. So we do believe that AT&T would have an extraordinary hardship due to non-self-inflicted conditions. In addition, American Tower is the owner of the tower and basically, if we take a look at the tower, American Tower bought this just like any landowner would buy, say, an apartment building or something, and if they're limited to 24 feet, it may be here, basically the rest of the tower is space that American Tower owns that they're not able to use. It would be like having an apartment building of ten units and only being able to rent out one. And again, from American

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Tower's perspective, that also we would claim as a hardship.

The procedure for seeking a variance is to first file a written request, which we did, then go to CDRC and to receive a recommendation from them, which we did, and then to prove to this Board that compliance would result in—there's a couple of possibilities here—either arbitrary and unreasonable taking, or it would exact a hardship which is what I just mentioned to you. And also the variance would not result in conditions which are injurious to the health and safety.

That is something that we also want to talk about. We think that providing cellular service to the full capacity allowed by this tower, that is, putting those antennas at 150 feet is important for public safety. One of the important things is the emergency access that cellular phones provide, not only to make 911 calls, but also for emergency professionals who are out in the field trying to do things. Especially with the interstate going through there, I think the emergency service is important. I've personally broken down very near the rest area and I was pleased that it was close enough that I could walk over and get a phone. I didn't have a cell phone at the time. So I think safety is one big thing.

The other thing is that there are courts that have held that the public—just to have a cellular service is in the interest of the public welfare. Another safety issue that often comes up is the radio frequency and whether that is safe. AT&T's antennas do comply with the FCC standards.

The next exhibit is again a long technical thing and I apologize at this hour for springing it on you. It is a report by an AT&T Wireless radio frequency engineer, called "RF Exposure Analysis." Basically, it's I think a really great report because it does a lot of plain language stuff in addition to the big formulas that are not things that I could explain to you. But the important thing is on page 6. There's these little charts, and down here in the corner, this chart here does say that these antennas, and this was an analysis with this site with the 12 antennas at 150 feet. Even with the 12 antennas, these antennas end up producing a radio frequency which is 1,246.59 times lower than the maximum permissible exposure of radio frequency. So I did just want to, in case you were concerned about the safety of this facility, it meets the FCC requirements.

I'm almost done. Thank you for your patience. The last thing I wanted to do is I did go back through the record and the last BCC meeting and I wanted to talk about some of the concerns that were raised at that meeting to try to make sure that there's not loose ends out there. The first is that one member of the audience had felt that AT&T had not carefully considered the alternatives out there. And again, for AT&T are basically the Milagro Wireless pole, which they do not believe is suitable to locate on, or building additional towers.

And another thing that came up at that hearing, two women spoke, both expressed discontent about towers. And part of the point about going on an existing tower is that it eliminates the need to build additional towers in the area. So I think both of those things, I did want to point out we're not building a new tower; we would be going on an existing tower.

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The third thing was, and this was the Commission's concern to my understanding, was that we did not submit a terrain management plan, and that was an oversight. I will admit that. We were under the impression that we did not need to because we would not be causing any disturbance to the groundcover or changing the topographical areas, characteristics of the area, the drainage pattern, anything like that. And both AT&T and American Tower do want to do things right. They don't want to cut corners and if this Board feels that we do need to go back and do a terrain management plan, we are willing to do that. And I would just ask that if you do feel that way and are willing to grant the variance, you could attach it as a condition to the variance and we would be happy to accept that.

So in summary, because the CDRC recommended approval of the variance, and also the staff report recommended approval, we really appreciate your willingness to rehear this matter and we respectfully request that you grant the variance for us. Thank you.

CHAIRMAN DURAN: Why do you think it's inappropriate to locate on the Milagro Tower?

MS. HENRY: Well, here I'm speaking for my clients and I'm here on behalf of American Tower tonight but our firm also works with AT&T, and both of these companies are concerned about things being properly permitted. AT&T has said that they don't want to—the other thing that both of these clients are concerned about is trying to do things with local government in the right way and not try to do sneaky things, not trying to do shady things and not trying to challenge things. And I realize that might sound funny in the context of we did file suit. But the problem with the Milagro tower is that it just basically says the County doesn't have any zoning authority on this piece of land. And either the County does or it doesn't. If it does, that opens a whole can of worms and we'll go down that path if we get there, but if it doesn't, that tower is improperly permitted. And AT&T doesn't want to be involved with that.

CHAIRMAN DURAN: Yes. So other than just being politically incorrect, you could have the ability to locate on that Milagro Tower.

MS. HENRY: Well, technically, I suppose we would. I don't know, but my understanding is a carrier could go on that tower and could say, You know what? I'm going to gamble. I'm going to gamble that the County loses and I think that Milagro will win this lawsuit and they will not need to get the County permit, so I'm going to go ahead and jump on, now because I can get the top spot on the tower, the best spot. And there might be somebody out there willing to do that but AT&T is not.

CHAIRMAN DURAN: Are we in a lawsuit with Milagro?

MR. KOPELMAN: Mr. Chairman, members of the Commission, we are in state district court. Yes. Also with the State Highway Department on that one.

CHAIRMAN DURAN: Okay. Thank you. Any other questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

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COMMISSIONER SULLIVAN: Excuse me, I've forgotten your name.

MS. HENRY: Michelle Henry.

COMMISSIONER SULLIVAN: Ms. Henry, the report from the Lyle Company, talking about the Milagro Tower, included in our packets as Exhibit E, states that the site will connect to one further north on Interstate 25 at the Channel 11 TV station and to the south to a new monopole at La Bajada Hill. Now, are you going to connect to the La Bajada monopole or not.

MS. HENRY: Okay, there is some confusion and thank you for bringing that up. I meant to bring it up in my presentation. There are actually, there's actually an existing tower right on the top of La Bajada Hill, where the pinnacle of the bluffs are, and you can see it from the road, the area down where the road to Galisteo Dam is, if you look up you can see a shiny, small, silver tower which is 24 feet tall to my understanding. It's properly permitted. And we, AT&T is going to be also applying to put a tower up there at 24 feet there on top of the bluff, not the Milagro Tower.

So while they're in the same neighborhood, they would be different towers.

COMMISSIONER SULLIVAN: Okay, but this report says to the new monopole at La Bajada Hill.

MS. HENRY: Correct.

COMMISSIONER SULLIVAN: That would be the blue one up at the top of the hill.

MS. HENRY: It wasn't our intention to mislead anybody by that. We were, AT&T's intention, to my understanding, has always been to either try to locate on the existing, I believe it's the Voicestream antenna there on top, not the blue tower, but the tower on top of La Bajada Hill, or to make their own if they weren't able to negotiate a lease on the other one. So it is perhaps, not well stated. It is not well stated in the letter to clarify the difference. But that was not the intent to go on the Milagro pole.

COMMISSIONER SULLIVAN: Now, you're representing the tower owner, is that correct?

MS. HENRY: Correct.

COMMISSIONER SULLIVAN: Do you have to authority to commit AT&T in this regard?

MS. HENRY: American Tower and AT&T have been working hand in hand on this project, and I do have an agent here from AT&T tonight and if you would feel comfortable with her speaking to this then let me bring her up here.

COMMISSIONER SULLIVAN: Not at all if your answer is yes

MS. HENRY: Yes.

CHAIRMAN DURAN: Okay. This is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Okay, if not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

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COMMISSIONER TRUJILLO: Understanding the case a little bit better now, I make a motion to approve CDRC Case V 00-5600, AT&T Wireless with the conditions outlined here if there's any.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and there's a second. Any further discussion?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'm sorry I didn't ask this when you were up. The color of the tower is currently red and white. I don't think that's required any more by anyone else it exceeds, I think is it 200 feet?

MS. HENRY: I'm not sure. We would need to check with the FAA and do you know if we can change the colors? Mr. Chairman, Commissioners, our understanding is that if the FAA doesn't need it to be marked, we can repaint the tower.

COMMISSIONER SULLIVAN: A previous case, the reason I bring it up, a previous applicant, prior to this current Commission testified that 200 feet was the limit, above which the towers had to be a, lighted, and b, painted with that checkerboard thing. So assuming that's the case, let's make that assumption, then would your client and AT&T object to the painting of that tower in a more environmentally compatible color?

MS. HENRY: We would accept that.

CHAIRMAN DURAN: Desert storm?

COMMISSIONER SULLIVAN: I'll leave the color up to the staff. I won't get into that at this hour. But I see an opportunity to, again, provided that that is permitted by the FCC and the FAA.

MS. HENRY: Yes Commissioner, we would accept that.

CHAIRMAN DURAN: Okay, so that's an additional requirement. Do you accept that to your motion?

COMMISSIONER TRUJILLO: Yes I do.

CHAIRMAN DURAN: And the second?

COMMISSIONER CAMPOS: Yes.

CHAIRMAN DURAN: Those in favor, signify by saying "aye."

[Unanimous.] Opposed? Motion carries.

MR. KOPELMAN: Excuse me, Mr. Chairman.

CHAIRMAN DURAN: Yes,

MR. KOPELMAN: I hate to bring this up at such a late hour, but if I could just have a minute. Going back again, this was Case EZ S 00-4890, Estancia Real at Las Campanas. After the vote, I had an opportunity to study the rules of order in a little more detail. And it's my legal opinion that in accordance with Section 8.a that a majority vote was required of all those present, not just the majority vote of the constituent members. So I think the vote results in a deadlock, and again, I wasn't sure of that the time the vote was made and I apologize for that, but in reviewing the rules of order, I'd

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say that the Commission has several options.

One option is to revote it and see if the vote would be different. The second option would be, I think it results in effect in a table and it would have to come back the next time, because I believe the intention of the Commission was in a 2-2 deadlock to bring it back when there was a full Commission. But my legal opinion is that the vote that was taken is not an affirmative vote in support of the project and again I apologize. When the vote was taken I didn't realize that.

CHAIRMAN DURAN: Well, how about we consider it a table and bring it up at the next meeting?

COMMISSIONER TRUJILLO: Very good.

CHAIRMAN DURAN: Is that okay?

COMMISSIONER TRUJILLO: That's fine.

COMMISSIONER CAMPOS: It's okay with me.

COMMISSIONER SULLIVAN: I do not quite understand. You're saying because there were two affirmative and one negative and one abstention, that three affirmative would be required?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, that's correct, the way I read the rules of order. And I will call Las Campanas tomorrow and let them know this.

COMMISSIONER SULLIVAN: Do you need a motion to table then?

COMMISSIONER TRUJILLO: It's tabled automatically, right?

CHAIRMAN DURAN: Yes.

MR. KOPELMAN: Mr. Chairman, I think it's automatically and it will bring it back at the next meeting.

COMMISSIONER SULLIVAN: That's fine.

CHAIRMAN DURAN: Okay.

- VIII. D. 9. CDRC Case #MIS 00-5531. Vista Clara Ranch Liquor License. Transwest Hospitality Development Corporation, applicant, requests approval to allow a transfer of location and ownership of Liquor License #927 from Highway 68 in Alcalde to Vista Clara Ranch as set forth in the Santa Fe County Land Development Code. The property is located off State Road 41 North of Galisteo, within Section 25, Township 14 North, Range 9 East**

MS. ELLIS-GREEN: Thank you, Mr. Chairman, Commissioners. On October 10, 2000, the BCC granted approval to allow for liquor sales to resort guests at the Vista Clara Ranch. Liquor license #927 is currently owned by Richard de la Cruz and is currently located at the de la Cruz Club 64 on Highway 68 in Alcalde, New Mexico.



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The applicant's intent to purchase the liquor license and move the location of the license to the Vista Clara Ranch, which is north of Galisteo.

Recommendation: Staff's position is that this subject property has the required zoning for liquor sales. Staff recommends the transfer of ownership and location of liquor license #927 be granted to Transwest Hospitality Development Corp.

CHAIRMAN DURAN: Any questions of Penny? Is the applicant here? Would you please come forward and state your name for the record and let the Clerk swear you in.

[Duly sworn, Kay Sanford testified as follows:]

KAY SANFORD: Kay Sanford. I live in Galisteo, close to Vista Clara Ranch.

CHAIRMAN DURAN: Do you have anything you'd like to add to the record?

MS. SANFORD: No. I think I've been here before and I don't think I have anything else to add.

CHAIRMAN DURAN: Okay. Is there anyone out there in the audience that would like to address the Commission concerning this issue? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor, signify by saying "aye." [Unanimous.] Opposed? Motion carries

MS. SANFORD: Thank you, Mr. Chairman, Commissioners.

- VIII. D. 10. CDRC CASE #M 00-5620. Lafarge Mine Zone Creation. Lafarge, applicant, Jim Siebert, agent, requests approval for creation of a mine zone to allow for sand and gravel extraction on 38.21 acres, as set forth in the Article XI of the Land Development Code. The property is located north of SR 599, within Section 2, Township 16 North, Range 8 East.**

MS. ELLIS-GREEN: The applicant estimates that it will take approximately three years to mining in three phases and two additional years to complete the reclamation and reseeding. Phase 1 will be mined and then will be used for the operations area and stockpiling while phases 2 and 3 are mined. The applicant states that the overburden will be used to create a temporary berm for drainage control, and the gravel deposit will be mined. When the extraction is completed, the overburden and topsoil will be replaced and reseeding will be done.

Recommendation: Staff's position is that the locational criteria for the creation of a mine zone have been met and that this application is in accordance with Article XI of the

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Land Development Code. The decision of the CDRC was to recommend approval of the creation of a mine zone and sand and gravel extraction, subject to the following 14 conditions. And Mr. Chairman, may I enter them into the record?

CHAIRMAN DURAN: Yes.

[The conditions are as follows:]

1. All water for dust control and irrigation shall be treated effluent unless the applicant amends this application for use of a well and provides proof of water rights and water availability. Any such amendments shall be reviewed for approval by the CDRC and the BCC.
2. If at any time sufficient treated effluent is not available and an amendment for the use of a well has not been approved, all mining shall cease. If mining operations cease for a period of six months, the applicant shall reclaim the disturbed areas or the County will file a demand on the letter of credit.
3. The applicant shall submit an approved driveway permit from the Highway Department prior to plan recordation.
4. The applicant shall provide documentation verifying use of the proposed driveway.
5. The applicant shall be in compliance with the condition of the Air Quality Permit, Relocation Permit, and siting requirements.
6. The applicant will request a final fire inspection.
7. If the applicant proposes any outside lighting, cut-sheets will be provided. All lighting shall be shielded.
8. The applicant will address all staff redline comments; original redlines will be returned.
9. The applicant shall provide detail showing all three phases on an individual sheet so staff can determine the overall grading effects.
10. The applicant shall provide a reclamation plan covering all three phases on one sheet.
11. The drainage and grading plan shall be approved by the Permit and Inspection Division Director.
12. The final plan will be recorded with the County Clerk.
13. A financial guarantee will be required for all revegetation prior to mining of each phase. The financial guarantee will be kept until successful revegetation has been verified by staff for a minimum of one year after reseeding.
14. The applicant will comply with applicable review comments from the following:
  - a. Office of the State Engineer
  - b. Environment Department
  - c. State Highway Department
  - d. Fire Marshal
  - e. Subdivision Engineer
15. To prevent uncontrolled overflow, the pond should be examined for silting at least twice a year. If sediment levels are more than 18 inches above the designated bottom elevation of the pond, then this sediment should be removed. [Added at motion.]
16. If water remains in the pond for more than two days that the applicant pump it out.

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[Added at motion.]

17. The applicant shall comply with the five-year phasing plan. Mining can take place for three years with reclamation taking an additional two years. [Added at motion]

CHAIRMAN DURAN: Penny, is this property located in the Highway Corridor?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, this is located on State Road 599. It's actually been exempted from the Highway Corridor Plan.

CHAIRMAN DURAN: Oh, this is the Baca property?

MS. ELLIS-GREEN: That's correct.

CHAIRMAN DURAN: And what were the reasons why we exempted the Baca property?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, I believe it's due to a settlement agreement.

CHAIRMAN DURAN: But that settlement agreement was not subject to allowing anything to be constructed on this site. My understanding is that it wasn't that they could build anything they wanted on this site, that it would have to receive Board approval.

MS. ELLIS-GREEN: My understanding is that they would need to receive Board approval, but certain commercial uses may well be allowed on this property.

CHAIRMAN DURAN: Is this not a mining zone that we're creating here?

MS. ELLIS-GREEN: Mr. Chairman, they are requesting to create a mining zone for sand and gravel.

CHAIRMAN DURAN: And our Code allows for a mining zone to be created along this major arterial?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, the Code has locational criteria for the creation of a mine zone, which includes that they need to demonstrate there is mineral resources, that the land is reasonably compatible for the use of mining, and that there's been a history of mining in the area. There's mining existing to the north and to the east of this property and the applicants have provided information that states that there is sand and gravel on this property.

CHAIRMAN DURAN: Isn't it true though, we've allowed for the mining applications, in fact renewals of mining applications, we've allowed them to come forward and approve them based on the vision that we have that this area would no longer support from an aesthetic point of view, mining, and that the previous applicants had agreed that they would relocate to a more suitable area once one was developed or available?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, the Board has looked at two previous cases, Western Mobile had a batch plant, and I believe they're now Lafarge, and also the R.L. Leeder property, which is just to the east of this property. On both of those variance and actually commercial requests, the Board did put a ten-year time frame on those approvals. Those approvals were between one and two years ago, so there's still approximately eight years running on those.

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This applicant is stating that it will be three years of mining and then two years of reclamation. So within five years, the site should be reclaimed.

CHAIRMAN DURAN: So in five years this use would expire?

MS. ELLIS-GREEN: This approval is estimate to be over within five years.

Yes.

CHAIRMAN DURAN: So this use could not be extended without going through the process again for any additional time?

MS. ELLIS-GREEN: Mr. Chairman, Commissioners, for something like this, the applicant would need to stick to their phasing plan, which looks at three years for mining, and then another two years to regrade the site and revegetate the site.

CHAIRMAN DURAN: Okay. Any questions of Penny? Thank you, Penny. Is the applicant here? Jim, I just need to ask you. This is the same one that was tabled for further—

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer, Santa Fe.

CHAIRMAN DURAN: Thank you, Becky. So this is the same application that was before us last meeting, wasn't it?

MR. SIEBERT: Correct. Mr. Chairman, Commissioner Sullivan had some concerns regarding drainage. We have had a meeting with staff regarding that. We've done some additional studies. One of the issues was the pond and the percolation rate in the pond. We've actually done soil borings out there to determine that and have done some additional drainage work in terms of evaluation of run-off, and that's been submitted to staff.

CHAIRMAN DURAN: Okay, could you deal with the issues that you and Commissioner Sullivan had discussed prior to tabling and if the Commission has more questions concerning the project, we'll discuss that after that.

MR. SIEBERT: Mr. Chairman, what we did is we asked Orallynn Guerrerortiz, who is the engineer on the project to do the evaluation so let me just tell you the kind of additional information that was provided.

CHAIRMAN DURAN: Unless the Commission would like to proceed differently, I'd be more than willing to—

COMMISSIONER SULLIVAN: I think it would be useful to hear her testimony.

[Duly sworn, Orallynn Guerrerortiz testified as follows:]

ORALYNN GUERRERORTIZ: Hello, my name is Orallynn Guerrerortiz and my P.O. Box is 2758 here in Santa Fe. I did meet with Commissioner Sullivan and he raises concerns. He was concerned on various issues including the potential for having significant amount of ponding, which could create some vector problems and potentially a nuisance as far as being a hazard to children. We investigated the soils on the site. They're extremely sandy and gravelly, so I don't anticipate that there'll be much ponding there at all. He was also concerned about how the system was going to be operating.

Just to give you a brief overview, there is an existing borrow pit related to the

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construction of the highway there and there is an exit culvert from that borrow pit. Theoretically, it was supposed to be used as a stock pond, but the volume that is going to be provided below the exit pipes is more than the total volume of run-off that will be coming from this project. So there's more than adequate volume to hold the water and we did recommend that the Lafarge Company maintain that pond so that excessive sedimentation does not occur, so that we do not have a problem in the future with overflow. And we did discuss in general what would happen if it did overflow and there are some structures, additional culverts underneath the highway that would ultimately drain this site and lead it to the Santa Fe River.

I think those were the primary issues of concern. Am I right, Commissioner Sullivan?

COMMISSIONER SULLIVAN: Yes.

MS. GUERRERORTIZ: Thank you. If there's any further questions?

CHAIRMAN DURAN: Any questions of Oralynn?

COMMISSIONER TRUJILLO: Commissioner Sullivan, your issues regarding drainage have been addressed?

COMMISSIONER SULLIVAN: I think so and I was given a letter which I'm afraid you all don't have, by Mr. Siebert, providing the design analysis from Mrs. Guerrerortiz. Maybe—okay, you do now have copies of it. [Exhibit7]

Two things are brought up in there, two things I'd like us to consider as conditions, just on the drainage issues. And I recall there were other issues that were brought up late at the last meeting and one was one that you touched on about the Highway Corridor location, Mr. Chairman. But if you look at the second page of the report under pond overflow, the second paragraph in there. I think we should make the first—this is a recommendation from Ms. Guerrerortiz and I think that should be a condition, should the Board wish to approve this, that being to prevent uncontrolled overflow, the pond should be examined for silting at least twice a year. If sediment levels are more than 18 inches above the designated bottom elevation of the pond, then this sediment should be removed. I would just recommend that that recommendation be included as a condition of approval.

The second one is at the bottom of that page under vector control, where it's discussed how long it takes for mosquitoes to incubate, and seven days is the time period that's apparently, according to Mrs. Pam Reynolds of the New Mexico Environment Department. I would suggest another condition, and I suggest this condition also because in response to my request, was the pond going to be fenced, the answer is basically no. There will be fencing around the site and gates and signage but I don't think if kids are going to play in there they're going to read the sign. In light of that, I would suggest another condition that if water remains in the pond for more than two days that the applicant pump it out.

They did apparently take backhoe tests to look at the soil. There were no permeability tests taken so from the visual analysis of the soil, according to Ms. Guerrerortiz it appears to be permeable to them and it should drain out in far less than seven days and my suggestion is that if it's not out of there within two days, they pump it out. Is that a problem?

MS. GUERRERORTIZ: I would ask that Jim Siebert answer that question.

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MR. SIEBERT: The applicant has no problem with either of those conditions.

COMMISSIONER SULLIVAN: I just would add that that drainpipe is a touchy issue, that they're talking about that goes underneath 599 for two reasons. One is it's very close to the 100-year flood plain. So if there's a 100-year flood, there's a possibility that the water goes the other way, i.e., from the river into the site. The only thing according to Ms. Guerrerortiz' report that may prevent that from happening is the pipe doesn't go downhill, it goes uphill. That is to say, it's higher at the river than it is at the site of the mining, the mining site. It goes this-a-way as it were. So that pipe's not the be-all, end all, which is the reason I'm concerned about the pumping.

CHAIRMAN DURAN: Any other questions of the applicant? It's a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman, move for approval of CDRC Case M 00-5620.

CHAIRMAN DURAN: Is that with Commissioner Sullivan's—

COMMISSIONER TRUJILLO: With Commissioner Sullivan's two conditions.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Okay, there's a motion. There's a second. Any further discussion?

COMMISSIONER SULLIVAN: Excuse me, Mr. Chairman, just one other thing. On the time period. I understand the two adjoining mining operations, and I visited the site and there are two active operations on each side of this site, now have about eight years left to run under the approval that the prior Commission gave to them. Is that correct? Somebody's shaking their head.

MR. DOMINGUEZ: That's correct.

COMMISSIONER SULLIVAN: And that this has a time frame in the submittal of a period of five years, three years for mining and two years for reclamation. Is it necessary for us to place a five-year time limit on this approval, or is there sufficient clout or regulatory authority here based on their submission. Mr. Kopelman?

MR. KOPELMAN: Mr. Chairman, Commissioner Sullivan, I think if that's an important point for the Commission, I think you should make it very express.

CHAIRMAN DURAN: Let's do that.

COMMISSIONER SULLIVAN: I would ask for that amendment, if that's okay with the maker.

COMMISSIONER TRUJILLO: Sure.

COMMISSIONER CAMPOS: It is.

CHAIRMAN DURAN: Okay. ? Those in favor, signify by saying "aye."

[Unanimous.] Opposed? Motion carries.

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**VIII. D. 12. CDRC Case #Z 00-5870. C de Baca Master Plan. Simon C de Baca, applicant, Jim Siebert, agent, request master plan zoning for 39,200 square feet of storage units and 29,342 square feet of office/warehouse/light industrial building on 9.56 acres. The property is located south of County Road 56 within Section 10, Township 16 North, Range 8 East**

MS. ELLIS-GREEN: Thank you, Mr. Chairman, Commissioners. The applicant is requesting master plan approval for 14 storage unit buildings totaling 39,200 square feet and three office/warehouse/light industrial buildings totally 29,342 square feet on two tracts of land totaling 9.56 acres in four phases. The applicant proposes the following uses within the three buildings: Office, warehouse and distributing, construction companies, veterinary clinics, light manufacturing, car restoration, plant nursery and the sale of landscape materials.

The property is located within the Redevelopment District designated in the Highway Corridor Plan. The proposed uses conform to the allowable uses within this district. Building 3 is located within the LDN 3 of the Airport Noise Zone; retail uses are prohibited in this area.

Recommendation: The decision of the CDRC was to recommend master plan approval subject to the following 17 conditions. Mr. Chairman, may I enter them into the record?

CHAIRMAN DURAN: Yes.

[The conditions are as follows:]

1. All redline comments will be addressed. Original redlines will be returned.
2. The applicant shall submit a drainage and grading plan with the preliminary development plan.
3. The applicant shall submit a detailed parking budget with the preliminary development plan. The number of spaces shall be determined by the occupancy of the building.
4. All water lines shall be eight-inch minimum.
5. An additional hydrant is required near the retention ponds within the storage unit area.
6. There is no retail use within Building 3. [Changed to 1 and 2.]
7. The storage units shall be set back 50 feet from the CR 56 right-of-way.
8. The outside storage areas shall be screened on all sides by a six-foot to eight-foot high stucco or stone wall.
9. All utilities shall be underground. This shall be noted on the master plan.
10. All conditions of the sewer and water availability letters shall be complied with. City review of the master plan shall be completed prior to preliminary development plan submittal.
11. Buildings 1, 2, and 3 shall be sprinklered.
12. All lighting must be shielded. The applicant shall provide cut-sheets and lighting analysis for outside lighting with the preliminary development plan submittal. Lighting

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- within the storage unit development shall be building mounted.
13. Eight of the parking spaces shall be handicap spaces.
  14. The applicant shall submit a landscape plan meeting Code requirements with the preliminary development plan.
  15. Driveway access shall be approved by Public Works.
  16. The master plan will be recorded with the County Clerk.
  17. Compliance with applicable review comments from the following:
    - a. State Engineer Office
    - b. State Environment Department
    - c. State Highway Department
    - d. County Fire Marshal
    - e. County Public Works
    - f. Development Review Division Director

CHAIRMAN DURAN: Penny, what's the lot coverage after both these structures are completed?

MS. ELLIS-GREEN: Mr. Chairman, I believe it is under 30 percent which is the Code requirement.

CHAIRMAN DURAN: Okay. Good. Any questions of Penny?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Penny, the question I had was that the car restoration, plant nursery and sale of landscape materials, I assume could be considered retail activities. Is that correct?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Sullivan, yes. They could be considered retail and we have added a condition that Building 3 is not allowed to have any retail sales. So those uses would not be permitted in Building 3.

COMMISSIONER SULLIVAN: I'm not sure I know which numbers but the reason for that is in the airport—is it the noise zone?

CHAIRMAN DURAN: Right.

COMMISSIONER SULLIVAN: The noise zone. Retail is not permitted.

MS. ELLIS-GREEN: That's correct.

COMMISSIONER SULLIVAN: And part of this property is in the airport noise zone and part of it's not. Is that correct?

MS. ELLIS-GREEN: That is correct. Yes.

COMMISSIONER SULLIVAN: Okay. So which one is Building 3? Is that the one right in the center of the V?

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Sullivan, if you look at your master development plan—maybe Mr. Siebert actually has a better copy. It's the building to the east.

COMMISSIONER SULLIVAN: Maybe I'm backwards here but I thought the



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noise zone—there's a plat of the noise zone. I thought it covered a different building. It's at the first figure. Jim, can you hold that map up so that it looks like this one? Now the noise zone, cuts, which is a zone 3. Is that correct? Zone 3, which does not allow retail, cuts right through that boomerang looking parcel, right through the center of it, right at its apex. Yes. And it hits that building. So if you're saying excluding Building 3, you're actually out in noise zone 2 which permits retail.

MS. ELLIS-GREEN: Mr. Chairman, Commissioner Sullivan, I believe you're correct. I believe it's actually Building 1 that's in LDN 3. That would be condition number six should be changed then.

COMMISSIONER SULLIVAN: There's actually two of them. It's the one at the bottom and the one in the middle, if I'm not mistaken. And for the Commission, the map I'm looking at is the one that has all the gray in it and this boomerang looking piece in the middle. It's at the beginning of Mr. Siebert's report or fairly close. And what I'm looking at, Mr. Chairman, is there's dashed lines, there's dashed lines there. And you see they radiate around the runway. And you'll see LDN 4 and LDN 3 and then outside that is LDN 2. And you see how they cross the parcel, and where they cross the parcel is in LDN 3 and you see up above on the left there, LDN 3 says no retail in that noise zone. Do we have a clarification of that condition, Penny?

MS. ELLIS-GREEN: Mr. Chairman, the LDN zones are not on Mr. Siebert's map, but looking at this figure from the Redevelopment District, it does look like it covers all of Building 1 and a portion of Building 2. So you should probably prohibit retail in both Building 1 and Building 2.

COMMISSIONER TRUJILLO: Okay.

COMMISSIONER SULLIVAN: That's the only question I had, Mr. Chairman.

CHAIRMAN DURAN: Okay. Is the applicant here? Have we done this yet? We don't have a motion on the table do we?

MR. SIEBERT: I don't know. I'm too tired to know. I'm duly sworn; I understand that and I'll answer any questions you may have.

CHAIRMAN DURAN: Any questions of Jim? Okay, this is a public hearing. Is there anyone out there that would like to speak to the Commission concerning this issue? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for approval of CDRC Case Z 00-5870 with the corrections that were brought forth by Commissioner Sullivan.

CHAIRMAN DURAN: Which has to do with the uses allowed in the zones, right? The airport noise zones.

COMMISSIONER TRUJILLO: Exactly right. And the conditions that have been delineated by the CDRC.

COMMISSIONER CAMPOS: Second.

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CHAIRMAN DURAN: There's a motion. There's a second. Any further discussion? ? Those in favor, signify by saying "aye." [Unanimous] Opposed? Motion carries.

How about if we table executive session until—

COMMISSIONER SULLIVAN: Is it real short?

COMMISSIONER TRUJILLO: Can we do it Thursday after the water summit?

MR. KOPELMAN: Mr. Chairman, members of the Commission, we can certainly do it on Thursday?

CHAIRMAN DURAN: Yes, why don't we do it then?

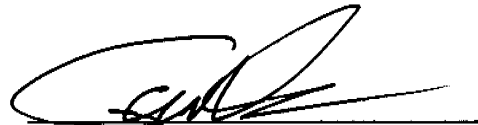
MR. KOPELMAN: No complaint from me.

CHAIRMAN DURAN: I don't think I can talk anymore.

**ADJOURNMENT**

Chairman Duran declared this meeting adjourned at approximately 11:25 p.m.

Approved by:



Board of County Commissioners  
Paul Duran, Chairman

Respectfully submitted:

  
Karen Farrell, Commission Reporter

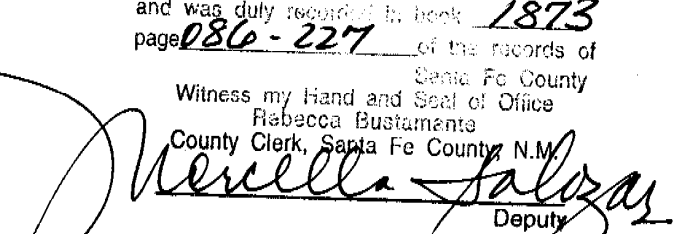
ATTEST TO:

  
REBECCA BUSTAMANTE  
SANTA FE COUNTY CLERK



1148557  
COUNTY OF SANTA FE } SS  
STATE OF NEW MEXICO }  
I hereby certify that this instrument was filed  
for record on the 15 day of Mar A.D.  
20 01 at 8:07 o'clock a m.  
and was duly recorded in book 1873  
page 086-227 of the records of

Witness my Hand and Seal of Office  
Rebecca Bustamante  
County Clerk, Santa Fe County, N.M.

  
Deputy



**Memorandum of Agreement**  
**Amendment #1**

This MOA by and between the Boards of Santa Fe County Commissioners (hereinafter referred to as "The County" or "SFC") and St. Vincent Hospital (hereinafter referred to as "SVH").

1873200

**Section I – Statement of Purpose**

The purpose of this agreement is to establish a harmonious and productive collaboration between The County and SVH. This agreement addresses tasks of health and human service outreach, resource building, planning and coordination outlined in the Scope of Work that SVH will conduct with and for the benefit of the County.

**Section II – Background**

WHEREAS, public funding and budget cuts necessitate intensive community-wide planning and coordination of health and human service delivery for purposes of efficiency; and

WHEREAS, SVH is a not-for-profit corporation providing hospital inpatient and outpatient services for residents of the County and serving as a regional referral center for the region surrounding the County; and

WHEREAS, SVH recognizes an ethical responsibility to provide health services to its community in accordance with its role as sole community provider, its corporate purposes as a tax-exempt charitable organization, and its mission; and

WHEREAS, the cooperation between the County and SVH to coordinate and facilitate the effective delivery of health and human services will greatly increase local ability to access funding for these purposes; and

WHEREAS, the County and SVH shall utilize the established County Health Planning Commission for recommendations and assistance relative to the implementation of this agreement; and

WHEREAS, the provision of services as outlined below would contribute to SVH's fulfillment of its community and regional public health responsibilities; and

WHEREAS, the County and SVH desire to enter into this agreement and have been strongly encouraged to do so by public and private funding sources; and

WHEREAS, it is mutually recognized that this agreement shall not be construed to affect the jurisdiction of Federal, State, County or other local government agencies which exist as a matter of law.

NOW, THEREFORE be it understood that the parties shall work in good faith to implement the following:

1873201

**Section III – Project Development and Implementation**

A. Initiate planning and coordination of health and human services delivery.

- 1. The processes set forth in this agreement are intended to outline the efforts that shall be conducted by SVH in conjunction with the County to plan and coordinate the efficient and culturally sensitive delivery of health and human services in Santa Fe County.
- 2. SVH will cooperate with the County to explore models for a countywide financing and delivery method for indigent health care services. This will include centralized case management, centralized data and billing systems, a specific scope of services, and the integration of substance abuse treatment and prevention with other health services.
- 3. SVH will cooperate with the County to create a coordinated delivery plan for health and human services to be endorsed by the County.

B. Resource Development

- 1. SVH will cooperate with the County to seek local, state, federal and private resources on behalf of the County for programs serving County residents that will fall within the scope of the County and SVH endorsed plan.
- 2. SVH will cooperate with the County to establish an ongoing clearinghouse capacity to provide information about available resources and to offer technical assistance to build and promote local health and human service organizations.

C. Advocacy and Outreach

- 1. SVH will cooperate with the County to develop or participate in the development of social impact statements addressing actions that might affect the well being of residents or the social fabric of Santa Fe County.
- 2. SVH will cooperate with the County to build community awareness and support through community education activities related to health and human services.
- 3. SVH will cooperate with the County to conduct outreach campaigns on topics affecting the health status of residents of Santa Fe County on an as-needed basis, at the request of the County and according to the will of the SVH Board of Directors and Administration.

1873202

#### Section IV - Assessment and Evaluation

SVH and SFC shall have equal representation on a Progress Review Committee (PRC) that shall serve as the evaluation team for the progress of the activities described within. The PRC shall include, at a minimum, the Vice Presidents of the Community Service Network and Finance Administration Departments for SVH, the Directors of the Finance Department and CHEDD Indigent Fund for SFC, and a member that is not associated with either SVH or SFC, but approved by SVH and the SFC Board of County Commissioners. The PRC shall meet quarterly, on the first Tuesday of the second month following the end of each calendar quarter to assess and evaluate progress made under the MOA. The PRC will prepare quarterly reports to be completed and available for review on, or before, February 22<sup>nd</sup>, May 24<sup>th</sup>, August 23<sup>rd</sup>, and December 27<sup>th</sup>, 2002.

#### Section V – Conflict Resolution

In the event of disagreement over the implementation or interpretation of this agreement, the parties agree to work together in good faith to resolve the disagreement. If these efforts are unsuccessful, either party may request that a mediation board be established. The mediation board shall be comprised of five (5) members, two (2) selected by each party and the fifth chosen by the four members so appointed. Decisions of the Board shall be by simple majority and shall be non-binding; however, the parties agree to participate in such mediation and to consider the board's decision in good faith.

#### Section VI – General Provisions

1. This agreement shall be effective as of August 29, 2000, with services for year one commencing on October 1, 2000, and services for year two commencing on October 1, 2001. It shall continue in effect until September 30, 2002. Any services and funds not completed or expended in year one shall carryover to year two.
2. This agreement shall be re-negotiated according to the following timeline:

November 1, 2001	SVH shall submit Sole Community Provider request to The County in the manner prescribed by the NM Human Services Department, Medical Assistance Division.
November 12, 2001	SVH and SFC representatives re-negotiate the terms of the MOA.
December 1, 2001	Draft MOA is prepared and presented to SFC Board of County Commissioners (BCC) and SVH Board of Directors.
December 11, 2001	Sole Community Provider request and MOA are put on SFC BCC Agenda.
December 25, 2001	SFC BCC Meeting.

3. The dollar amounts set out under "Scope of Services", below, represent SFC's and SVH's estimates of the amounts needed for each service over the course of the year. SVH does not undertake to expend more than the stated amount for any service.
4. In recognition of SVH's willingness to assume financial responsibility for certain county public health services which, at the present time, will continue to be provided by county personnel, SVH agrees to remit to SFC a monthly installment of \$ 174,750, plus applicable Gross Receipts Tax, payable 30 days in arrears starting on October 31, 2000 and ending on September 30, 2001, and \$ 190,891, plus applicable Gross Receipts Tax, payable 30 days in arrears starting on October 31, 2001 and ending on September 30, 2002. These payments, which are to be considered interim payments pending study of the suitability of SVH assuming direct responsibility, shall encompass the following services, as further detailed under "Scope of Services":
  - Item IA: MOA Coordination
  - Item IIA: EMS Medical Services
  - Item IIB: E-911 Addressing
  - Item IVE: Maternal and Child Health Care
  - Item VB: Ineligible Indigent Care
  - Item VC: PARA Transit\Senior Medical Transport
5. Nothing in this agreement shall be construed to give either party the power to bind the other to any agreement not approved by the second party's board, i.e., the Board of County Commissioners or the SVH Board, respectively.
6. This agreement in no way shall limit the ability or the authority of either party to seek their own resources, implement their own plans, or deliver services as they see fit.
7. Except as herein specifically set forth, all of the provisions of the Memorandum of Agreement entered into between the parties hereto, with the effective date of August 29, 2000, shall remain in full force and effect. This amendment supersedes in its entirety, the Memorandum of Understanding between St. Vincent Hospital and the County of Santa Fe dated February 15, 2000 and its terms and conditions shall be deemed terminated.

IN WITNESS THEREOF, the parties have executed Amendment #1 to this Memorandum of Agreement on the dates below specified.

1873204


SANTA FE COUNTY

ATTEST

\_\_\_\_\_  
Paul Duran, Chairman  
Santa Fe County

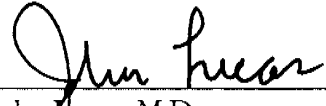
\_\_\_\_\_  
Rebecca Bustamante  
Santa Fe County Clerk

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

  
\_\_\_\_\_  
Steven Kopelman  
Santa Fe County Attorney

2/13/01  
\_\_\_\_\_  
Date

ST. VINCENT HOSPITAL

  
\_\_\_\_\_  
John Lucas, M.D.  
President and CEO

2/13/01  
\_\_\_\_\_  
Date

**SCOPE OF SERVICES**

**I. COORDINATION OF HEALTH AND HUMAN SERVICES**

A. SVH will participate in the coordination/monitoring of the planning for, and delivery of, health services between SFC and SVH as outlined in this Agreement through the development of liaison activity between the two entities.

<b>Cost: Year 1</b>	<b>\$ 100,000</b>
<b>Cost: Year 2</b>	<b>\$ 100,000</b>

B. SVH intends to assist SFC with the provision of the following array of health and human services.

- EMS Medical Services
- E-911 Addressing
- Maternal and Child Health Care
- Ineligible Indigent Care
- Santa Fe Care Network
- Health Services in Santa Fe County
- HealthCare Marketing and Outreach
- Clinic Health Care Support

This shall be done either through the establishment of a unique SVH department, or through a contractual arrangement with another entity or affiliate. SVH will fund this activity on an annual basis to provide the administrative oversight necessary to coordinate services and provide direct care where required.

**II. EMERGENCY MEDICAL SERVICES**

**A. Staffing of EMS Stations**

SVH agrees to assist SFC with the provision of Emergency Medical Services twenty-four (24) hours a day, seven (7) days a week at four (4) EMS stations located in the four quadrants of Santa Fe County. The provision of these services includes funding the cost of Emergency Medical Technicians and Dispatchers at each location. The cost of these services will increase by no more than 3% per year over the next two years.

<b>Cost: Year 1</b>	<b>\$ 1,423,000</b>
<b>Cost: Year 2</b>	<b>\$ 1,465,690</b>



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**B. E 911 Addressing**

SVH will assist SFC with the completion and maintenance of rural addressing for all residents in Santa Fe County.

<b>Cost: Year 1</b>	<b>\$ 209,000</b>
<b>Cost: Year 2</b>	<b>\$ 300,000</b>

**III. CARE COORDINATION**

**A. Santa Fe Care Network**

SVH will assist SFC with the provision of screening, assessment and referral services for individuals that are in need of mental health services, alcohol and substance abuse treatment and/or in-patient services. Staff workers made up of Screeners and Compliance Monitors will provide the services.

SFC will provide the capital for a facility to be constructed on Highway 14 within the next 18 months. For the duration, SVH and SFC will jointly serve on a selection committee to contract with an organization to administer the operation prior to the completion of a facility. SVH and SFC will also jointly serve on a Community Advisory Board to provide oversight for the Center.

Referral of Patients to Center:

Patients will be referred to the center from a variety of stakeholders.

Referral Sources for Patients:

Patients will be referred to a variety of providers for the provision of care.

<b>Cost: Year 1</b>	<b>\$ 350,000</b>
<b>Cost: Year 2</b>	<b>\$ 287,000</b>

**B. Case Management for Jail Inmates**

SVH agrees to work in conjunction with the County and their contract Jail Administrator to develop a coordinated primary care plan that will complement the efforts in IV. A. above.

**IV. HEALTH EDUCATION & OUTREACH**

**A. Mobile Healthcare Unit**

SVH will assist SFC with procurement, or lease of a mobile healthcare unit to be used to provide healthcare screening, assessment, and treatment to Santa Fe County residents.

<b>Cost: Year 2</b>	<b>\$ 100,000</b>
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**B. Health Services in Santa Fe County**

SVH agrees to coordinate with SFC and Santa Fe County public school systems to expand health services throughout the county. SVH will use existing programs where possible while simultaneously taking advantage of untapped public resources aimed at improving access to health care through the schools. SVH also agrees to provide preventative and limited primary care services to underserved communities in Northern and Southern Santa Fe County through the use of a mobile unit and existing resources.

SVH also agrees to assist SFC and the City of Santa Fe with health education and outreach services to the residents of public housing, and Section 8 housing clients. Education and outreach will be conducted at mutually agreed upon sites. The number of families in various types of public housing is as follows:

Housing Provider	Number of Families
SFC Public Housing	221
Section 8 Housing (City and County)	721
Santa Fe Civic Public Housing	<u>581</u>
 Total Number of Families	 1,523
 <b>Cost: Year 1</b>	 <b>\$ 400,000</b>
<b>Cost: Year 2</b>	<b>\$ 400,000</b>

**C. Healthcare Marketing and Outreach**

SVH agrees to provide and coordinate marketing and outreach services in order to inform all citizens of SFC in a consolidated manner of the health and human services available to them. Included in the effort is the promotion of collaboration among the various service providers. The vision includes a brochure and Public Service Announcements (PSAs), at a minimum.

<b>Cost: Year 1</b>	<b>\$ 100,000</b>
<b>Cost: Year 2</b>	<b>\$ 38,000</b>

**D. County Health Day**

SVH agrees to participate in up to two (2) County Health Days for the benefit of the residents of Santa Fe County and SFC employees. The Health Days will include a variety of screenings and capacity for referrals from a location provided to SVH by SFC. These funds may also be used by SVH and SFC to provide other health programs and benefits to Santa Fe County residents and employees.

<b>Cost: Year 1</b>	<b>\$ 10,000</b>
<b>Cost: Year 2</b>	<b>\$ 10,000</b>

**E. Maternal Child Health Community Infant Project**

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SVH will assist SFC with the provision of maternal child health services to include, at a minimum, home visits and parenting skills, as well as the administration of the program itself as required.

The current service providers and cost per year are:

<b>Cost: Year 1</b>	<b>\$ 105,000</b>
<b>Cost: Year 2</b>	<b>\$ 130,000</b>

**V. COUNTY HEALTH CARE PROVISION AND UNDERWRITING**

**A. Clinic Health Care Support**

SVH agrees to provide technical assistance, provider support, and any other assistance or support deemed necessary by SVH and SFC; to health care clinics, and other organizations as solely determined by SVH and SFC, serving Santa Fe County residents, using a needs-based methodology.

<b>Cost: Year 1</b>	<b>\$ 300,000</b>
<b>Cost: Year 2</b>	<b>\$ 350,000</b>

**B. Support for Services Provided not Eligible for Indigent Fund Reimbursement**

SVH agrees to provide support through other non-profit organizations for services provided to patients where care has not heretofore been eligible for reimbursement under the SFC Indigent Fund.

<b>Cost: Year 1</b>	<b>\$ 200,000</b>
<b>Cost: Year 2</b>	<b>\$ 175,000</b>

**C. PARA Transit\Senior Medical Transport**

SVH will assist SFC with the provision of transportation and outreach services to the handicapped and senior citizens of SFC.

<b>Cost: Year 1</b>	<b>\$ 60,000</b>
<b>Cost: Year 2</b>	<b>\$ 120,000</b>

<b>Total Cost of Services within the Scope of Services: Year 1</b>	<b>\$ 3,307,000</b>
<b>Total Cost of Services within the Scope of Services: Year 2</b>	<b>\$ 3,475,690</b>
<b>Total Cost of Services within the Scope of Services: Year 1 &amp; 2</b>	<b>\$ 6,782,690</b>

EXHIBIT 'A' - ZANE SPIEGEL

REVIEW BY ZANE SPIEGEL  
April 1978

of  
WATER RESOURCES ASPECTS OF  
"SANTA FE COUNTY GENERAL PLAN"  
(March 1977)

GENERAL COMMENTS

The Santa Fe County General Plan relies heavily on certain erroneous concepts in hydrology which invalidate many of the Plan's conclusions and recommendations.

The principal deficiencies are in references to steady state; relation of steady state to recharge; failure to relate steady states to diversion of natural discharge used by existing water rights claimants; failure to recognize the environmental and economic disasters which would occur in traditional irrigation centers as a result of operation of the Plan and associated Code; omission of any maps or tables showing specific springs and acequias which depend entirely or partly upon ground-water discharge; omission of historical developments which have already affected natural discharge to springs and adversely affected local irrigated-land economies.

RECOMMENDATIONS

A. The Santa Fe County General Plan should be revised to incorporate (1) concise and correct definitions and descriptions of hydrologic concepts, such as steady state, equilibrium, natural discharge, diverted natural discharge, storage depletion, drawdown cones,

mining, incidental mining, water rights, etc., and

(2) history of development of water use and water rights legislation and administration, with conclusions as to the probable future fate of existing irrigated areas without a revised

General Plan and Code.

B. Neighborhood, community, and civic organizations should encourage and assist the City and County of Santa Fe in the following procedures to attempt to rectify past errors in state water law and administration by

- (1) educating residents, consultants, and state employees in the correct concepts of hydrology;
- (2) taking administrative and legal actions to withdraw or terminate existing permits for subdivisions which have obtained city or county approval on the basis of fallacious concepts, false assumptions, erroneous computations, or deliberate concealment or perversion of facts;
- (3) administrative and legal actions against professional hydrologists and engineers who have participated in the activities cited in B (2) above, whether on behalf of subdividers or in their roles as county advisors;
- (4) petitioning for adjudication suits in areas of Santa Fe County not yet included in such suits;
- (5) preparing and presenting expert testimony in ongoing adjudication suits, showing the effects on water rights claimants

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of certain historic events which affect such claimants adversely;

(6) assisting the director of the new New Mexico Department of Natural Resources in preparation of legislation abolishing

New Mexico Statute 75-11-1 and other "loopholes" which legalize stealing of water from prior appropriators.

The cheapest and fastest way to initiate the above activities would be to take a concise, forceful, and visual statement about hydrologic misconceptions, errors, and misleading statements in the current Santa Fe County General Plan, and in previous applications by subdividers, to the New Mexico Attorney General, Director of the New Mexico Department of Natural Resources, U.S. Department of Housing and Urban Development, U.S. Secretary of the Interior, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Department, New Mexico Environmental Improvement Agency, Director of the U.S. Geological Survey, and all local, state and national news media.

## APPENDIX B

### SUPPLEMENTAL DEFINITIONS AND COMMENTS

#### INTRODUCTION

Steady state in hydrology refers to a condition of hydraulic equilibrium (balance) in which inflow to a reservoir or aquifer equals total outflow, at least on a long-term average. Obviously, there can be an infinite number of steady states ranging from:

(a) Zero net inflow (hence zero total outflow), resulting

in complete drainage of a reservoir or aquifer down to its lowest outflow level (e.g., the Rio Grande in Santa Fe County), to

(b) some maximum net inflow value, such that the top of the saturated zone of an aquifer is at the land surface over a sufficiently large area to discharge all of the net inflow as ground-water discharge.

It should be obvious that if well discharge equals the recharge, the net inflow becomes zero (condition (a) above), which not only results in eventual diversion of all outflow, but results in a decline of aquifer water levels to the ultimate outlet level, which is the Rio Grande.

If a new set of net well withdrawals is superimposed on an existing steady state, a long period of nonsteady adjustment (drawdown of water

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levels in the entire aquifer; decrease in aquifer discharge by springs) occurs. If the total net withdrawals by wells does not exceed the amount of aquifer discharge which is diverted to the wells, a new steady state may be achieved, although it is possible that some or all of the wells may be drawn down to the base of the aquifer before the new steady state is reached.

In any case, in arriving at the "steady state", water levels in wells and the aquifer in general decline, accompanied by incidental mining or storage depletion in the drawdown cone, which extends to the outer limits of the aquifer, including its natural discharges. The natural discharges must be decreased to the full extent of the "steady" net aquifer depletion rate; when a well is pumped, water is taken from storage in the well bore and adjacent to the well, creating a drawdown cone which extends gradually outward from the well at a rate depending upon the aquifer transmissivity, aquifer storativity and the local geology of the water-saturated zone. The rate at which the drawdown cone expands can be calculated by using the appropriate equation pertaining to the local geology. The Theis equation is only one of many possible equations for making such calculations; it is strictly applicable only to the simplest of cases, none of which exist in Santa Fe County.

It should be recognized that natural recharge varies enormously seasonally and annually, and that water levels will vary somewhat about some average level, in a "steady state". Since 1952, most of

Santa Fe County has had precipitation (hence natural recharge) at levels greater than the long-term average. Therefore a "steady state" achieved under the present conditions of above-average precipitation and recharge could result in critical depletion of the aquifer in a future drought as severe as that of the period 1945-51.

Also, the "mountains and homestead zones" (Plan, p. 22, par. 1) are hydraulically connected to and drained by the basin zones, hence will be affected not only by internal withdrawals, but by drawdowns in the basins.

#### NATURAL STEADY STATE

Before irrigation canals were built to spread spring flow or mountain runoff over large areas so as to supplement natural recharge (hence raise aquifer water levels) and before wells were constructed to withdraw ground water (hence lower aquifer water levels), an approximate natural steady state existed in Santa Fe County. Natural recharge, fluctuating seasonally and annually, maintained storage levels (water tables) which fluctuated slightly about long-term average profiles sloping from the upper boundaries of the respective aquifers to outflow points (springs) along the Rio Grande and many of its tributaries.

#### MODIFIED STEADY STATE - FIRST PHASE

Divisions of mountain runoff and local spring flow for irrigation by prehistoric Indians and historic Spanish and Indians recycled water

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and locally increased recharge and aquifer discharge. A new steady state with larger total spring flow was approached. This occurred before the modern concepts of hydrology were formulated, and since most changes of spring flow were gradual, or were masked by fluctuating weather, they were generally unnoticed.

#### MODIFIED STEADY STATE - SECOND PHASE

Wells were constructed and pumped, lowering the previously steady water levels in nearby areas of various aquifers. Most wells were of small capacity and caused only small drawdowns of aquifer water levels. However, the drawdown cones spread, overlapped, and reached the spring outflow points, thus decreasing spring flow gradually. Many wells near springs quickly achieved a new steady state by lowering water levels and reducing pre-well aquifer discharge, such that the sum of spring discharge rates and net well withdrawal rates remained equal to the previous steady recharge rate. Wells located on ranches remote from springs may not yet have achieved a steady state by decreasing spring flow to the full extent of net pumping at the time (1951) the first aquifer water level and spring-flow measuring programs were begun in Santa Fe County (Spiegel and Baldwin, 1963).

#### MODIFIED STEADY STATE - MODERN PHASE

The concurrent post-war influx of population and severe drought, beginning about 1945, caused a rapid increase in numbers of wells, total pumpage, and net ground-water withdrawals. By the time the severe drought ended in 1952, population and net well withdrawals were

increasing more rapidly in many areas, initiating a greater drawdown of the aquifer water levels, which was offset in part by increased natural recharge in some areas, and either accentuated by reduction of irrigation water-spreading or over-compensated by initiation of local wastewater spreading (Santa Fe River). In recent years the trend of water levels and spring flow has become downward nearly everywhere but near the Santa Fe wastewater spreading area, due to the increasing number of wells and well withdrawals.

Most of these new withdrawals are not offset by reduction of irrigation rights in the natural discharge areas (e.g., Cienega, Tesuque, Tesuque Pueblo, Pojoaque, Santa Cruz, etc.). Therefore the total water rights that have become established now far exceed the pre-well aquifer discharge, which is now decreasing. As the drawdown cones of more and more wells expand to the areas of natural aquifer discharge, water shortages in the spring-fed acequias will increase, and if a drought period equivalent to the 1946-1951 period were to return, there would be alarming water shortages and serious economic hardships in all of Santa Fe County's colonial settlements (except in Cieneguilla, which receives Santa Fe sewage far in excess of its natural spring flow).

Zane Spiegel  
PO Box 1541  
Santa Fe NM 87504-1541

1873212

# Santa Fe Board of County Commissioners

1873213

Testimony Opposing Ordinance 2001-\_\_\_\_\_  
Prohibiting the Transfer of Water from  
Residential Lots to Commercial Lots  
Within the El Dorado Utilities, Inc.  
Service Area

Submitted by Dennis Kensil

February 13, 2001



SFC CLERK RECORDING 08/13/2004



1873214

## Amendments to Ordinance 2000-14

### Amendment #1

4. The Code Administrator may consider and process applications for master plan zoning, preliminary and final development plans for commercial development within the EI Dorado Subdivision Utilities, Inc. franchise area with the following conditions:

a. Applicant dedicates EDU water from platted, approved residential lots in an amount equal to the total water budget for the proposed commercial development. The platted, approved residential lots that are pledged under this ordinance may owned or leased by the applicant proposing the commercial development. \*c

*(This suggestion would allow water transfers from owned or leased residential lots to commercial projects anywhere within the EDU service area. This would permit approved or proposed commercial projects to use water previously allocated for residential use but prohibit new residential hook-ups, well drilling or conveyances on the pledged lots during the moratorium.)*

### Amendment #2

11. The following shall be exempt from the restrictions and limitations of this Ordinance:

a. Any subdivision application, land division application, zone change or other related land use application for which the applicant delivers evidence satisfactory to the Office of the State Engineer and the County Hydrologist that the applicant can and will dedicate to the Utility as a condition of initial staff review approval an amount of water rights and long-term water supply equal to or greater than the water supply for the particular development being approved. Applicant could enter the County land use process only after receiving written approval from the State Engineer for any water rights transferred and or wells permitted (neglecting NMSA 72-12-1 domestic wells.)

*(This suggestion would allow an applicant who successfully completes a transfer of water rights or wet water to the Utility to make a land use application to the County. It possibly will encourage finding new resources and moving water rights to strengthen the Utility.)*

### Amendment #3

b. Any land use application, involving a change of use of a pre-existing, approved subdivision in which water usage required for development involved in the requested application will be equal to or less than the water usage allocated for the development in the pre-existing subdivision. In evaluating the relative water usage, the County Hydrologist may consider or recommend a proposal for xeriscape or natural landscaping in place of other landscaping required by the county Code as a means of reducing and reallocating the water usage for the proposed development application.

*(This suggestion would allow an existing legal lot with a current Utility connection to reallocate already accounted for water to adapt to a new commercial use on an approved use list. It may facilitate commercial development without increasing already planned water use.)*

# ***Lightning Speed?***

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SFC CLERK RECORDING 08/13/2004

<b><i>Event</i></b>	<b><i>Ordinance 2000-14 allowing transfers</i></b>	<b><i>Ordinance 2001-__ prohibiting transfers</i></b>
<b>Initial Discussion</b>	August 2000	January 9, 2001
<b>Approval of Title and General Summary</b>	September 26, 2000	January 30, 2001
<b>Public Notices</b>	October 6, 2000 October 13, 2000	?
<b>First Hearing</b>	November 14, 2000	February 13, 2001
<b>Second Hearing</b>	December 12, 2000	March 13, 2001
<b>Recording Date</b>	January 17, 2001	?
<b>Effective Date</b>	February 17, 2001	?

1873216

League of Women Voters of Santa Fe County

# VOTER'S GUIDE

TO THE NOVEMBER 7, 2000 ELECTIONS

The League of Women Voters of Santa Fe County is a non-partisan organization which provides information about political issues and candidates for public office in order to promote greater citizen participation in government. The League does not support or oppose any political party or candidate.

Questionnaires were sent to all candidates who were declared eligible by the County Clerk. The League of Women Voters of Santa Fe County sent the questionnaires and compiled the answers. All answers are printed exactly as received by the League. The League has not edited the answers for meaning, grammar, punctuation or spelling. Candidates were advised that their responses would be limited in length for each question. The symbol "... " indicates that the answer exceeded the limit; the portion exceeding the limit was omitted. Candidates for each office are listed in alphabetical order. Distribution of questionnaire to candidates and compiling of responses is funded through the League of Women Voters Education Fund.

## COUNTY COMMISSIONER QUESTIONNAIRE

1. Current occupation. (20 words)
2. Experiences and qualifications that qualify you for this office. (40 words)
3. What do you think is the most urgent issue facing the county of Santa Fe? If elected what would you propose to solve the problem? (60 words)
4. What role(s) do you believe county commissioners should play in county government? (60 words)
5. What steps would you take to guarantee an adequate supply of clean water to ALL residents of the county? Also, address whether or not the supply is adequate for the new dwellings and commercial construction approved or under consideration by the city and county. (60 words)
6. The County General Plan encourages residents of the county to come together in order to develop community plans for their area. At the same time, the recently organized Regional Planning Authority is developing a regional land use plan. How can these plans be brought together so they meet the needs of the area as a whole? (60 words)

### DISTRICT #2

Paul Duran



1. Real estate broker, French & French Fine Properties, 23 years
1. I am the incumbent Commissioner for District 2 and have a proven track record of supporting community-based issues.
3. Water and growth management. We need to accurately assess our community's aquifer and other water resources in order to manage growth in our community. It is likely that if we do not find an alternative water resource, we may need to limit development. County residents similar to City residents must adhere to strict water guidelines and the County Commission must...
1. Although 70% of all issues brought before the County Commission are land-use related, the role of a County Commissioner involves developing strategies and programs that will provide much needed services to the community such as health care benefits providing opportunities for economic growth working with the non-profit organizations that provide additional services to the citizens of Santa Fe building consensus...
5. The County and the City need to work together to quantify our water resource, not only in the aquifer but at other points of diversion which provide us with this resource. I'm not sure that clean water is the issue here but rather a sustainable source of water. It is not certain to any of us whether or not we...

6. The Regional Planning Authority was created by the County and the City with the understanding that both bodies had just approved their own respective general plans. This authority was given the task of analyzing both those general plans to determine areas of conflict so that we could, from a regional point of view, develop a more suitable land use plan...

### DISTRICT #2

Melissa McDonald

1. Co-owner of Santa Fe Permaculture, a water-wise landscape design and installation company.
2. I hold a degree with honors in Landscape Architecture with an emphasis on urban planning. As a citizen activist on a number of diverse issues, I have been consistent in my deep commitment to issues that directly impact our community.
3. Water is unquestionably our most urgent issue. In addition to tirelessly acquiring new rights, building infrastructure, educating the public and creating a workable regional plan, we need a new approach that recognizes the great potential of untapped resources such as rain water catchment, greywater recycling, constructed wetlands, appropriate landscaping and efficient appliances. Realistic water budgets should be required for new development.
4. A county commissioner should ensure that her constituents are well-informed. Televising meetings will be



helpful, but we can do better. We can post agendas/minutes at public libraries and on community bulletin boards. We can increase the use of radio and printed media. The county posts meeting times on its website. Why not add complete agendas/minutes in a timely manner?

5. In addition to doing everything in my third answer, I support building regional partnerships for water sources and delivery systems, managing groundwater sensitive areas, formulating detailed hydrological studies and monitoring our supply. There is not enough information available to determine whether or not our supply is adequate in the short-term, but we need a new, sustainable approach in the long-term.
6. The various plans should be brought together around the critical issues of regional water planning, economic development, open space, transfer development rights, public transit, affordable housing, impact fees, design performance standards and streamlining the development process. Commissioners and councilors need to identify and clarify conflicting areas and seek resolution among the plans. Public input and dialogue should always be encouraged.

### DISTRICT #4

Paul Campos

1. Attorney, private practice
2. Former Santa Fe County Attorney (1985-88) and current member of the City of Santa Fe Zoning Commission (November 1998-present). This experience has helped me understand issues facing our community, namely water scarcity and urban sprawl.
3. WATER! We need to know more about the quantity

>>> >>> >>> PULL OUT HERE

and quality of water available to our community and protect its purity. We need to divert San Juan-Chama from the Rio Grande and buy water rights for County Water Company. Such county water must be used primarily in well-defined growth areas, where liquid water systems are in use.

- The role of a county commissioner is to set policy, establish priorities and hire well-qualified administrators. A commissioner must understand the big picture, not try to micro-manage county government, and stay in touch with his constituents. A commissioner must be vigilant about expenditures to insure that taxpayers' money is not wasted.

- In the county, unlike the city, there are many sources of water, including many privately drilled domestic wells, thus, government cannot guarantee the amount or quality of the water supply. The best the county can do is to require use of community water and liquid waste systems and strongly encourage development within well-defined growth areas; through the use of incentives.



- The county and city need to determine where growth areas are to be developed and where the road system will align. We need to coordinate the distribution of water and require the development of liquid waste systems within densely populated areas. We can have diversity of development, respect traditional communities and still meet the needs of the whole.

**DISTRICT #5**

Roger X. Lenard

- Principal member technical staff, Sandia National Laboratories, and technical advisor on aerospace programs
- Served on two presidential commissions; served on numerous Defense Science Boards; four-year member of New Mexico State Board of Education; serve on Governor's Government Efficiency Task Force.
- Clearly water availability and water use is a major issue for both Santa Fe city and the southern part of the county (District 5). The problems are different because the city has a relatively fixed supply and increasing demand. The southern part of the county has reasonably good subsurface water supplies but much water is being exported out to the Estancia...
- The commissioners should be responsible to ensure that mandated county services are easily accessible and implementable by the citizen. The county commission should ensure that existing zoning laws are

enforced and work to expand the tax base for the county through attraction of business and industry commensurate with the area's desires. The commission should provide needed infrastructure.

- We need a near, mid- and long-range plan. Present supplies for the City of Santa Fe are strained. In the southern part of the county that are adequate at present but planning is required. In the near term, incentivize local and corporate reclamation for multiple reuse. In the near to mid-term, incentivize more efficient use of agricultural water...
- I disagree with the concept of RPA's. I think they displace the authority of the Commissioners. I think local plans are acceptable so long as they comply with the regulations of the county itself. The southern part of the county is completely different from the city of Santa Fe. It doesn't want to be included in the Regional Planning including...

**DISTRICT #5**

Jack Sullivan

- New Mexico Registered Professional Engineer. President, Sullivan Design Group, Inc., since 1978. Water resource planning and infrastructure design experience.
- Santa Fe County resident, 25 years. Professional experience: Water, wastewater, transportation and land use planning. Decorated veteran. Businessman. Graduate, Georgia Tech and Stanford University. Community College Business Advisory Committee. Elementary students' tutor. Youth soccer association past president and coach.
- Adverse effects of growth: water shortage, traffic congestion, inadequate roads, solid waste, too few sheriff's deputies and animal control officers, and a strain on fire and EMT resources. Solutions? Community-based plans tied to water budgets, wastewater systems to recharge the groundwater and irrigate parks, water reuse incentives and infrastructure costs paid by developers.
- A Commissioner's most important role is to represent his constituents, bringing issues to the attention of the Commission or County Manager for resolution. An effective Commissioner is a leader, not a micromanager—someone with a vision, a planner and a policy maker. A commissioner deals courteously and fairly with all parties and considers the merits of all issues without bias.
- Given current water use restrictions, an Eldorado area development moratorium, and



10,000 approved 2.5 acre lots, Santa Fe's long term water supply is clearly inadequate for new residential and commercial developments. In the future, we must plan within the limits of sustainable water supplies, provide wastewater systems where feasible and require that developers provide water rights for proposed developments.

- The RPA has reviewed the ongoing community plans and is currently focusing on the Highway Corridor, the Southwest Planning Area and the urban area boundary. The RPA can bring consistency to these community plans and recommend any needed modifications, for example, reducing residential and commercial densities in the proposed Community College District.

**DISTRICT #5**

Xubi Wilson

- I am a Baker/Breadcrafter/Pastry Chef specializing in unique sourdough breads and fine exotic ice creams.
- I am an experienced organizer with excellent research skills and a proven ability to build consensus among diverse groups. I look at problems from many angles to find innovative solutions. I have successfully worked on governmental policy for 18 years.
- We need to work on economic development to create better jobs. Supporting existing local business clusters is a great start. We need to work hard at identifying what these businesses need in order to flourish—and then create that infrastructure. We need to improve the skills of our workforce, expand telecommunications access and build locally based, cheap, reliable electric power.
- County Commissioners should be the human face of county government in our districts. We should be open and accessible to our constituents, have a clear vision of where critical issues will need to be addressed, and be able to successfully mediate among diverse points of view. We should communicate well with staff and be able to successfully articulate community concerns.
- We should address water issues on the demand side by assisting residents with conservation. This may include supporting agricultural conservation technologies which farmers cannot afford. We need effective water budgeting to create incentives for water uses that match community needs. New development should never come at the expense of current residents. Roofwater and greywater should be used for landscaping.



(This pullout continues after SFR page 32.)



This page donated to THE LEAGUE OF WOMEN VOTERS OF SANTA FE COUNTY

as a public service by THE SANTA FE REPORTER

For the Santa Fe Reporter's political endorsements, please turn to page 8 of this issue.

1873218

***BCC February 12, 2001***

Mr. Chairman, Commissioners, my name is Dennis Kensil. I live at 635 Caminito del Sol and I am opposed to the ordinance as presented by Ms. Yuhas.

In a meeting that I had with Commissioner Campos last Friday, he told me that if I had any ideas about modifying the El Dorado Utilities development moratorium, I should prepare something in writing and bring it to today's meeting. In the material you have just received are three suggested amendments to the current ordinance.

**Amendment #1**

One of the criticisms of Ordinance 2000-14 is that it is too restrictive and only applies to the Eldorado at Santa Fe subdivision. Amendment #1 would rectify this limitation and allow the transfer of approved, residential hook-ups to any approved or proposed commercial development within the EDU service area. It would allow approved commercial projects to proceed by utilizing this amendment. It would reallocate unlimited, residential rights to .25 ac/ft/lot for community services in an area of 6000 residents and save water.

In addition, I propose that Ordinance 2000-14 be amended to allow commercial projects to pledge leased, residential hook-ups towards its water budget. These vacant residential lots would then be set aside during the moratorium, be made subject to the same restrictions as required in the current ordinance and accomodate commercial development within current water allocations.

Transferring and leasing water rights is a time-honored method of utilizing approved and allocated water in New Mexico and could be put to effective use under Ordinance 2000-14.

**Amendment #2.**

This suggestion was first presented to the BCC in April 1999 by the then County Hydrologist, Jack Frost. This proposal would permit approved or proposed residential and commercial projects within the EDU service area to proceed when adequate long-term water supply and water rights are dedicated by the developer to El Dorado Utilities. By requiring projects to supply wet water and paper rights in an amount equal to or greater than that required for the project, it encourages the private sector to search for new resources. Furthermore, when the State Engineer approves water rights which are then dedicated to the utility, it strengthens EDU at no cost to the existing customers.

**Amendment #3**

This is another of Mr. Frost's suggestions from 1999. This proposal would allow an approved development or subdivision with current utility connections to reallocate approved water to a new commercial use on an approved list. This would facilitate a different commercial use without increasing water allocations for approved projects.

All these suggestions utilize water that is either:

1. currently allocated by the County and approved by EDU, or
2. draws on new resources approved by the State Engineer to strengthen the utility company.

These proposals can be quickly and easily implemented to ease the County bias away from no-development in the EDU franchise area to a position where some development, within certain parameters, would be allowed. In light of the encouraging Eldorado groundwater study by John Shomaker, this is an appropriate time to consider such a change.

*Prior to making any decision on the EDU moratorium, I would encourage the Board of County Commissioners to direct staff to contact John Shomaker requesting a presentation to the BCC on the important work that he has performed. I believe it would also be appropriate to invite El Dorado Utilities, Inc. to update the Board on the status of its' new wells and water rights applications prior to any BCC decision regarding the moratorium.*

**A Response to Commissioner Sullivan**

Finally, I would like to respond to Commissioner Sullivan's comments at the January 9 BCC meeting about why this amendment should be rescinded.

Regarding the issue of fairness, there are other property owners within the Eldorado subdivision who could benefit from the ordinance as it is currently written. By adopting amendment #1, it would certainly benefit more landowners with development interests in the 285 corridor. From a public policy standpoint, I believe this is the fair and right position for the BCC to take.

Furthermore, why should commercial landowners be excluded from proceeding with development when our residential neighbors can proceed without question? We made our commercial investments just like residential property owners did ..... relying on EDU as a service provider and the County to permit applications in approved subdivisions where water has been allocated. Many of us have water meters on our properties. EDU has said they will serve us. Is this fair or is this perhaps an equal protection question that the courts will have to decide?

The statement that 330,000 sq. ft. of development has been master plan approved in the Eldorado area is incorrect. These numbers, provided to Commissioner Sullivan by

the owner of the Agora shopping center, are intended to have a chilling effect on new development. Does this commission intend to encourage and protect monopolies or will the land use code be honored to protect all property owners that have business ideas that seek to serve the community?

The statement that "the water problem is severe in Eldorado and there is no immediate answer to it" is also incorrect. Why not rely on current, professional information from John Shomaker and EDU instead of perpetuating myths that undermine the community?

I challenge the statement that Eldorado at Santa Fe does not have a plan. What has unfolded over the last 30 years out there is the plan. All the homesites have been sold, roads, schools, fire stations and libraries constructed, 2500 homes built and half of the original non-residential sites developed. The only thing left to plan are three, mixed-use intersections that qualify for neighborhood district status. Eldorado does not need more single family homesites; it needs more services and a Board of County Commissioners with the political courage to follow 30 years of precedent.

By rescinding this ordinance, or failing to broaden its scope to include properties outside Eldorado, the BCC is saying that water neutrality in development is undesirable, new local services can wait 2-5 years while yet another community plan is discussed and domestic wells for commercial development are the way for property owners to proceed.

Commissioners Sullivan and Campos, in your packages you will find statements you made to the League of Women Voters during the campaign about growth incentives and development within defined areas, how the County should discourage private domestic wells and encourage the use of community water while requiring developers to provide water rights for proposed developments. *Ordinance 2000-14 incorporates all of these ideas.* A vote rescinding this ordinance would therefore, be at odds with your stated positions during the campaign. Accountability is important and so my question is, will your actions as Commissioners line up with your words as candidates?

Finally, the current EDU development moratorium has been in effect for almost 5 years. As a point of reference, that is longer than America's involvement in World War II. Prior to the water moratorium, there were 1-2 years when Santa Fe County tabled new developments because of traffic concerns on 285. I bring this up to remind the Commissioners, old and new, that within the last 7 years, there has only been about 6 months when new subdivisions and commercial projects have been approved in the Eldorado area. Since the County chose to intervene 5 years ago by prohibiting new development because of water concerns, isn't there some responsibility on the County's part to be proactive or creative in finding solutions to this problem? As a tax-paying landowner and a citizen of Santa Fe County, I would request that the BCC begin to take some action to either amend or lift the EDU water moratorium.

Nancy and Ken Salazar  
20 A Meyers Rd.  
Española, NM 87532

1873221

Mr. Estevan Lopez  
c/o County Land Use Administration  
P.O. Box 276  
Santa Fe, NM 87504

Re. CDRC CASE # V00-5860

February 7, 2001

Dear Mr. Lopez,

We are writing to express our views on Barbara Zavada request to allow commercial zoning on her property located on .9 acres of land East of US 285 in Arroyo Seco, within Section 30, Township 20 North, Range 9 East, (Commission District 1).

We are opposed to this property being zoned as commercial.

1. The road, Meyers road runs parallel to 84/285 and has a north and south entrance. It has two existing businesses on it now but both are right on either the north or south entrances to the road so traffic does not go on the length of the road. It is a quiet, narrow, chamisa and tree branch overgrown asphalt frontage road used primarily by the land owners. It is privately owned by the land owners (since 1957) and is not maintained by the county. It is already scarred with potholes and allowing a commercial property in the center of this road would only add more traffic and make the existing problem worse. This road runs through Ms. Zavada's property and is an easement for all the other property owners. There are three easements on her property.

2. The road is often use by the land owners to walk on and ride bikes on and for us personally to teach our children (3 years and 6 years old) to ride their bikes.

3. Ms. Zavada has used her house as a studio for her art and has been implying that she wants the property commercial so that she can use it as a studio, but the property is for sale and has been for a while. She even talked to my husband about wanting to sell the property but was not finding buyers for the price she is asking so therefore wanting commercial zoning. I do not feel she is acting in good faith. I have heard that there is an interest for storage units to be put on the property. Worse yet would be a gas station threatening to contaminate our ground water. Without some kind of restrictions, anything could be built right up to our property line. Her existing house is probably no more than



1873222

SFC CLERK RECORDING 08/13/2004

six feet from our property line. The light pollution from any type of larger scale commercial property would shine into our home and disrupt our nights and evenings. Plus the risk of theft and compromised safety from the increase of traffic for my family and the other adjoining property owners would be devastating. Granting Ms. Zavada commercial zoning would surely change the complexion of our rural neighborhood in a negative way.

My husband and I have lived in Arroyo Seco since 1985 and enjoy the dark skies at night and the safety we have always felt in this little community. Ms. Zavada had lived here part time for maybe three years and lives in Utah the rest of the year and is now planning to move on.

I hope you will consider our concerns and not allow commercial property adjacent to our property. Thank you .

Sincerely,



Nancy and Ken Salazar

Arroyo Seco/  
January 25, 2001

SHR CLERK RECORDING 08/13/2004

Santa Fe County Land Use Administration  
P.O. Box 276  
Santa Fe, N.M. 87504-0276

Sirs:

In regard to ODRG case #V 00-5860  
Barbara Zavada  
due to be heard by the BCC on Feb. 13, 2001, requesting a variance  
to allow commercial zoning outside of a commercial district.

This property is within the boundaries of the Traditional Community  
of El Valledo Arroyo Seco.

The property is on the County designated 911 address of Meyers Road.  
Meyers Road is a leftover portion of old highway 285 which was turned  
back to the property owners prior to 1960. It is approximately 1500'  
long. It is not owned by the County or any other government entity.  
It fronts the residences that border it from the days of homesteading  
(BLM approximately 1957) and was returned to the homesteaders prior  
to 1960 when the highway 285 as it now is was established. It is used  
primarily by the residents along this old blacktop.

It curves off of the present 285 and about 1500' later curves back  
on to 285. There is no reason for "outside" traffic to use this road  
other than the mailman or the paper carriers. The road is a disintegra-  
ting old blacktop. It is used by the residents for walking and visit-  
ing with the neighbors.

This road is the only access to Ms. Zavada's property. To grant  
Ms. Zavada a commercial variance would bring "outside" traffic to this  
primarily neighborhood road and further erode the surface.

Ms. Zavada is not a full time resident of the neighborhood. She divides  
her time between here and Moab, Utah.

We don't feel she is serious about making this her residence and  
place of business. She has had for some time, a "for sale" sign on her  
property. This indicates to us and to the other neighbors that she is  
not requesting the variance in good faith, but only wants it turned  
commercial in order to sell it for more money!

As a property <sup>owner</sup> who also resides along this old blacktop, we are very  
much opposed to her request to turn her property, which she has owned  
for only a few years, into commercial property. We have lived here for  
40 years.

We ask that she be denied her request.

Respectfully,  
Mr. and Mrs. J. A. Meyer  
#6 Meyers Road  
Española N.M. 87532

*Mr. J. A. Meyer*  
*Mrs. J. A. Meyer*

JAN 2001

1873223

Charles & Annette Romero  
26 Meyers Rd.  
Española, N.M. 87532

1873224

RECORDER RECORDING 08/13/2004

February 8, 2001

Case # 3V0-00 5860

*This letter is opposing the request of rezone of Case 3 Vo-00-5860, for commercializing of this property, the requestor is not more than 100' from our driveway and property and I would like the rezoning declined. I believe this rezoning is for her financial benefit, the requestor has her property for sale and hasn't had any luck and now she wants to rezone believing by commercializing her property will have a better chance in selling. This property is split by Meyers rd. which is shared by all so she has no parking for and kind of business. One of our concerns, will this affect our property taxes. What about traffic flow and the safety of our children who ride their bikes & neighbors who take walks each day. What about the safety of our homes?. Currently no one knows we are here, if this is passed every one will be on the frontage rd. Is said property owner going to pay to maintain additional abuse on the road. The property itself does not have the facilities to accommodate a business. Currently the property has a cesspool not a septic with leach field. We are also concerned about our water table a business could drastically deplete our water table. Why should a property owner be allowed to rezone for financial gain to leave the after effects and problems for the neighbors?*

*This is a close net neighborhood, who care about each other it like a large family we would like to keep it so. I feel so much and so many are at stake for the financial gain of one.*

*Please Give this your consideration.*

*Thank you,*

*Charles and Annette Romero*

File C

SFC CLERK RECORDING 08/13/2004

# DESIGN ENGINUITY



P. O. Box 2758, Santa Fe, New Mexico 87504  
(505) 989-3557 FAX (505) 989-4140  
E-mail [DESIGNENGINUITY@prodigy.net](mailto:DESIGNENGINUITY@prodigy.net)

1873225

February 7, 2001

Commissioner Jack Sullivan  
Santa Fe County  
PO Box 276  
Santa Fe, NM 87504-0276

Re: Lafarge – 599 Materials Extraction Project  
Stormwater Management Issues

Dear Commissioner,

Thank you for meeting with me to discuss your concerns with regards to stormwater management at the proposed Lafarge materials extraction project adjacent to SR 599. I have conducted additional field investigations and spoken with vector control specialists, the results of which are summarized below along with a summary of the stormwater management plan.

**Existing Conditions**

The 38.22 acre site has a poor coverage of natural grasses. The 100-year, 24-hour storm event is anticipated to generate a peak flow of 41cfs from this site, with a total volume of runoff of 5.4 acre-feet. The terrain slopes at an average of 2.2% toward the southwest to a manmade "stock pond" which appears to be a highway borrow pit. There are 2-3.5'x2.5' corrugated metal pipes which are designed to drain water from south of SR 599 into the pond. The inlets to these pipes are located just north of the FEMA mapped area to be inundated during a 100-year flow event. Between the pipes and the area to be inundated there is a slight rise. Thus even though the pipe inlets are 0.2' below the FEMA predicted 100-year flow event water surface elevation, because of the rise between the pipes and the river limits, it is unlikely that water would flow from the river into the pond.

**Proposed Stormwater Management Plan**

Initially, the existing stock pond will be altered slightly to make it more uniform in shape. The final pond volume will be a total of 11.7 acre-feet, with 5.4 acre-feet of storage volume located below the exit culvert inlets.

187322

During mining operations the site will be over excavated and there will be a series of mining pits which will collect sediment and stormwater. It is unlikely that stormwater will leave the site during mining operations.

Upon closure of mining operations, the site will be regraded such that it will be predominately flat with some 3-to-1 slopes. As a result, the stormwater time of concentration will be increased. In addition, the site will be revegetated with native grasses which will reduce the amount of runoff. The calculated 100-year, 24-hour storm water peak flow rate is predicted to be 28 cfs, 13 cfs less than the pre-development condition. The total volume of runoff is calculated to be 4.3 acre-feet. Therefore, as the pond's storage volume exceeds the predicted runoff, no stormwater should leave the site.

**Pond Overflow**

In the unlikely event that the pond overflows, water would drain toward the property located to the southwest and pond between the SR 599 frontage road and a hill located to the southwest. If the water level rose high enough, the water would then drain northeast along the frontage road's drainage ditch to a 36" CMP that drains the north side of the frontage road fronting the Lafarge project. This CMP feeds into 2-36" CMPs which drain under the highway and discharge into a wired wrapped riprap spillway that feeds directly into the Santa Fe River channel.

To prevent uncontrolled overflow, the pond should be examined for silting at least twice a year. If sediment levels are more than 18" above the designed bottom elevation of the pond, then this sediment should be removed. Once successful revegetation of the site occurs, excessive sedimentation is unlikely and flows generated from the site will be below their historic rate, thus stormwater detention will not be warranted.

**Infiltration Rate at the Pond**

On February 7, 2001, we used a backhoe to dig 3 test pits within the pond bottom to a depth of 6 feet. The soils encountered were somewhat variable. The westernmost pit comprised of cobbly sand with 1" to 6" gravels and cobbles plus minor amounts of silt. The center pit and easternmost pit were comprised of medium sands with some silt and minor amounts of gravel. The soils underlying the pond are channel deposits which are very permeable. It is unlikely that the pond could hold water for more than 48 hours.

**Vector Control**

Ms. Pam Reynolds of the New Mexico Environment Department Vector Control Program informed me that mosquitoes in our community require about 7 days to complete their larvae stage. They must be in stagnant water for the duration. Given the highly permeable nature of the strata below the pond, it is unlikely that water could pond for 7 days. In the unlikely event water remained in the pond for several days and mosquito larvae were suspected, Ms. Reynolds recommends that a bacterium commonly called BTI be added to the water. Larvae will feed on the BTI and as a result will die. BTI is sold in donut shaped briquettes and is readily available at stores like Home Depot.

Please call me if you have any further questions.

1873227

Sincerely,



Orallynn Guerrerortiz, P.E.

Cc: Jim Siebert, Siebert and Associates  
Teresa Conner, Lafarge  
Charlie Gonzales, County Land Use Department  
Penny Ellis-Green, County Land Use Department

SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

REGULAR MEETING  
(Public Hearing)

February 13, 2001 - 4:15 P.M.

*Amended Agenda*

SFC CLERK RECORDING 08/13/2004

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Approval of Agenda
  - A. Amendments
  - B. Tabled or Withdrawn Items
- VI. Approval of Minutes
- VII. Staff and Elected Officials' Items:

OK	need
OK	OK
OK	OK
OK	need
✓	✓
✓	✓

A. Matters from the County Manager, Samuel O. Montoya

- 1. Request Authorization to Enter into Amendment Number One to the Memorandum of Agreement with St. Vincent Hospital for Health Care Services
- 2. Request Approval of Sole Community Provider Request for St. Vincent Hospital

B. Matters of Public Concern - NON-ACTION ITEM

C. Matters from the Commission

- 1. Resolution No. 2001-<sup>(18)</sup>A Resolution Considering Short and Long-Term Solutions to Provide Additional Water Supply for the Santa Fe Metro Area
- 2. Resolution No. 2001-<sup>(17)</sup>A Resolution Creating a Santa Fe County Corrections Advisory Committee
- 3. Discussion Regarding the Silverado Northside and Southside Assessment Districts

D. Matters from the County Attorney, Steven Kopelman

- 1. Executive Session
  - a. Discussion of Possible Purchase, Acquisition or Disposal of Real Property or Water Rights

**VIII. Public Hearings:**

OK	need	<p><i>Amended</i></p> <p><b>A. Ordinance No. 2001- An Ordinance Establishing the Rules and Regulations for County Parks, Trails and Open Space Areas (Second Public Hearing)</b></p>
OK	✓	<p><b>B. Ordinance No. 2001- An Ordinance Amending and Replacing Santa Fe County Ordinance 2000-14 and Declaring a Moratorium on New Subdivisions, Land Divisions and Master Plans for Projects Served by El Dorado Utilities, Inc. and Encouraging Conservation Measures within the El Dorado Utilities, Inc. Service Area which Prohibits Transfer of Water from Residential Lots to Commercial Lots (First Public Hearing)</b></p> <p><i>Don't need</i></p>
OK	need	<p><b>C. Ordinance No. 2001- An Ordinance Amending Santa Fe County Commission Chairperson Election Ordinance No. 1990-7 to Provide for One Year Terms for the Chairperson and that the Chairperson Serves at the Will of the Commission (One Public Hearing Required)</b></p> <p><i>Tabled</i></p>
OK	✓	<p><b>D. Land Use Department Items:</b></p> <p>1. <b><u>EZ CASE #DL 00-4770.</u></b> Felix and Sadie DePaula. Paul Rodriguez, agent, Felix and Sadie De Paula, applicants, request plat approval to divide 12.1 acres into four 3.0 acre tracts. The subject property is located off Calle Carla and Calle Suzana, within Section 25, Township 17 North, Range 8 East (2 Mile EZ District) (Commission District 1). Oliver Garcia</p>
OK	✓	<p>2. <b><u>EZ CASE #S 00-4890.</u></b> Estancia Real at Las Campanas. Las Campanas Limited Partnership (Michael Baird, Vice President), applicant, is requesting final plat/development plan approval for a 12 lot residential subdivision phase on 27.2 acres in accordance with the approved master plan, and a variance of the minimum road standards to permit a finished road grade exceeding 3 percent for 100 feet from the intersection. The property is located off Las Campanas Drive, within the five-mile Extraterritorial District, Sections 11 and 12, Township 17 North, Range 8 East (Commission District 1). Joe Catanach</p>
OK	✓	<p>3. <b><u>CDRC CASE #V 00-5945.</u></b> Agustin Roybal Variance. Agustin Roybal, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow for the placement of a second home on 5.34 acres. The property is located at 88 Willow Road in the South Fork area, within Section 31, Township 15 North, Range 9 East (Commission District 3). Wayne Dalton</p>
OK	✓	<p>4. <b><u>CDRC CASE #V 00-5680.</u></b> Miguel Coblentz Variance. Miguel Coblentz, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land</p>



OK	✓
OK	✓
OK	✓
OK	✓
OK	✓

- Development Code to allow for a land division of 2.65 acres into two lots. The property is located at the southwest corner of the intersection of Quail Run and Juniper Street within the South Fork area, Section 31, Township 15 North, Range 9 East (Commission District 3). Frank White
5. **AFDRC CASE #V 00-5710.** Lazaro Mata Variance. Lazaro Mata, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow for the placement of a second dwelling on 1.44 acres. The property is located within the Traditional Community of Agua Fria, Section 31, Township 17 North, Range 9 East (Commission District 2). Wayne Dalton
  6. **CDRC CASE #V 00-5860.** Barbara Zavada Variance. Barbara Zavada, applicant, requests a variance of Article III, Sections 4.1 and 4.2 (types and locations of commercial districts) of the Land Development Code to allow commercial zoning outside of a potential commercial district on her 0.90 acre piece of property. The property is located at 24 Meyers Road in Arroyo Seco, within Section 30, Township 20 North, Range 9 East (Commission District 1). Wayne Dalton
  7. **CDRC CASE #V 00-5600.** AT&T Wireless. Reconsideration of application by AT&T Wireless for a variance of Article III, Section 4.4.4.c. (Maximum Height) of the Land Development Code to allow for 12 cellular antennas and a microwave dish to be mounted 150 feet high on a existing lattice tower. The property is owned by the Bureau of Land Management and is located off the I-25 Frontage Road, near the rest area, within Section 24, Township 15 North, Range 7 East (Commission District 3). Frank White
  8. **CDRC CASE #A/V 00-5951.** Alan Weiss Appeal/Variance. Dr. Alan Weiss, applicant, Rosanna Vasquez, agent, request an appeal of the County Development Review Committee's decision to deny a lot split of 3.28 acres into two lots: one lot consisting of 2.525 acres and one lot consisting of 0.75 acres, which would result in a variance of Article III, Section 10 (lot size requirements) of the Land Development Code. The property is located at 141 Sombrillo Road in Sombrillo, within Section 12, Township 20 North, Range 8 East (Commission District 1). Wayne Dalton
  9. **CDRC Case #MIS 00-5531.** Vista Clara Ranch Liquor License. Transwest Hospitality Development Corporation, applicant, requests approval to allow a transfer of location and ownership of Liquor License No. 927 from Highway 68 in Alcalde to Vista Clara Ranch as set forth in the Santa Fe County Land Development Code. The property is located off of State Road 41, north of Galisteo, within Section 25, Township 14 North, Range 9 East (Commission District 5). Penny Ellis-Green

ok	✓	<p>10. <b>CDRC CASE #M 00-5620.</b> Lafarge Mine Zone Creation. Lafarge, applicant, Jim Siebert, agent, request approval for creation of a mine zone to allow for sand and gravel extraction on 38.21 acres, as set forth in Article XI of the Land Development Code. The property is located north of State Road 599, within Section 2, Township 16 North, Range 8 East (Commission District 3). Penny Ellis-Green</p>
ok	✓	<p>11. <b>CDRC Case #Z 00-5900.</b> International Pond Supply. Charles and Tavo Kelty, applicants, Lorn Tryk, agent, request approval of a Master Plan Amendment for two 5,000 square foot warehouse buildings, a 3,500 square foot warehouse building, a 2,500 square foot cold frame and a 3,000 square foot greenhouse and a 12 space parking area on 3.78 acres. The property is located on the I-25 Frontage Road, east of I-25 at the La Cienega exit, within Section 4, Township 15 North, Range 8 East (Commission District 3). Frank White <b>TABLED</b></p>
ok	✓	<p>12. <b>CDRC Case #Z 00-5870.</b> C De Baca Master Plan. Simon C De Baca, applicant, Jim Siebert, agent, requests Master Plan Zoning for 39,200 square feet of storage units and 29,342 square feet of office/warehouse/light industrial building on 9.56 acres. The property is located south of County Road 56 within Section 10, Township 16 North, Range 8 East (Commission District 3). Penny Ellis-Green</p>

**IX. ADJOURNMENT**

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).