

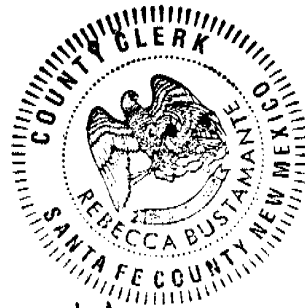
2188919

SANTA FE
BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

July 9, 2002

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



1219 447
COUNTY OF SANTA FE } ss
STATE OF NEW MEXICO
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 16 DAY OF Aug A.D.
20 02 AT 11:37 O'CLOCK 9 2188 M / 2189
AND WAS DULY RECORDED IN BOOK 2188
PAGE 919-047 OF THE RECORDS OF

SANTA FE COUNTY
WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.
Rebecca Bustamante
DEPUTY

SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

2188920

(Public Hearing)
July 9, 2002 - 3 p.m.

Amended Agenda

- ~~I.~~ Call to Order
- ~~II.~~ Roll Call
- III. Pledge of Allegiance *Invocation by Rev. Bradley*
- ~~IV.~~ Approval of Agenda

- A. Amendments
- B. Tabled or Withdrawn Items

Approval of the Minutes -

- V. Matters of Public Concern - Non-Action Items

- VI. Matters from the Commission

- ~~VII.~~ Presentations @ 6 p.m.

- A. "A Regulatory Perspective on the Reuse of Reclaimed Water" by Stephen Borsch, P.E., Program Manager, Maricopa County Department of Environmental Services and Arizona State Department of Environmental Quality
- B. "Practical Applications for Soil Aquifer Treatment and Indirect Potable Reuse" by Peter Fox, Ph.D., Associate Professor, Department of Civil and Environmental Engineering, Arizona State University

- VIII. Consent Calendar

- A. Request Adoption and Findings of Fact and Conclusions of Law for the Following Land Use Cases:

- Approved* - 1. EZ CASE #MP 01-4261 - Tesuque Creek Subdivision (Approved)
- Approved* - 2. EZ CASE #S 02-4061 - Heartstone Subdivision (Approved)
- Approved* - 3. EZ CASE #DL 02-4120 - John R. Romero Family Transfer (Approved)

- Approved* - B. Request Approval of Amendment #3 to Professional Services Agreement #22-0023-CHDD With Las Cumbres Learning Services, Inc., for the Delivery of the Community Infant Program to Indigent Santa Fe County Residents to Establish the Budget of \$133,000 for Fiscal Year 2003 (Community and Health Development Department)

* Tabled Items will be heard on Aug. 13 (Land Housing)

Approved - C. Request Approval of a Professional Services Agreement With the Lopez Garcia Group for \$10,681.02 to Provide Archaeological Services for the Proposed Trails and Open Space Acquisition Known as Vista Grande (Project and Facilities Management Department)

Approved - D. Request Ratification of Change Order Number 1 for the Santa Fe County Pueblo Garcia/Valle Vista Subdivisions Water System Extension Improvements Project, Construction Contract #22-0123-UT for \$19,927.16 (Utilities Department)

Approved - E. Request Approval of Amendment Number 1 to the Cost Reimbursement Agreement Between the City of Santa Fe, the County of Santa Fe, Las Campanas Limited Partnership, and the Bureau of Land Management (Utilities Department)

IX. Administrative Items

A. Appointments - are Effective Immediately

- approved* - 1. Appointments to the Regional Planning Authority - *Trujillo - Sub. Campos*
approved - 2. Appointments to the Extraterritorial Zoning Authority - *Campos - Sub. Trujillo*

X. Staff and Elected Officials Items

A. Community and Health Development Department

Approved - 1. Request Authorization to Accept and Award a Professional Service Agreement to the Highest Rated Offeror for RFP #22-62 for Maternal and Child Health Program Coordination, Breastfeeding Outreach, and Evaluation

Approved - 2. Request Authorization to Accept and Award a Professional Service Agreement to the Highest Rated Offeror for RFP #22-61 for Maternal and Child Health Prenatal Promotora Outreach, Health Education, and Service Coordination for Child Deliveries

Approved - 3. Request Authorization to Accept and Award a Professional Service Agreement to the Highest Rated Offeror for RFP #22-61 for Maternal and Child Health Adolescent Confidential Reproductive and Mental Health Services

Approved - 4. Request Authorization to Accept and Award a Professional Service agreement to the Highest Rated Offeror for RFP #22-61 for Maternal and Child Health Temporary Child Care Assistance Services

XI. Land Use Department

XII. CDRC CASE #V 02-5130 - Isabel Tafoya Variance. Isabel Tafoya, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Land Division of 3.72 Acres into Two Tracts. The Property is Located off of Via De Los Romeros in the Traditional Historic Community of La Cienega/La Cieneguilla, Within Section 19 and 30. Township 16 North, Range 8 East (Commission District 3). Audrey Romero **FOR DELIBERATION ONLY TABLED**

Tabled for next meeting - 1. Request Authorization to Publish Title and General Summary of an Ordinance Amendment to Article XVI (Transfer of Development Rights) of the Santa Fe County Code (Ordinance 1996-10), Relating to Community Water and Sewer Requirements, Additional Sending and Receiving Areas, and Other Amendments as Necessary

B. Utilities Department

- Approved* - 1. Request Direction on the Disbursement of State and Tribal Assistance Grants (STAG) in the Amount of \$291,000 to Santa Fe County to Assist in the Development of Small Community Water Systems

XIII. Matters from the County Manager, Estevan López

- Approved* - 1. Request Approval of Amendments and Modifications to Amendment Number 3 of the Memorandum of Agreement Between Santa Fe County and St. Vincent Hospital

B. Matters from the County Attorney, Steven Kopelman

- Tabled* - 1. Executive Session
- Discussion of Pending or Threatened Litigation
 - Discussion of Possible Purchase, Acquisition or Disposal of Real Property or Water Rights

XIV. Public Hearings**A. Land Use Department**

- Ordinance No. 2002 - An Ordinance Addressing Water Conservation for All Sources and Uses of Water Within Santa Fe County (First Public Hearing). Katherine Yuhas TABLED
- Will be brought
again on
Aug. 13
at 6:00 PM* Ordinance No. 2002 - An Ordinance Amending Article VII, Section 6.2.2.c, and Adding a New Section 6.2.2.d, to the Santa Fe Land Development Code (Ordinance 1996-10) to Require Proof of a Valid Water Right Permit for Type I and Type II Subdivisions, and Type III Subdivisions of More Than 12 Lots. Type III Subdivisions the Propose to Allocate More Than 0.25 Acre Ft. Per Year Per Lot, and Non-Residential Developments Using More Than 1.0 Acre Ft. of Water Annually (First Public Hearing). Katherine Yuhas
- CCDRC CASE #01-5570 - Thornburg Master Plan. Thornburg Enterprises Ltd., Applicant, Santa Fe Planning Group, Agent, Request Master Plan Approval for a Mixed Use Development to Consist of an Employment Center, Village Zone, a Neighborhood Center and a New Community Center on 224 Acres. The Development Proposes a Maximum of 742 Residential Units, and 4,015,000 Sq. Ft. of Commercial Uses, Open Space, and Parks. The Property is Located West and East of State Road 14, North of Vista Del Monte, Within Sections 24 and 25, Township 16 North, Range 8 East (Commission District 5). Penny-Ellis Green TABLED
- CCDRC CASE #MP 02-5050 - Sonterra. Richard Montoya (Santa Fe Planning Group- Scott Hoeft, Agent), Applicant is Requesting Master Plan Approval for a Mixed Use Development (Residential, Commercial, Community) in a Village Zone, Consisting of 520 Residential Units and 29,117 Sq. Ft. of Commercial Space on 245 Acres. The Property is Located off of Vista Del Monte East of Valle Subdivision Within the Community College District, Section 30, Township 16 North, Range 9 East (Commission District 5). Joe Catanach TABLED

5. CDRC CASE #DP 01-5131 – Village at Eldorado. Allan W. Crossingham and Stacy L. Crossingham Trustees of the Crossingham Trust, Applicants, Request Master Plan Amendment to Include Phasing, and Preliminary Development Plan Approval of Phase I to Include: 6,000 Square Foot Pub/Restaurant; 13,000 Square Foot Theatre Complex With 3 Screens, Live Performance Stage, and Multi-Purpose Room; 30,000 Square Feet of Retail Space; 7,000 Square Feet of Office Space; Open Air Markets/Farmers Markets and a Coffee Drive-Thru Kiosk. The Property is the Village at Eldorado (Formerly Sierra Plaza) Located at the Southeast Corner of Avenida Vista Grande and Caliente Road, Within Section 9 and 16, Township 15 North, Range 10 East (Commission District 5). Audrey Romero TABLED
- Approved, aca* 6. EZ CASE #S 01-4221 – Sena Vista Heights. Paul and Mary Jo Parker, Applicants, Jim Siebert, Agent, Request a Master Plan and Preliminary Development Plan and Plat Amendment and Final Development Plan and Plat Approval for a 72 Lot Residential Subdivision on 15 Acres Through a Transfer of Development Rights as Set Forth in the Santa Fe Metro Area Highway Corridor Plan. The Property is Located off of the I-25 Frontage Road Across From the Santa Fe Downs, Within Section 26, Township 16 North, Range 8 East (Commission District 5). Vicki Lucero
7. CDRC CASE #V 01-5610 – Bryan & Karen George Variance. Bryan & Karen George, Applicants, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Family Transfer Land Division of 12.12 –Acres into 3-Lots; One Consisting of 7.12 Acres, and Two Lots Consisting of 2.5 Acres. The Property is Located at 22A San Marcos Road East, Within Section 11, Township 14 North, Range 8 East (Commission District 3). Wayne Dalton TABLED
- Approved* 8. CDRC CASE #V 02-5170 – Anthony Duran Variance. Anthony & Donna Duran, Applicants, Request a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Small Lot Family Transfer Land Division of 4.03 Acres into Three Lots; One Lot Consisting of 1.5 Acres, and Two Lots Consisting of 1.25 Acres. The Property is Located at 75 Feather Road, Within Section 27, Township 19 North, Range 9 East (Commission District 1). Wayne Dalton
- Approved* 9. CDRC CASE #V 02-5200 – Jim Lestyk Variance. Jim Lestyk, Applicant, Requests a Variance of Article III, Section 2.3.3 (Height Restrictions for Dwelling or Residential Accessory Structure) of the Land Development Code to Allow a 29-Foot Atrium for a Residence to be Constructed on 78 Acres. The Property is Located at 390 B. Anaya Road, Within Section 7, Township 10 North, Range 10 East (Commission District 3). Wayne Dalton

- Will
Submit Master
Plan - Work
with Staff.*
- Approved
Tabled*
- Tabled*
- Approved
w/ conditions*
10. **CDRC CASE #APP 02-5181** – Joe Miller, Appeal. Joe Miller, Applicant, is Appealing the County Development Review Committee’s Decision to Uphold the Land Use Administrator’s Decision Regarding the Status of Cimarron Villages I, Cimarron Village II, and Lot C-1. The Property is Located at the Intersection of US 285 and Colina, Within Section 16, Township 15 North, Range 10 East (Commission District 5). Wayne Dalton
11. **CDRC CASE #V 02-5071** - Richard Cordova Variance. Richard Cordova, Applicant, Jon Paul Romero, Agent, Request a Variance of Article III, Section 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 1.35 Acres. The Property is Located Two Miles South of Espanola on the West Side of US 84/285, Within Section 13, Township 20 North, Range 8 East (Commission District 1). Wayne Dalton
12. **CDRC CASE #MP 02-5070** – Richard Cordova Master Plan. Richard Cordova, Applicant, Jon Paul Romero, Agent, Request Master Plan Approval for an 8,000 Sq. Ft. Building for Office and Retail Space on 1.35 Acres. The Property is Located Two Miles South of Espanola on the West Side of US 84/285, Within Section 13, Township 20 North, Range 8 East (Commission District 1). Wayne Dalton
13. **CDRC CASE #V 02-5190** - Russel Hein Variance. Russel Hein, Applicant, Requests a Variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to Allow a Family Transfer Land Division of 1 Acre into Two Lots; Each Lot Consisting of .50 Acres. The Property is Located at 37 Tango Road South of Cuyamungue, Within Section 28, Township 19 North, Range 9 East (Commission District 1). Wayne Dalton
14. **CCDRC CASE #MP 02-5250** – Rancho Viejo – Windmill Ridge, Units 3 & 4. Rancho Viejo de Santa Fe - Bob Taunton, Vice President (Design Workshop – Joe Porter, Agent), Applicant is Requesting Master Plan Approval for a Mixed Use Development (Residential, Commercial, Community) in a Village Zone and Fringe Zone, Consisting of 461 Residential Units and 45,000 Sq. Ft. of Commercial Space on 304.5 Acres. The Property is Located off of Richards Avenue South of the Community College Within the Community College District, Sections 20,21,28,29, Township 16 North, Range 9 East (Commission District 5). Joe Catanach
TABLED

XV. ADJOURNMENT

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).

2188925

SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

July 9, 2002

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:15 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called 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

III. Invocation

An invocation was given by Pastor Bradley Bennett from St. John's Methodist Church.

IV. APPROVAL OF THE AGENDA

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

CHAIRMAN DURAN: Estevan, are there any changes to the agenda?

ESTEVAN LOPEZ (County Manager): Mr. Chairman, there are a few items that have been noted on the latest version of the agenda as being tabled. Those are as follows: Under X. Staff and Elected Officials' Items, B. 1, CDRC Case #V 02-5130 is tabled. Under XI. Public Hearings, the Land Use Department, XI. A. 1 is tabled. That is the ordinance addressing water conservation for all sources and uses within Santa Fe County. XI A. 3 is

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tabled. That's the Thornburg master plan. XI. A. 4 is tabled. That's the Sonterra master plan. XI. A. 5 is tabled. That's the Village at Eldorado. XI. A. 7 is tabled. That's the Bryan and Karen George variance. And XI. A. 14 is tabled. That's the Rancho Viejo master plan.

Mr. Chairman, we've also made one minor amendment. It's basically a clerical amendment to agenda item VIII. C, the latest agenda has been modified from what was in your packets. That's the ratification of the change order. But the new caption that's before you today should be correct and those are the changes or the requested tablings and amendments, Mr. Chairman.

CHAIRMAN DURAN: Estevan, why was XI. A. 1 tabled? The water conservation ordinance.

MR. LOPEZ: Mr. Chairman, staff felt that we had not yet completed the work that we needed to do before we brought this forward to you.

CHAIRMAN DURAN: Okay.

MR. LOPEZ: I should also add that a number of the tablings, including the Thornburg, the Sonterra, the Eldorado and the Rancho Viejo master plans were tabled for the purposes of basically trying to keep this agenda to a manageable level per your direction as the last meeting. We're moving those items to the next land use hearing to be heard, to be the first ones heard, before any other items are added to that land use agenda.

CHAIRMAN DURAN: Okay, any questions of Estevan?

COMMISSIONER TRUJILLO: The ones that are tabled from land use will not be heard until next—until the August land use meeting?

MR. LOPEZ: Mr. Chairman, Commissioner Trujillo, that's correct. August 13th I believe.

COMMISSIONER TRUJILLO: Some of these cases have been on the agenda for quite a long time. Why do we keep—and I understand the direction that was given by the chairman, but for example Sonterra has been on the agenda I remember for the last six times.

MR. LOPEZ: Mr. Chairman, Commissioner Trujillo, I think the last time that that one was tabled, that was at the applicant's request. I think that's correct. As was Thornburg's. So those two were tabled at the applicant's request previously. The tabling that we're requesting today really is to keep this meeting to a manageable time frame more than anything else.

CHAIRMAN DURAN: Any questions of Estevan?

COMMISSIONER SULLIVAN: Move for approval of the agenda.

COMMISSIONER GONZALES: Second.

COMMISSIONER SULLIVAN: As amended.

CHAIRMAN DURAN: For discussion I just have a question. So the presentation—we're going to go into Matters of Public Concern and Matters from the Commission, and then we're going to jump to the Consent Calendar?

MR. LOPEZ: Mr. Chairman, yes. The presentation is listed on the agenda as beginning at 6:00 p.m. What I would request is that we move ahead on the agenda and complete whatever items we can and at 6:00 p.m. come back to that presentation.

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Also just for the record I want to note that I had a discussion with Commissioner Sullivan regarding the presentations and the direction that was given at a previous meeting. Commissioner Sullivan reminded me that direction had been given that we get somebody from the State Engineer's Office to basically provide a local view of these topics and working with Gary and with you, Mr. Chairman, we made the determination to try and split that agenda. Our intent is still to bring this—or to invite someone from the State Engineer and also from the Environment Department to come and make presentations on these topics at a subsequent meeting. Up until today, Gary Roybal, our Utility Director and myself have been working, and we've made invitations for the meeting of the 30th. Commissioner Sullivan reminded me that that's an administrative meeting and much of the public may not be able to attend at that meeting so I'm going to try and work to see if we can structure it so that any presentations we make would be done at a time that would be convenient for the public to attend if they so desire.

CHAIRMAN DURAN: Do we have confirmation that someone from the State Engineer's Office will be here this evening?

MR. LOPEZ: Mr. Chairman, Gary is indicating that no, we don't have any such confirmation. They have been invited by I don't know whether they're coming or not.

CHAIRMAN DURAN: Could you call them, Gary, and ask Mr. Turney if he's going to send someone? I spoke to him the other day and he said that he was but it wouldn't be bad idea to remind him, if you don't mind. Thank you. You don't have to do it right this minute. Maybe when we're talking about something else. Whatever you want to do.

Any other discussion?

The motion to approve the agenda as amended passed by unanimous [5-0] voice vote.

V. Approval of the Minutes: May 14, 2002, continuation held on June 5, 2002

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had some typographical changes which I gave to the recorder prior to the meeting so if you'd like to entertain a motion to approve with those changes I'd be glad to move.

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

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Any further discussion?

The motion to approve the June 5, 2002 meeting minutes as amended passed by unanimous [5-0] voice vote.

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VI. Matters of Public Concern – Non-action Items

CHAIRMAN DURAN: Is there anyone out in the audience that would like to address the Commission on any issue, any concern? Rudy, do you have anything to say?

VII. Matters from the Commission

CHAIRMAN DURAN: Any issue that any of the Commissioners would like to bring up?

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: Two brief issues. One, I have been neglectful in not acknowledging the Commissioner-elect from District 3, Michael Anaya. He's been coming to the meetings regularly and I want to welcome him here again today and congratulate him and know he'll do a great job. So congratulations.

The other relates, Mr. Chairman, as you know, at the last meeting, I was emphatic about giving direction to the open space committee to start addressing the maintenance and upkeep program for the open space and trails program, which has been neglected by the open space committee. And I spoke with Corky briefly about this issue and asked him what it would be that we would need to get this program moving or to provide his office's support as was indicated that their office has been extremely busy dealing with the acquisitions and his answer in a nutshell is as most answers are is they need more bodies. So what I'd like to do is, because I believe in this so much is direct the County staff to take whatever capital money that I have available or that's been appropriated and appropriate that to the open space and Land Use Department to be used, whether as a term position or short term position or whatever project is needed to further the cause of getting a maintenance program up and running for the public to begin to use County properties, which I think is really important, key and critical. So I'll leave that at Estevan's and Mr. Ojinaga's discretion as to how to use the money, whether it's to hire somebody short-term to help build the program or whatever it might be to use in that fashion.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: The amount of monies that we have are \$35,000 each and I don't know if that will be enough to fund this position so I propose that if any more monies are needed that my fund also be tapped for this purpose. It's a good program. The open space land, a lot of it has been bought and it is imperative that we get a management program in place as soon as possible.

MR. LOPEZ: Mr. Chairman, Commissioner Gonzales, for clarity then. You would ask that we move your entire \$35,000 into the open space. And Mr. Chairman, Commissioner Trujillo, I believe you've already asked me to set some amount of yours aside, \$20,000 was it?

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COMMISSIONER TRUJILLO: I have \$25,000 left, Estevan. I understand that we need about \$11,000 to complete—I don't know, but I have \$15,000 left and if we need up to and including the \$15,000, let's go for it. The position is important and we need to fund it.

MR. LOPEZ: Mr. Chairman, Commissioners, thank you.

CHAIRMAN DURAN: I'll give you ten of mine.

MR. LOPEZ: Ten?

CHAIRMAN DURAN: No, I take that back. I already told someone I'd help them out. Sorry. Any other issues from the Commissioners? Concerns?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Lopez, just a quick question. Concerning the Chimayo water meeting, do you have any updates, any results? I know Mr. Roybal met with the people up in Chimayo last week, I believe, or the week before. I was just curious as to what the result of that meeting was about the water issue there.

GARY ROYBAL (Utilities Director): Good afternoon, Commissioners. Rudy Garcia and myself went out to meet with the greater Chimayo Mutual Domestic Water Association. Also present was Commissioner-elect Harry Montoya. And they basically discussed their water situation. The feasibility study that had been performed, the areas of contamination and potential areas where a well could be drilled. They advised us that they have approximately \$400,000 and they are in the process of drilling a well. They'll drill a well and put a 10,000 gallon storage tank to allow people to go in and haul water from the facility. They don't have the funding to put in the pipeline for a distribution system. That's going to run approximately a million dollars of so.

But they also need to get a permit from BLM to drill the well. So that's a process in itself and they were going to meet with BLM the following day to see about doing the necessary steps, probably an environmental assessment for the well site, because it will be located on BLM land. They did ask the County to assist them in moving one of their tankers. The National Guard has two tankers out there. They wanted to have one moved to the Benito Chavez Community Center. I did communicate with the National Guard and ask them if they would do that. They said that they would go ahead and do that the next time they move the trucks out there they would put them in different locations for the convenience of the people.

They did provide us with a copy of their feasibility study and we are looking at probably working with them, maybe in conjunction with the City of Española and Rio Arriba County to see how we can cooperatively work together to help the situation in that area.

COMMISSIONER CAMPOS: Do you plan to meet with these folks again, to take an active role from here until the problem is resolved?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, yes. I believe that is a role that we would put ourselves out to to help them and assist them in this area. So they do have monthly meetings, which I believe is the first Tuesday of every month. So we will be looking to participate in those and keep updated and see how we can assist them in their water project.

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COMMISSIONER CAMPOS: There was a lady by the name of Eileen Martinez who called me several times about the water issue. Is she and the people she represents part of the organization you met with?

MR. ROYBAL: She is the president of the greater Chimayo Mutual Domestic Water Association.

COMMISSIONER CAMPOS: The solution that you're looking at is comprehensive? It involves a lot of people in that area? We're not excluding anybody from this planning?

MR. ROYBAL: It involves the greater Chimayo area. I believe there's one, there's the Chimayo Mutual Domestic Water Association, which serves about 50 to 60 customers and they will serve everybody including that mutual domestic if they're interested in participating in that. But they will be covering maybe 90 percent of the entire area with this water system.

COMMISSIONER CAMPOS: Thank you very much.

COMMISSIONER TRUJILLO: Gary, are we looking at expanding the existing mutual domestic infrastructure, the one that serves Plaza del Cerro? Is that going to be expanded to serve the Chimayo proper area, both Santa Fe County and Rio Arriba County? Because I understand there's some factionalism, a schism whereby the existing utility does not want to expand even though it is obvious that there is a need for potable water in other areas of Chimayo. Are we trying to facilitate, to expand the existing mutual domestic utility in that area?

MR. ROYBAL: Mr. Chairman, Commissioner Trujillo, no. There's two mutual domestic water systems out there. One's the Chimayo Mutual Domestic, which serves approximately—which is an existing, established mutual domestic which serves about 50 to 60 customers. Then the greater Chimayo Mutual Domestic Water Association was created to serve the remaining area. It's my understanding that there is some reluctance for the existing mutual domestic to be part of the regional solution. One of the things that we explored in there was they don't necessarily have to expand their area but they could be a bulk water customer of the greater mutual domestic water association which would provide them with potable water on a bulk basis and they would have their own distribution system to do it.

One of the things we emphasize is that for any type of federal funding a mutual regional cooperative effort has to be made and that is one of the initiatives that I think we can facilitate with these parties.

COMMISSIONER TRUJILLO: Very good. Because it seems that we're duplicating the same effort in the area and for federal funding purposes, it would be better to represent a regional partnership in the community.

MR. ROYBAL: Well, to respond to the regional issue, we did kind of put forward that we do want to work with them from a County perspective. One of the issues that will come up, it's on the agenda, is federal funding to assist small water companies or small water systems within the County. And this is one of the areas that we think we can work with in these areas to be able to facilitate their water system expansions.

CHAIRMAN DURAN: Thank you, Gary.

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had a couple of items I wanted to bring forward. Stick around.

MR. ROYBAL: Excuse me, I just got a note here. In reference to the State Engineer, he will be attending this evening with another one of his staff persons.

CHAIRMAN DURAN: Great. Thank you very much.

COMMISSIONER SULLIVAN: Will he be making a presentation, or just listening?

CHAIRMAN DURAN: We don't have time for a presentation.

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, no, he won't be making a presentation but he will be present for the presentation.

COMMISSIONER SULLIVAN: A couple of issues. One, I just wanted to remind folks that Eldorado Water and Sanitation District is having an election, I believe starting the end of this week regarding the purchase of the Eldorado Water Company. So it's an important issue for those who are living in that area. I want to encourage them to pick up the ballots from the Water and Sanitation District and vote for or against that issue as they see fit.

Secondly, we had talked, Gary, about a water issues forum in the Community College District at the last meeting and prior to that. How's that coming along?

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, we're going to schedule that meeting for August 6 to give people adequate notice. We did try and post an ad in the *New Mexican* and *Journal* to try and get it done this Thursday. However, it just came out in the *Journal*. And I did talk to Patty Burkes from the Valle Lindo Subdivision and she wasn't aware of it and we communicated as to how best to notify people and with discussions with her, we decided that maybe moving it for a month and giving everybody adequate notice we'd be able to get more public involvement in this meeting.

Additionally, two of our staff people, our County Hydrologist and Doug Sayre, our water and sewer operations director are out on vacation for part of this month. So I think it would be very helpful to everybody if they were present at this public forum.

COMMISSIONER SULLIVAN: I got a call from the Neighborhood Network organization and they offered their services and I told them to contact you to help in the organization of it and getting the word out and structuring the issues or however you would like them to help out in terms of getting more participation in the program. So you should be getting a call from them probably some time this week.

MR. ROYBAL: I appreciate that, Commissioner.

COMMISSIONER SULLIVAN: The other item that I had was on the—we talked before about the enforcement of water use issues where we allocate a certain amount of water rights, a quarter acre-foot and so forth and they submit water meter readings at a particular time each year. Is that going to be covered in the water conservation ordinance that we don't have yet?

KATHERINE YUHAS (County Hydrologist): Mr. Chairman, Commissioner

Sullivan, yes, that's part of the water conservation ordinance.

COMMISSIONER SULLIVAN: Okay, just to get a handle as to what we do if they don't meet these criteria.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, that's all spelled out within the water conservation ordinance. Getting the program in place and actually following through on all those things may take a bit, but that's where it is.

COMMISSIONER SULLIVAN: All right. It was on my checklist of things to do. I wasn't sure if it was a part of that ordinance or not. Another item that we discussed, Mr. Chairman, several months ago was an electronic newsletter to go out to the public about County events. I believe that that was going to go forward. Estevan, have we made any progress on that?

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, we have. I know that we've put out at least one such newsletter and I think that Virginia—no, she's indicating we've put out two such newsletters to date. We're trying to make it into a more regular type feature that we'll just start putting out on a regular basis. That's what we're working towards.

COMMISSIONER SULLIVAN: Okay. Would you put me on the distribution list so I can know what's going on in the County?

MR. LOPEZ: Mr. Chairman, I'll ask to make sure that all of the Commissioners are on the distribution list.

COMMISSIONER SULLIVAN: Maybe the others might want to be on it too.

MR. LOPEZ: Right.

COMMISSIONER SULLIVAN: And my last item was, at our June 5th meeting, Commissioner Gonzales brought forth an issue regarding doing an audit or review of the bond funds, the public funds that were used in the Rancho Viejo project to determine whether they in fact create a more affordable housing or whether it's a wash. There's a philosophical issue about whether those bond, capital improvement district funds do or don't work in favor of the public. So I wanted to follow up on that and see what progress we've made on that.

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, I'll let Roman address it.

ROMAN ABEYTA (Land Use Administrator): Mr. Chairman, Commissioner Sullivan, it's my understanding that there is a meeting today in fact, with Katherine Miller, Bob Taunton and Karl Sommer to discuss this item. So we're moving in that direction to coordinate that.

COMMISSIONER SULLIVAN: Will there be a request for proposals, or some type of solicitation to hire someone to do this?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I'll let Katherine address that.

KATHERINE MILLER (Finance Director): Mr. Chairman, Commissioner Sullivan, one of the issues with this is actually one we have not budgeted any money for an independent auditor within the County to go out and audit Rancho Viejo's books. The other issue is being able to determine—all we can do is look at if the County had not approved this type of financing, what it would have cost Rancho Viejo to do it otherwise and how they would

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have built that into the cost of the home. Actually, tracking the dollars is almost an impossible issue and no auditor will give a definitive answer as to where that dollar went because their budget is not established that way, saying, okay, if we finance this ourselves it's going to cost this amount and if we finance it this way the savings is going to be spent here.

It's also driven by market value of the homes and where the market drives the value of those homes, it's hard to say, is that a dollar saved from financing differences or is that a dollar acquired because the price of homes has gone up. Auditors won't give those kinds of opinions. They can give you an idea as to whether somebody's books are correct and state it as an actual representation of it, but they're not going to give an independent opinion as to whether somebody's making a profit off of our financing.

So whether we're going to get the actual dollar followed through the entire process and where it ended up is going to be almost impossible to determine even with an audit. Rancho Viejo has indicated to me that they're willing to show how they structure the pricing of their homes and what I'd recommend that we do is look at what does it cost for financing it through traditional means for commercial enterprise versus doing it through the tax exempt financing. And let's just say on a project like the Rancho Viejo Boulevard and the water or wastewater that it financed. Let's just say that saved \$500,000. To take a look at what that difference in what that financing cost is and then, have the Commission decide is it a way to have that developer put the money, some of those funds that would be saved, into that development for something specific so that you could see a tangible benefit of doing tax-exempt financing within a development.

Otherwise, it's really a matter of looking at that development and saying can I see that it's a better development because it had tax-exempt financing, better value for money? It's very, very difficult to track a dollar that's not actually ever received for that specific purpose.

COMMISSIONER SULLIVAN: I can see that it's certainly not as easy as a normal audit where we, as you say just track the pennies through the process. It sounds like where you're going is the right path. The response generally from the developers is well, any savings just goes to reduce the cost of the house, so you pay me now or you pay me later. And that's where I have a problem coming on board because I feel you sell the houses for the most you can get for them in the market. So I'm not convinced that the savings do go there. Maybe they do. So I think what you're getting at is going in the right direction. It may have to be combined with a market overview to look at not the same type housing, because that doesn't exist, but similar type housing or as you say come up with some recommendations as to what that difference in financing, where it can be seen in the actual development.

There's been a lot of work in Arizona on tax-exempt financing and they're fairly sophisticated on it there so maybe we don't need an auditor. Maybe we need someone that's specifically experienced in tax-exempt financing. I'm not sure. But it seemed like a good idea that Commissioner Gonzales had and I just wanted to be sure we're moving forward. I'd like to be a part of that as you develop a scope of work. I'd like to see what your ideas are on that scope and have an opportunity to comment on that.

MS. MILLER: Okay, Mr. Chairman, Commissioner Sullivan, I've got a

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meeting with them this afternoon around 4:30 to start building the data for how we'd move forward with it and hopefully we can start to structure something that would be of benefit to look at. What is the advantage of doing tax-exempt financing for that area or any other development.

COMMISSIONER SULLIVAN: I think we're looking at it really for any development. We're not focusing just on one developer. We're saying is this a good expenditure of public funds. And I think there are entities that have done some work on that. League of Women Voters comes to mind as one who has done a study of that in other states. It may or may not be applicable to New Mexico or to Santa Fe but I'd just like to be kept in the loop as that moves forward because I think it's an important issue.

MS. MILLER: Okay.

COMMISSIONER SULLIVAN: That's all the questions or comments I had, Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Chairman, one last thought. I viewed the last EZA meeting on television and the voice part of it was very bad. A lot of the Councilors and Commissioners were not speaking into the mikes. A lot of times the witness was not. I think we really have to be more careful about that if we're going to really communicate with members of the public, and I guess that would be your job to make sure everybody talks into the mike.

CHAIRMAN DURAN: Okay.

MR. LOPEZ: Mr. Chairman, just a couple other housekeeping matters if I may. Gary Roybal, our Utilities Director just informed me that he's supposed to meet the people that will making the presentation this afternoon, so he asked if his item under Utilities Department might be moved up to right after the Consent Agenda or the Consent Calendar. I would ask for that consideration.

CHAIRMAN DURAN: Any problem with that?

COMMISSIONER CAMPOS: No. No problem.

CHAIRMAN DURAN: Okay. We'll do that.

VIII. Consent Calendar

- A. Request adoption of findings of fact and conclusions of law for the following land use cases:**
- 1. EZ Case #MP 01-4261. Tesuque Creek Subdivision (approved)**
 - 2. EZ Case #S 02-4061. Heartstone Subdivision (approved)**
 - 3. EZ Case #DL 02-4120. John R. Romero Family Transfer (approved)**

CHAIRMAN DURAN: Is there any Commissioner that wants to isolate any of these three for further discussion?

COMMISSIONER CAMPOS: Mr. Chairman, I just would like a little bit of

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information from staff concerning the family transfer case. There's not much—I don't think there was a lot of information in the packet.

CHAIRMAN DURAN: Let's isolate that one. The Chair will entertain a motion to approve VII. A. 1 and 2.

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

CHAIRMAN DURAN: Is there a second?

COMMISSIONER SULLIVAN: Second.

COMMISSIONER CAMPOS: Mr. Chairman, I have a question. Is this the case that was up in the mountains? Is this where we had discussed—

CHAIRMAN DURAN: Tesuque Creek, yes.

COMMISSIONER CAMPOS: Having some language concerning the Wildland/Urban Interface Ordinance and have it state that there was a heavy fuel load out there and that this should be stated with conspicuous lettering? Is this the same case?

CHAIRMAN DURAN: Right. It's the same case.

COMMISSIONER CAMPOS: Mr. Kopelman was going to either meet with the applicant or get back to us before we moved forward on this. I'd like some clarification on that issue.

MR. ABEYTA: Mr. Chairman, Commissioner Campos, we went back through the minutes of the meeting when the case was approved and based on the reading of those minutes we amended the condition that you had a concern with to add more language, which was condition 13, and that is consistent with the discussion and the approval that the Board gave. The condition or the amendment we made was that the disclosure statement must include a statement regarding concerns of high fire risk, due to the high fuel load which may result in the possibility of additional expenses by the landowner for building materials and to provide defensible space. This disclosure must also note that the landowners will be required to comply with the Wildland/Urban Interface Code. At that meeting, the applicant agreed to that, the minutes showed, so we did amend it the way you had requested or suggested last month, because the minutes reflect that.

The Legal Department reviewed these findings of fact and we're okay with that.

COMMISSIONER CAMPOS: As far as the lettering being conspicuous, is that okay also? Is that part of your condition?

MR. ABEYTA: We don't have that as part of the—we don't have that language in there. We just talk about the disclosure statement must include—

COMMISSIONER CAMPOS: You're saying that that would not be consistent with the decision.

MR. ABEYTA: That would not be inconsistent with the decision. That follows the decision.

COMMISSIONER CAMPOS: Okay.

CHAIRMAN DURAN: Any further discussion?

The motion to approve VII. A. 1 and 2 passed by unanimous [5-0] voice vote.

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Case? COMMISSIONER CAMPOS: On number 3, what was the vote on the Romero

CHAIRMAN DURAN: Wasn't it unanimous?
COMMISSIONER CAMPOS: I don't remember. I don't think so but I don't
remember.

COMMISSIONER SULLIVAN: No, it wasn't unanimous.

COMMISSIONER CAMPOS: What was the vote on it?

COMMISSIONER SULLIVAN: I don't know, but I voted against it.

CHAIRMAN DURAN: Okay, well what's the point?

MR. ABEYTA: Mr. Chairman, we'd have to review the minutes to see what
the vote was. The case was approved but—

COMMISSIONER TRUJILLO: It was 3-2 for.

COMMISSIONER CAMPOS: Mr. Chairman, I would just for the record make
my objection as to no jurisdiction by this body to approve this particular variance since there is
no ordinance authority to do so.

CHAIRMAN DURAN: The record is noted. Is there a motion to approve item
VII. A. 3?

COMMISSIONER TRUJILLO: So moved.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Any further discussion?

**The motion to approve item VIII. A. 3 passed by majority [34-1] voice vote, with
Commissioner Campos voting against.**

**VIII. B. Request approval of amendment #3 to professional services agreement
#22-0023-CHDD with Las Cumbres Learning Services, Inc., for the
delivery of the Community Infant program to indigent Santa Fe County
residents to establish the budget of \$133,000 for fiscal year 2003**

CHAIRMAN DURAN: Are there any questions of staff?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Chairman, the question I had was the
only thing in our packet was a two-page memorandum indicating that this would be an
expenditure of \$133,000. What are we going to use the money for?

EDY POWERS: It's being used, Mr. Chairman and Commissioner Sullivan,
this is the funding provided to the Community Infant Project, which is a program of the
Maternal and Child Health Council.

COMMISSIONER SULLIVAN: Do we have a set of goals or do we have a

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scope or do have some deliverables, or do we have a number of individuals that are going to be contacted each year? Is there something a little bit more definitive than what we have here?

MS. POWERS: It's an amendment.

ROBERT ANAYA: Mr. Chairman, Commissioner Sullivan, this is an ongoing program that the Commission has historically funded. At the last Commission meeting, the Commission actually approved the amendment to keep the program going which had the entire listing and scope. The only thing we're requesting here today is inclusion of the money that goes along with the program. But we can provide you with the entire existing contract that details out what the program does specifically. Edy can go through that now for you but the amendment is being brought forward because we didn't have the dollar amount in the last amendment you approved.

COMMISSIONER SULLIVAN: Are there some year to year deliverables? In other words, in the last two years, can you tell me what, in terms of specific numbers or goals that you've achieved and where we're going this year on the third year of this?

MS. POWERS: Mr. Chairman and Commissioner Sullivan, this program has been serving a consistent number of 40 families per year for the last three years and because the funding is staying flat this year, there will be no further increase in the number of families that this program can serve. I think we've been in touch with the Commission at various times about the work that this program has been doing. It's been reported several times. The goal is to improve the relationship between the infant and the parents or caregivers in order to build a strong emotional attachment and bonding for the future life of that child. That's the goal of this program.

COMMISSIONER SULLIVAN: I understand, and it's a great program. Do we have each year a different 40 clients or are they the same ones or do they roll over from year to year?

MS. POWERS: Mr. Chairman, Commissioner Sullivan, it depends. Some of the families have been with the program for two to three years. Then there are other families that come on, use the services and then are discharged or decide to leave. So it varies considerably. Sometimes they have a waiting list of up to 14 families. So they've had to turn some families away.

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

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

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Any further discussion?

The motion to approve amendment #3 to professional services agreement #22-0023 passed by unanimous [5-0] voice vote.

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Garcia Group passed by unanimous [5-0] voice vote.

VIII. D. Request ratification of change order #1 for the Santa Fe County Pueblo Garcia/Valle Vista Subdivisions water system extension improvement project, construction contract #22-0123-UT for \$19,927.16

CHAIRMAN DURAN: Gary, are you going to give us the two-minute drill?

MR. ROYBAL: The Utility Department is proposing a ratification of a change order for an existing contract to upgrade, to extend and upgrade the Valle Vista system. What happened is in our extension and expansion of the system, we found that the system wasn't appropriately looped and needed valves. What was happening is when we were shutting the system down to put meters in or do some repairs, we had to shut the whole system down so what we were doing is installing other equipment and facilities so that when we do our meter change out or any types of repairs we don't shut the entire system down; we just shut down portions of it at a time so people will continue to get service except for those where the repair or the meter installation is taking place.

CHAIRMAN DURAN: Any questions of Gary?

COMMISSIONER SULLIVAN: Just a question for Estevan or Gary. What's our procedure on approval of change orders? Is there a dollar amount that can be approved in the field and another dollar amount that comes back to the Commission?

MR. ROYBAL: I'll defer to the County Manager.

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, Katherine I think would probably be best suited to respond to that.

MS. MILLER: Mr. Chairman, Commissioner Sullivan, we're actually in the process of revising that. The way it is right now, the Manager on any contract that's been approved by the Commission, the Manager has authority up to \$25,000, but all of those are brought back to the Commission for ratification to restore his authority back to zero. So this has actually already been authorized on paper and this is just to ratify that and restore Estevan's authority to be able to approve a future amendment or change order on that project if necessary.

COMMISSIONER SULLIVAN: So what would happen if the Commission determined, for whatever reason and I don't think—it's certainly not the case here but in some other case, that they disagreed with that and it wasn't approved. What would happen then?

MS. MILLER: Mr. Chairman, Commissioner Sullivan, the authority has been given to Estevan to do up to \$25,000 so that he would have. But say you didn't want to approve this, then he would not be able to do the next one. If there's another change order, that would have to come back to the Commission for approval. It could not be done in the field or administratively, because he will have already used up his authority up to \$20,000. He'd have maybe \$5,000 more on that particular contract and that would be it.

If it exceeds \$25,000, then those have to come to the Commission for approval before authorization to the contractor to move forward or they risk not being paid. And they are told

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that. When we do post-award meetings with them, they're told who's authorized, the dollar limits. They're given letters and that if they do any changes that are different than the contract that they risk not being paid for those changes and incurring those costs if they're not ratified or approved by the Board.

COMMISSIONER SULLIVAN: So it's \$25,000 per contract?

MS. MILLER: Yes. Per contract, but once we bring it to the Board, the resolution states that restores the Manager's authority to then do the next one. If you did not ratify that one in that way he would not have the authority then to do another one on this particular contract. It would have to come to you first.

COMMISSIONER SULLIVAN: Okay. And did you say you're amending that now or making changes to that?

MS. MILLER: Yes. What we're trying to do, staff is coming up with some different levels and possibly a percentage. We want to bring that to the Board for approval but we had a couple meetings on some other ways because that's a very limited resolution and authority and it's on contracts up to \$10,000, and then amendments to contractors up to \$25,000 if the contract has been approved by the Board. But there's not a whole lot of flexibility in that policy.

COMMISSIONER SULLIVAN: So you'll be coming back with something on that?

MS. MILLER: Yes.

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman.

CHAIRMAN DURAN: Any other questions?

COMMISSIONER CAMPOS: A related question for Mr. Roybal if it's okay with you. Mr. Roybal, as far as water conservation, the ordinance we're looking at, are we going to be requiring water efficient appliances, toilets, showers, things like that?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, yes. In fact I think that's taking place right now on all new permits.

COMMISSIONER CAMPOS: So we'll have a plan that's similar to the City's in that respect?

MS. YUHAS: Mr. Chairman, Commissioner Campos, yes. Our ordinance is based a great deal on theirs, and in terms of the requirements for retrofitting for plumbing and things like that, it is the same. And it would require a retrofit, I think it's 2005 for everything that's non-residential. And all residential when they're building now, has to comply with low-flow fixtures.

COMMISSIONER CAMPOS: Thank you.

CHAIRMAN DURAN: Any other questions of staff?

COMMISSIONER SULLIVAN: Move for approval.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion to approve, with a second. Any further discussion?

MR. ROYBAL: Any application for a permit to use federal lands is under the NEPA process, yes.

CHAIRMAN DURAN: And that would include the granting of any easements? Request for a grant of easement?

MR. ROYBAL: Yes, Mr. Chairman.

CHAIRMAN DURAN: Okay. Like for infrastructure installation.

MR. ROYBAL: Mr. Chairman, yes. Any type of permit for rights-of-way to use their facilities would require some type of a NEPA, either an environmental impact statement, which is an extensive environmental study, or an environmental assessment, which is not as extensive as an environmental impact statement. And it's the environmental impact statement that the NEPA process in the Buckman project is, that's what's being undertaken right now.

CHAIRMAN DURAN: If we were to work something out, if pipes, like from the San Ildefonso project were to be installed on BLM land, would it require the same kind of NEPA process?

MR. ROYBAL: Mr. Chairman, I can't give you that answer with any certainty. It may very well require an environmental impact statement or environmental assessment, but it would require some type of a NEPA process.

CHAIRMAN DURAN: How long do you think the NEPA process is going to take on the Buckman?

MR. ROYBAL: Mr. Chairman, we are hoping that it would take 18 months and not much longer than that. The contractor's already working on the NEPA process. They've done their field inspection. They're doing their surveys and the process is going forward as we speak.

CHAIRMAN DURAN: Is there any way of speeding that process up? Not in terms of the work that needs to be done but once the work has been completed, is there any way of having the review process occur in a timely fashion?

MR. ROYBAL: Mr. Chairman, I'm not aware of any process that would facilitate it any quicker than what's already taking place. Once the study has been done, then it goes for a decision by BLM and the Forest Service. And that process is internal to them. They review all the documents and all the studies and they make their decision.

CHAIRMAN DURAN: Okay. Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman, the NEPA process, whether an EA or EIS, requires a public input protocol. Part of the process, right?

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

COMMISSIONER TRUJILLO: And has that happened yet?

MR. ROYBAL: Mr. Chairman, Commissioner Trujillo, they are scheduling the public hearings and I believe they've already scheduled them. They will be held in September.

COMMISSIONER TRUJILLO: In September. And where will they be held at? Do you know? Do we know?

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, there are several

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opportunities for public input during the NEPA process. But these first meetings for the scoping of the EIS will be conducted here in Santa Fe, probably at the Sweeney Center is what people are talking about right now, and they will be held two different times, probably about a week apart in the evenings in early September.

CHAIRMAN DURAN: Any other questions of staff? What's the pleasure of the Board? There was a motion and a second. Is that correct?

The motion to approve amendment #1 to the agreement with the BLM passed by unanimous [4-0] voice vote. [Commissioner Gonzales was not present for this action.]

X. C. Utilities Department

- 1. Request direction on the disbursement of State and Tribal Assistance Grants (STAG) in the amount of \$291,000 to Santa Fe County to assist in the development of small community water systems [Memo attached as Exhibit 1]**

MR. ROYBAL: Thank you, Mr. Chairman. The County of Santa Fe applied for a grant from the State and Tribal Assistance Grant program. The County was awarded a \$300,000 grant to assist small community water systems within the county. Of that amount, approximately three percent or \$9,000 of the \$300,000 will be retained by the Environmental Protection Agency for administration of this fund. What staff—this is the first type of grant that the County has received to assist small community water systems. And we're here today to seek Commission direction on how to allocate or disperse this fund or this money that's been earmarked for the County of Santa Fe for small community water systems.

What I bring forward today is a recommendation to the Commission for its consideration to look at two small community water systems that County staff has been working with in the northern part of the county. One of them is the Cuatro Villas Mutual Domestic Water Association, and the other is the Cundiyo Water Association. These two mutual domestics, County staff has been working with them on their water facilities and the water issues that face these communities and what we would like to do is use these two communities as a pilot project to develop a process and procedure in which we could work with other communities and be able to facilitate any type of federal funding and the disbursement of this funding for small community water systems in Santa Fe County.

It's a relatively small amount. It's \$291,000. It does require a 45 percent matching fund, either local or in-kind to be able to use this STAG grant. So I'm here today in conjunction with the Land Use staff and the Project and Facilities staff. We've been working with these communities to seek direction on how to disburse these funds, or at least work to allocate these funds to small community water systems.

COMMISSIONER TRUJILLO: Mr. Chairman, I know that Las Cuatro Villas has been working diligently and conscientiously for the last three or four years in an effort to

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provide potable water to the four communities of Arroyo Seco, La Puebla, Cuarteles and Sombrillo. They've had a hard time attracting seed monies, federal funding to give impetus to this process. I think that the monies would be applied in the right direction if Las Cuatro Villas is earmarked for some of these monies and also Cundiyo. And I think it's a worthwhile expenditure of monies and I thank you.

COMMISSIONER GONZALES: Mr. Chairman, I would just say that in addition to this, this highlights, as Gary indicated, the need to try and access more federal monies for the number of independent county water systems. There's 50+ that are all in the same need that we're seeing here. I would just advocate for federal representation. It's important. A lobbyist. Of which you guys can deal with. Anyway, I think that with 50 independent systems all in need of some type of investment, we can't do it on our own from the County level.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think, first of all, let me compliment the staff on having received the grant. Good job. That's just the kind of seed money that we need to have to provide some of these communities, with, as Commissioner Trujillo said, the impetus to get going. Let me make one specific suggestion. Projects throughout the county that were financed last year with House Bill 160 funds, through the New Mexico Finance Authority, many are struggling and although over \$40 million was allocated to these communities, they were placed under an administrative review process which, in the case of some of them, is coming out to indicate either a 50 or a 25 percent matching requirement by these communities. And they can't afford the match. So that the projects are stagnating. The projects that are within Santa Fe County on that NMFA list could be looked at. I think we could get some of them moving, because actually what happens in many cases, if for example a community has a 25 percent match to make, if these funds can make that match, it results in a four-fold increase in money, because the money that's allocated for them under House Bill 160 is sitting there doing nothing. It has their name on it.

And if, for example, a match of \$100,000 were required or made, they would then get \$300,000 from the House Bill 160 funds that are just sitting there. So that would be really good leveraging of these funds. And I mention that because there's one in particular that I know. We've done some pro bono work for the Cundiyo project and as a result, it would probably be appropriate for me to recuse myself from the vote. We haven't—we've done it to help them scope out their project and provide some estimates so that they can receive some of this House Bill 160 funding. We're not under contract with them. We've done it as a community service, but nonetheless, I would rather just be safe and recuse myself from the vote since you've mentioned Cundiyo here.

But aside from Cundiyo, there are others in Santa Fe County that have that potential for funding and this sounds like a good way to do it.

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, if I could comment on that. I think this is exactly the direction we want to go but what we want to do is set up the

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process and procedure to be able to process these types of applications and work with the communities ahead of time so that we can, when we apply for these grants, that we know what the total requirement is and then be able to work with them and do this, because there is a 45 percent matching fund and it comes from state funding, that's great. I believe it does leverage, it leverages it both ways, both with the federal and the state. However, we don't have any process or procedure in place to be able to do this and this is why we're looking at these two community systems to develop the process and procedure for future funding in the area.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: A couple of questions. Mr. Roybal, the 45 percent match from the County, have you talked to Mr. Lopez about where this money is coming from?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, it's 45 percent local match. It could be state, it could be County, it could be in-kind services or a combination of the three. For instance, the Cuatro Villas has received state funding of somewhere in the area of \$65,000. If we could use that, we could use that to leverage it as part of the 45 percent matching funds. There's in-kind services that have been provided by County staff in working with the planning and the development of this system. That could also be used as going towards the 45 percent local match. So there's different options out there to be able to meet that 45 percent requirement.

COMMISSIONER CAMPOS: Okay. Is the County looking at providing any of that money itself? Have you talked to Mr. Lopez about that?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, I haven't talked or requested any County funding for this, other than I know we have provided a lot of in-kind staff time to this project.

COMMISSIONER CAMPOS: You've listed two projects. I imagine there are many projects that need money. I would feel more comfortable if you could give us all the projects that need money and then make a recommendation as opposed to only giving a recommendation as to who you believe are the appropriate recipients. Are there other folks out there that might need this money?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, right off hand, the greater Chimayo Mutual Domestic needs a million dollars and I'm sure there are other small community water systems out there that need funding to either upgrade or enhance their water systems. What we looked at were just two of them that County staff had been working with and were familiar with and we're in the process of working with them to do this and the reason we bring just these two forward is because what we want to do is develop the program itself internally within the County staff so that we can proceed forward and address other small community water systems in the future and be able to assist them in their funding of projects.

COMMISSIONER CAMPOS: Well, in the future, my suggestion is that you would bring all the names of different associations that need this money, otherwise we really aren't exercising any discretion here at the BCC. We're just, okay, Gary says two. Let's go for

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substitute member and I guess that would be Commissioner Gonzales in the same motion.

COMMISSIONER GONZALES: Okay.

CHAIRMAN DURAN: Relative to the substitute member, we may want to rethink that. I know that there's some City Councilors that are continuing to have a problem with our ability to substitute Commissioners on appointed committees. We don't need to talk about it now but at some point we should probably bring it forward for further discussion.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: As a part of that discussion, I had a discussion about that with Mr. Kopelman and he indicated to me that it was his understanding that a Class A county was required to have a substitute. Now that was when he was talking about the EZA. I don't know—the RPA is a separate thing. So being a Class A county now, we may be required to have an EZA substitute; I don't know that that applies to the RPA. I don't know if Legal's got any further input on that.

GERALD GONZALES (Assistant County Attorney): Mr. Chairman, Commissioner Sullivan, that's correct. Once we step into Class A status, statutorily we're required to have an alternate or substitute.

CHAIRMAN DURAN: On all committees or just the EZA?

MR. GONZALES: The EZA.

CHAIRMAN DURAN: Okay. That's good to know. Then we're in compliance.

COMMISSIONER CAMPOS: We're ahead of the game.

CHAIRMAN DURAN: Good. Visionaries.

The motion to appoint Commissioner Trujillo to the RPA, with Commissioner Gonzales as alternate passed by unanimous [5-0] voice vote.

CHAIRMAN DURAN: Welcome.

IX. A. 2. Appointments to the Extraterritorial Zoning Authority

CHAIRMAN DURAN: Is there someone that is resigning?

COMMISSIONER GONZALES: Actually, that would be me. I talked to Commissioner Campos about this a little bit and the County Manager and again, just due to a heavy travel commitment I'm not serving this body as well as it should be served with a continuous presence so I'd like to tender my resignation on the EZA.

COMMISSIONER SULLIVAN: Mr. Chairman, move to accept the resignation with regret and appoint Commissioner Paul Campos to the EZA.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: So we're accepting the resignation and appointing Commissioner Campos in the same motion. Okay.

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COMMISSIONER CAMPOS: And we need to declare a substitute member.

COMMISSIONER SULLIVAN: That's right.

COMMISSIONER TRUJILLO: I guess I'm the only one that's left.

COMMISSIONER SULLIVAN: You're it, guy. And adding as a substitute
Commissioner Marcos Trujillo.

CHAIRMAN DURAN: Any further discussion?

**The motion to appoint Commissioner Campos to the EZA with Commissioner
Trujillo as substitute passed by unanimous [5-0] voice vote.**

MR. LOPEZ: Mr. Chairman, question. Our Land Use Administrator just asked
for clarification as to whether these appointments are effective immediately. Is that correct, or
when would they be effective?

COMMISSIONER CAMPOS: We need to clarify that. I would move that move
appointments be effective immediately.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Okay. So immediate is part of the motion?

COMMISSIONER SULLIVAN: No there's another motion. I guess we can
vote on it.

**The motion to make the appointments effective immediately passed by unanimous
[5-0] voice vote.**

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just one thing. I do want to express the
community's appreciation to Commissioner Gonzales for the work that he has done and all the
Commission prior to the two of us in getting the RPA moving, and of course the time he spent
on the EZA. A lot of visionary concepts embedded in that RPA agreement that we're struggling
with and taking advantage of. As the new chair of the RPA it's a challenge, but I do want to
express my appreciation for that time and vision in that. Thank you very much.

COMMISSIONER GONZALES: Thank you very much.

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beginning of life is really, really important and if children have a healthy start then we can look forward to more competent and emotionally healthy individuals in the future.

I don't know that we—I'm kind of confused about what we could actually be doing about this particular study because it is such a medical activity. The doctors are the ones that are prescribing and they're responding now to the information that they're getting, so I'm not quite sure what our connection would be with that right now.

COMMISSIONER SULLIVAN: I guess maybe my question just to staff would be, maybe at the next meeting, bring us up to date on what kind of services we're providing for that group of women, or what should we be providing for that group of women. This study just brought that issue forward to me. I don't mean that we necessarily can replace family doctors, obviously, who prescribe that medication and who advise their clients on that, but it just seemed to be that there may be a gap there that we should be filling or helping with.

MS. POWERS: Commissioner Sullivan, we'll try to bring some information back to you about that. Any other questions?

MR. ANAYA: Mr. Chairman, if I could just briefly elaborate on that. I think that one of the things that the Health Planning Commission has been able to do over the last couple of years is really begin to focus in on what are the weak areas in our community relative to health care. And we could go back to the Health Planning Commission with your specific request but I think the access issue, access to health care and access to preventative health care from youth on up to our seniors, is something that the Health Planning Commission has incorporated within the document, the health plan that we've got. So I think we can go back and make a specific request around the study, but that in fact, the Commission and the Health Planning Commission are heading in the right direction to enter into better access for health care and preventive health care, which is something that's been lacking in the community.

COMMISSIONER SULLIVAN: Well, we may be doing everything we can do, and of course, the Indigent Fund and those funds are available for any age group. I understand that. But if you feel there's something that we may need to be participating in here I'd certainly like to hear about it. We had a motion and a second—

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Quick question for Mr. Anaya. As far as the numbers you're suggesting at this point, are they pretty much as they were last year? For example, Ms. Powers, you're recommending an \$80,000 contract?

MR. ANAYA: Mr. Chairman, if you'll look at the back of the contract under Exhibit A, there's a specific breakdown of where the revenue goes and you'll see there is no increase to Ms. Powers'—

COMMISSIONER CAMPOS: I don't have, except maybe two pages, well, maybe further down. Okay, I get it.

MR. ANAYA: It's right at the end of the contract.

COMMISSIONER CAMPOS: Okay, so it's about the same as last year?

MR. ANAYA: Mr. Chairman, Commissioner Campos, yes, relative to Ms.

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Powers. I don't recall if we had an adjustment to the other items.

MS. POWERS: Commissioner Campos, we have added an evaluation component to the funding. The breastfeeding outreach has also been added and otherwise it's the expenses of the program and salaries.

COMMISSIONER CAMPOS: The other programs are pretty much the same? The Community College, the high school and the La Familia Medical Center?

MS. POWERS: The Community College is reduced somewhat because they are not hiring a person to administer this project. So we are simply providing the funding for the provider services.

COMMISSIONER CAMPOS: La Familia? About the same?

MS. POWERS: They are the same, as are the Teen Health Center.

COMMISSIONER CAMPOS: Okay. Thank you.

COMMISSIONER SULLIVAN: Other questions? I think we had a motion from Commissioner Trujillo and we had a second.

The motion to accept and award a professional services agreement for project coordination passed by unanimous [3-0] voice vote. [Chairman Duran and Commissioner Gonzales were not present for this action.]

- X. A. 2. Request authorization to accept and award a professional services agreement to the highest rated offeror for RFP #22-61 for Maternal and Child Health prenatal Promotora outreach, health education, and service coordination for child deliveries**

MR. ANAYA: Mr. Chairman, Commissioners, this is the Promotora health services through La Familia Medical Center and I would defer any questions on items 2, 3, and 4 to Ms. Powers as she works with them on a daily basis.

COMMISSIONER SULLIVAN: Ms. Powers, do you want to give us a quick thumbnail sketch on item 2, please.

MS. POWERS: Commissioner Sullivan, this has been an ongoing program of the Maternal and Child Health Council with La Familia for a number of years. It's Promotora outreach, which is a health worker outreach to members of the community who are pregnant and health education is provided to these individuals as well.

COMMISSIONER SULLIVAN: And this went out for a request for proposals, I see, RFP #22-61, and was La Familia the only respondent?

MS. POWERS: That's right. It was.

COMMISSIONER SULLIVAN: Are there any other questions?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

COMMISSIONER SULLIVAN: There's a motion and a second.

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The motion to approve the agreement with La Familia passed by unanimous [3-0] voice vote. [Chairman Duran and Commissioner Gonzales were not present for this action.]

- X. A. 3. Request authorization to accept and award a professional services agreement to the highest rated offeror of RFP #22-61 for Maternal and Child Health adolescent confidential reproductive and mental health services**

MS. POWERS: Commissioner Sullivan, this contract has been provided again to the Teen Health Center for a number of years. It's a new contract again this year because of new funding from the Department of Health. This program provides confidential reproductive health and mental health services to students and Santa Fe High and Capital High.

COMMISSIONER SULLIVAN: Again, this was also a request for proposals. Was there just one?

MS. POWERS: There was one respondent.

COMMISSIONER TRUJILLO: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Why is it limited to Capital High and Santa Fe High?

MS. POWERS: That's the only school district that has that program available to their students in the county.

COMMISSIONER TRUJILLO: Is there any way that we could get it available in other school districts?

MS. POWERS: If the school districts are willing to allow that on their campus, it would be possible to do that.

COMMISSIONER TRUJILLO: Have we communicated with other school districts to implement something like this in those school districts?

MS. POWERS: We've communicated with Pojoaque School District and that's what the health coordination contract was about to coordinate health education in that school district. I have not seen any indication that they would be interested in this at this time.

COMMISSIONER TRUJILLO: Thank you.

COMMISSIONER SULLIVAN: Further questions?

COMMISSIONER TRUJILLO: Move for approval

COMMISSIONER CAMPOS: Second.

COMMISSIONER SULLIVAN: Motion for approval from Commissioner Trujillo and second from Commissioner Campos.

The motion to award a contract to the Teen Health Center passed by unanimous [3-0] voice vote. [Chairman Duran and Commissioner Gonzales were not present for this

action.]

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X. A. 4. Request authorization to accept and award a professional services agreement to the highest rated offeror for RFP #22-61 for Maternal and Child Health temporary child care assistance services

MS. POWERS: Commissioner Sullivan and Commissioners, this contract awards funding to the Community College, Santa Fe Community College to provide emergency, temporary child care assistance to families in crisis. Families that are in crisis that need help with paying for child care can apply to this program and are assisted in finding child care situations and the child care costs being subsidized.

COMMISSIONER SULLIVAN: Questions? All of these are funded how? Tell me again.

MS. POWERS: The Department of Health—actually it goes back to the County Maternal and Child Health Plan Act that was passed by the state legislature in 1991. And since that time there has been a council in this county and that council has been responsible for preparing a Maternal and Child Health plan that it provides to the County as well as to the state. That plan is what is used to build a proposal that goes to the state and the state then makes the award to the County to fund the priorities that have been identified in the plan.

COMMISSIONER SULLIVAN: Thanks.

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

COMMISSIONER SULLIVAN: Motion from Commissioner Trujillo, second from Commissioner Campos. Further discussion?

The motion to approve the temporary child care assistance program passed by unanimous [3-0] voice vote. [Chairman Duran and Commissioner Gonzales were not present for this action.]

COMMISSIONER SULLIVAN: Thank you, Ms. Powers.

MS. POWERS: Thank you very much.

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X. B. Land Use Department

2. **Request authorization to publish title and general summary of an ordinance amendment to Article XVI (transfer of development rights) of the Santa Fe County Code (Ordinance 1996-10), relating to community water and sewer requirements, additional sending and receiving areas, and other amendments as necessary**

JACK KOLKMEYER (Planning Director): Thank you, Commissioner Sullivan. Good afternoon, Commissioners. As you may recall, this item was brought forward several Commission meetings ago, and it was decided to table this to a further time and we wanted to bring this request forward again, reminding you that today, this is just a request for authorization to publish title and general summary. But we discussed a number of things when we brought this up the first time and I wanted to take a couple minutes to go over a number of things we talked about and to reiterate why we are bringing this forward and answer whatever questions I can for them for the moment because as I recall, two questions in particular were raised is, one was what developer would this benefit? I think that Commissioner Sullivan's comment. To my knowledge, the reasons for doing this are not related to any particular developer at this point and I'll go over that in a second.

But also, and I think Commissioner Campos brought out the point that, back again to well, wouldn't we be getting projects that might be just two users on a well and calling that a community water system. Again, both of those are really good points, but let me just take you to the scenario that brings us to this point and then we can pull those things back into the discussion again if need be.

First of all, actually later on this evening with the Sena Vista Heights case, actually brings to a conclusion our very first TDR project. That was the one which we allocated TDRs to move the flea market off of 599 and to locate those development rights elsewhere which is the project that's coming forth tonight. So it's taken us quite a long time to pull off one, but I think as I mentioned to you last time, I was at the American Planning Association convention in Chicago a couple months ago, and one of the largest programs was on a panel with me, which was Palm Beach County, Florida. And it took them 18 years to actually get their TDR program in place and working. So I think where we are right now by concluding the TDR, the first days of the TDR program to do what we said we wanted it to do.

And now being at a position where it's really a good time to kind of re-evaluate some of the issues that have come up, particularly in light of a number of things that have happened. One is that we've concluded now our work pretty much with La Cienega and we think we're going to be able to move forward to actually transfer some of the agricultural rights in that community to some of our receiving areas. One of the difficulties is, now the way that we have the ordinance stated, all the receiving areas have to use City and County sewer and water. So that makes it difficult, and I'll explain precisely why in just a second. But also now we're almost completed with the Airport Development District plan, and I think that a lot of us have forgotten that with the passage of the TDR ordinance any commercial development in the

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Airport Development District is required by ordinance to use TDRs. In fact nine TDRs per acre for any commercial development in that area with the exception of the properties that are actually at the former node at Airport Road and 599.

Again, no development right now could move forward there because the provision in the ordinance says that it has to have City or County sewer and water. So we're stuck in a situation where if developments, typically of an economic development nature that might be appropriate in the Airport Development District, they wouldn't be able at this point to move forward. Now that's just from our perspective. Two other things come into play here. One is that we all know that the City of Santa Fe recently decided that water service will not go beyond city limits. So areas that may have been served by the City that are in the county, because of that policy decision, we're not able to look to City water for projects that are outside of their municipal boundaries.

Secondly, or fourthly, I guess in the second part, is that the number one growth area in the County's general plan and in the TDR plan, which was the number one receiving area is the area south of Rodeo Road, which is now designated or referred to as the Los Solares plan. If that is, and there is an annexation discussion underway about that project, although it's in the county now, if the City annexes that, they would at this point annex it without the use of TDRs, and that's of concern to us because as it was originally stated in working through the Highway Corridor Plan, Highway Corridor Ordinance, that area was always viewed as one when we enacted the TDR program that TDRs would be used in in-fill areas such as that one and that now again presents us with another problem.

And finally, we are getting requests from a number of other places around the county for us to consider the use of TDRs. Pojoaque Valley, we've begun our planning process with them and again, one of the issues that comes up is can we use TDRs to preserve agricultural lands and it's possible that in that situation, both sending and receiving areas would be in that area if we move forward with that as a tool and then again, if there were to be receiving areas in that area, the provisions in the ordinance as stated would not allow TDRs to be used in that situation. We've also received some requests from the Galisteo Basin for again, similar issue agricultural, the use of TDRs for agricultural purposes. But again, being outside of an area that could be served by City or County water services, we wouldn't be able to use TDRs in that area.

So we think that there are a couple of—and given the conversation we had the first time—we think there are a couple of really interesting ways to solve this. Let me mention them and then I'll be happy to answer any questions that you might have at this moment regarding this situation. The way that it was stated in the ordinance, just to remind you, it says that all proposed developments within the receiving areas shall be served by City or County sewer and water systems, or other approved municipal sewer or water systems. One way to solve some of the dilemma that we're faced with about future projects would be to strike that phrase completely. Just take it out of the ordinance. That's the way that we had it originally in the very original ordinance, but that piece was put in when the ordinance was adopted and to my recollection, as I recall, it was a unanimous decision to put that in.

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Another way, maybe to solve the problems that we're faced with would be to change the wording of that to say, "All proposed developments within the receiving areas within the Two-mile Extraterritorial Zone should then be served by City and County sewer and water." We don't have any objections at all to the areas within the two miles that might be annexed or moved forward that they should be on City sewer and water. That seems, because they're all in the urban area, that seems entirely appropriate. It's when we get out of the two-mile area, beyond the two miles, it's when we start having problems with traditional communities and in some of the other areas where we may find the application of TDRs to be different than what we thought it might be originally.

Another way, and a similar way to do that might be also to change that wording to say. "All proposed developments within the receiving areas shall be served by City or County water and sewer systems, or other approved community or municipal sewer and water systems," and also to put a stipulation of size. For example, for projects of 25 lots or more. This would address the issue that Commissioner Campos brought up that we don't want a proliferation of very small water systems, and it wouldn't be likely that that would happen with TDRs anyway. They're probably going to be bigger projects. So to put some kind of stipulation on there for size.

So that's what we're concerned about, and again, I remind you that this is just a request for authorization to publish title and general summary but I wanted to try to clarify what our position, what some of the issues and problems were that came up and that we're faced with with the TDR program. So that's the information that I have and I'll be happy to answer any questions that you might have.

CHAIRMAN DURAN: Any questions of staff?

COMMISSIONER GONZALES: For discussion, Mr. Chairman, I'd like to move for approval of the request.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: There's a motion and a second for discussion. Any questions?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: The issue and the reason I think that we need to stick with the language that we have, which I don't think would preclude the Los Solares project because that's going to have municipal sewer and water. Should it have TDRs? It should. And I just happened to see in the paper today, on the front page, community water system, Cañoncito. It's out of water. It's out of money. They're hauling water. These community systems that come under the auspices of the definition of community water systems are just not at all set up administratively or financially, to accept high density growth as a part of them. They can't hardly keep up with what their requirements are to serve the residents that they have.

I don't think they're a good vehicle to impose TDRs on. You have to create an entire community water system, the management structure for it, and it's left to the users to

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administer and to finance, all for the intent of increasing the developable land adjacent to it or as a part of it. So I just don't think when we're talking about increasing developable land and density, that a community water system is a mechanism to service that. That's a rural mechanism, not an urban mechanism. And if you read the *New Mexican*, the front page today it's just one example. And I of course have seen many.

CHAIRMAN DURAN: How old is the system? Does it say how old the system is?

COMMISSIONER SULLIVAN: Well, many of them are not that old. It said this particular system is about 30 years old, the article says. It's just a matter of when individuals have to participate in the financing of these systems and the upkeep and the maintenance, they're not experienced. They're volunteers in most cases, and we have a health concern there that very often regulations are not met and water quality suffers. So it just seems like in an urban environment, community water systems are not where we want to be placing high density developments.

CHAIRMAN DURAN: Commissioner, don't you think, if your problem is with the management of it, don't you think that's an easy thing to fix?

COMMISSIONER SULLIVAN: It hasn't been for the many systems that are there. Once they're out there and created, then they're a community based system. They go on either fees that are generated on a per-user basis or they go on a metered basis. Many of these systems aren't even metered.

CHAIRMAN DURAN: Well, the Sunlit Hills system is one that has worked fine over the last 20, 25 years, and it's managed properly in my opinion, but maybe that Cañoncito system wasn't managed properly. Maybe the depth of it, maybe it needed to be replaced. Maybe they were using a 100-foot deep well when it should have been a 200 to 300 foot well. I think to just say, these kinds of systems are—that they're not good without really checking into how we might be able to benefit from them and still—with the idea of being able to manage them and protect those people that are on it.

COMMISSIONER SULLIVAN: There are some, Mr. Chairman, you're right, that are well run and those are primarily ones that have more affluent residents who can participate in the upkeep of the systems and properly manage them. By and large the ones I've dealt with over the last 25 to 30 years in New Mexico are barely making it and are minimal at best. The other problem is an administrative one. These are private systems. When you create a development, a denser development or a high density development with these systems as an underpinning, and you want to come back in the future and do something, either with the County water system or the County sewer system or make improvements or so forth, you don't have that flexibility anymore. They're now private systems. It's almost like dealing with land grants. You have to deal with everybody. You don't have a single entity other than a board, which very often the volunteers don't even show up to the meetings, to deal with. They're very cumbersome to deal with and questionable effectiveness in terms of being a private system.

So again, where we're talking about the urban areas having to deal, and force developers to create these systems as opposed to encouraging developers to put that money into

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extending sewer and water lines out to their projects, I think we're using a tool that's appropriate in a rural area but not in an urban area.

CHAIRMAN DURAN: Well, it's going to be a challenging amendment, isn't it?

COMMISSIONER GONZALES: Mr. Chairman, I don't think we've conclusively determined that wells in conjunction with some type of imported water system would not be of value to this county and so I think that what we are trying to do is search out every possible tool to manage growth in a 2000 square mile county. A community or a City or a County run water system or sewer system, it's just not going to be feasible throughout that 2000 square miles. Not that it has to be. But in areas where we want to manage the growth and in areas where we want to try and encourage and control the growth, we're going to need as many tools as possible.

So I would ask that the Commission allow for this debate to go forward, for us to really look at it in the context of having a water management program that utilizes imported water where necessary, where wells would not displace or harm surrounding communities, that they could be used in that area. But again, water is going to be integral to being able to properly control the type of development in this county that we need to control and to say that we're just going to limit it to the City or the County water system, I think it's not necessarily realistic. But that whole debate is still left to take place and again, this is just making this ordinance as flexible as possible.

If a development comes forward and the Commission in its wisdom determines that they don't want to see wells used in the area, you can say no and encourage the developers to—and weigh it at that time, whether the value of transferring development rights into an area that would be supported by a well is greater than it otherwise would be if you didn't do that. So again, I would just ask for the maximum flexibility in this program to allow it to continue to be effective for this community.

COMMISSIONER SULLIVAN: Mr. Chairman, just one last comment. I think the wells is an issue. Of course community water systems work off wells and here we are back again dealing with the depletion of the aquifer, and that's an important issue. The other issue is, my understanding of the TDR program is to try to encourage denser growth in the urban fringe and encourage density in that area. I think when we remove the water and sewer requirement from that, the municipal water and sewer requirement or a public requirement, then we allow the TDRs to go out into the county. And we have these little nodes of higher density. It can be any distance away from the urban area. That's my definition of sprawl. That's what I thought TDRs and our growth policies were supposed to be working to rectify, to keep that dense development closer in to where the services are available.

I think when we do this, we open up the option for these little dense communities and create more service problems in terms of our Sheriff's Department, EMTs, Fire Department, to serve these. I think we're promoting sprawl when we do this.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Sullivan, just to counter that, I would argue that there's more to the Santa Fe Metro, there's more to Santa Fe

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County than just the Santa Fe Metro area. The entire southern part of the county, the Estancia water basin is an area we need to focus on but they're dealing with their growth issues as well. We need to make this tool available for them. And that's a predominantly rural community but it may be determined that they want to take advantage of a TDR program to try and move development rights from one area to another.

We're trying to develop relationships with the Pueblos in the north who are determined to have some type of subdivisions take place in those communities. This could be some type of tool to address the movement of development rights from one area to another. So again, without knowing what the future is going to bring in terms of what this Commission is going to look at in terms of development, I don't see the harm in allowing this to be another flexible tool. But I would hope that the Commission would keep in mind that the challenges of growth, the challenges of sprawl, the challenges of dealing with development issues are more than just the Santa Fe metropolitan area, and we need to have these tools available as much as possible for the entire area as opposed to just this area.

CHAIRMAN DURAN: Well, if you gentlemen won't mind, how about we save the debate for the first meeting.

The motion to approve publication of title and general summary of amendments to the TDR Ordinance passed by majority [3-2] voice vote, with Commissioners Sullivan and Campos casting the negative votes.

X. D. Matters from the County Manager

- 1. Request approval of amendments and modifications to amendment #3 of the memorandum of agreement between Santa Fe County and St. Vincent Hospital**

MR. LOPEZ: Mr. Chairman, Virginia Vigil will present this item and after she's done, I've got just a few more items to discuss with you before we move off of Matters from the Manager.

VIRGINIA VIGIL (Policy Analyst): Good afternoon, Mr. Chairman, members of the Commission. Also present today is Gary Buff, with St. Vincent Hospital, Robert Anaya, and of course the County Manager who's been engaged in this process. You have three documents in your packet. The first one is a memo to you, which really summarizes what we're asking you to take action on today. The second one is presented to you with the specific language that would amend and make modifications to the third amendment of agreement with St. Vincent Hospital.

For the last couple of months, a core group of the members of the memorandum of agreement team have been meeting together to review the third amendment and to look at language that would further clarify this process. And I think basically, that's what we are here before you today, for you to take action on the clarification of this process. The memo is

specific to identifying the roles of the PRC, which is the Public Review Committee, which will be appointed by the County Manager. There will be three appointees to the Public Review Committee. There will be three appointees from Santa Fe County and three appointees from St. Vincent Hospital. There will be another appointee that will be recommended to be on this committee by the members of the appointed PRC committee. They will have overriding authority in regard to the implementation of expenditures and will meet at least quarterly.

They will have that overriding authority and will exercise their authority based on the recommendations from the memorandum of agreement team. We did create the opportunity for staff and counsel to participate in any of those meetings are needed. The PRC will review quarterly reports and submit them to the Board of County Commissioners. On the memorandum of agreement team, it is recommended to you that that team consist of two members from Santa Fe County, two members from St. Vincent's and we'll be authorized to—we do have a designation of members. Among these designees would be myself, Steve Shepherd and Kevin Henson as an alternate for the memorandum of agreement team. We have been acting in that capacity for the last three years.

St. Vincent Hospital recommends David Freshour and Gary Buff, with an alternate of Bonnie White for the MOA team. We also discussed the carry-over funds that have been in existence since we entered into this agreement and are recommending to you that the opportunity to review those carry-over funds be done on an annual basis and recommendations and agreements with proposed amendments be brought forth for your approval.

The modifications and further clean-up and clarifying language identifies the Santa Fe CARE Network as now being the Santa Fe CARE Connection and we also have provided funding and language that is broader and allows for funding for both the CARE Connection and the mobile health care unit to not be as restrictive as the previous third amendment did.

I stand before you for any questions and of course, as I said, Mr. Buff and Mr. Anaya are also here.

CHAIRMAN DURAN: Virginia, why is the last sentence going to be stricken? The one that says "Any services and funds not completed or expended in year one or two shall carry over to year three."

MS. VIGIL: That was the carry-over discussion that we had with the memorandum of agreement team, based on the fact that that language specifically provides for just a roll-over, we thought it would be a good opportunity for those participating in this process to review where those funds are, if in fact those funds will be needed for the upcoming year, or if in fact they will no longer be needed and perhaps could be used in another area. So in lieu of just carrying over funds for projects that were designated in year one, that annual review would provide the opportunity to designate funds for other purposes, or keep them for the same purposes.

CHAIRMAN DURAN: And that would be at the discretion of the PRC?

MS. VIGIL: It would be at the recommendation of the PRC to the Board of County Commissioners and St. Vincent's board.

CHAIRMAN DURAN: Okay. Thank you. Any questions of staff?

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Virginia, what's broke here that we need to fix? I recall seeing a memo from St. Vincent's saying they wanted some changes in the PRC. I get a little nervous when I see phrases like "shall have the overriding decision making authority in regard to all aspects of the MOA and all specified expenditures." Wow. That sounds like a pretty big departure from what the PRC, Progress Review Committee was supposed to do, which was provide a check and balance. What are we fixing here?

MS. VIGIL: To get back to your first question, Mr. Chairman, Commissioner Sullivan, when you ask what's broke that we're going to fix, I will give you my perspective on it. The PRC has not been functioning in a real clear level. As a matter of fact, it's been the memorandum of agreement team who has been coming to the indigent board to give their reports on a quarterly basis. I think that what was broken was something that never actually materialized and that's a real active Public Review Committee. This language provides the opportunity to activate that public review committee and to allow the memorandum of agreement team to do the groundwork, so to speak, and make recommendations to the PRC. The ultimate authority will be the BCC and St. Vincent's board.

But I think the PRC will review all the recommendations from the MOA on a quarterly basis, and have the ultimate authority as to whether or not the recommendations of the MOA team is bringing forth before them is something that they will come to recommend to you. I think that's sort of a three-tier process that allows for the opportunity of more review and also creates a solidifying force for decision making.

COMMISSIONER SULLIVAN: You say the Public Review Committee, but three members are County staff, three members are St. Vincent's staff. So I only see one public member and that would be--

MS. VIGIL: I'm sorry. It's Progress Review. I've been misstating that. It's the Progress Review. Thank you, Robert. It's the Progress Review Committee, and there's actually one additional member to that who will come to you through a recommendation from the Progress Review Committee. So there's actually seven members of that committee.

COMMISSIONER SULLIVAN: And I see us getting further away. I would be concerned that we're focusing in rather than focusing out here because I think that those six would then pick one of their own to be the seventh. I see, or I feel that I'm seeing the loss of the check and balance system here. There's only one person. How do we address that? Is there a way to make some specification that the seventh person is not involved primarily in the health care industry? Something of that sort?

MS. VIGIL: I certainly think that your recommendations and request could go to the PRC as to who would fulfill the responsibilities of this particular appointment and agree with your sense of objectivity represented by this appointment. So there was no designation as to who this seventh person should or should not be. We thought that that seventh person would be a representative from the community. And Robert Anaya says that he'd like the podium for a comment.

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MR. ANAYA: Mr. Chairman, Commissioners, I'd just like to briefly say that all we're doing here with the language, we're not attempting to adjust the language in a way that changes the dynamic of what we tried to do in the first place. When we did the initial agreement the MOA team was in fact, once we had the allocations of where money was to be spent, the MOA team was the one actually making the recommendations as to programs that were within the scope that the Board of County Commissioners and hospital board approved. All we're doing here is reclarifying that the MOA team is going to make some recommendations as to where those monies should be spent based on the direction that the County Commission and hospital board gives and then that those go to yet another entity, the PRC, just for another look, to make sure that the MOA team is making good, sound recommendations.

So I think it actually adds a check. It doesn't delete a check and it just reclarifies something that we hadn't been doing as well as we could have. So I think the language helps us in delivering the MOA and bringing back reports to you. It doesn't dilute what we've been working towards. I think you can actually have more detailed information than you had before.

COMMISSIONER SULLIVAN: Robert, the way I understand it worked before was that the County had control. We drove the bus. Now, in this set-up, if a recommendation comes to the Board of County Commissioners, and then it also goes to the St. Vincent's board, and they don't agree, who's in charge?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, the hospital board has always been on as part of the agreement. They've always been a mechanism that has reviewed the MOA agreement. We've negotiated that agreement together as two entities, and then we mutually agreed to the agreement. The Board of County Commissioners approves it here and the hospital board approves it in their—

COMMISSIONER SULLIVAN: I'm not talking about the agreement. I'm talking about issues that come up after the agreement. The way I read this is that any issue that comes before this Progress Review Committee that involves these expenditures, goes both to the Board of County Commissioners and to the hospital board. Am I reading that wrong?

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, if I might take a shot at that. The intent, as I understood it from modifying this was again, to clarify the role of the PRC, which up until now, and I'm relatively new in this whole discussion, but there was some disagreement I guess as to when it was appropriate to expend monies, although the monies were agreed to in the MOA itself, who was making the decisions to expend specific monies and when and so forth. There was some disagreements as to that. So our intent was to spell out that the PRC would have that discretion and our intent also was that the County Manager would serve on the PRC or designate somebody to serve.

I can tell you that my intent, at least as of today, if this amendment is approved, would be that our designees to the PRC would be myself, Ms. Katherine Miller, our Finance Director, and Mr. Robert Anaya, our Community and Health Department director. And hopefully, working with our counterparts from St. Vincent, we can resolve the issues as to when to make expenditures and what those expenditures should be made on, without creating any additional

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problems. So that really was where I was coming from in terms of the discussions we've had with them.

COMMISSIONER SULLIVAN: And once, Estevan, once you've gotten this group together to better coordinate and communicate over these expenditures, my question is, if there's a disagreement amongst them, i.e., via the St. Vincent's board or the County Commission, what happens?

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, as to those expenditures, it wouldn't come back, necessarily, to the Commission or to the hospital board. We would make that decision at the PRC.

MR. ANAYA: Mr. Chairman, if you look in your packet to the amendment that was most recently approved on page 3, Section 5 under conflict resolution. It says "In the event that a 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 members, two from each party and the fifth chosen by four members so appointed. Decisions of the board shall be by simple majority and non-binding. Parties agree to participate in such mediation and consider the board's decision in good faith."

I think the intent we were getting after here is to take the direction of the Board of County Commissioners based on the initial agreement, work within those categories of funding that the Board of County Commissioners agreed to, and as the MOA team and PRC review committee, be clear about expending those monies as the Board of County Commissioners directed us to expend those.

COMMISSIONER SULLIVAN: My last question, Mr. Chairman, is, this applies only to the MOA. This does not apply to the Indigent Fund, is that correct?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, that's correct. This only applies to the MOA.

COMMISSIONER SULLIVAN: Because in our last Indigent Fund meeting, St. Vincent's was woefully behind on its commitments to utilize the funding that it had allocated to it. So that's a separate issue. That's not going to be part of this issue. Is that correct?

MR. ANAYA: Well, Mr. Chairman, Commissioner Sullivan, relative to the expenditure of money, one of the reasons why we're wanting to reclarify what the PRC committee, Progress Review Committee is, is to in fact come back to this body late this month or the first part of August and bring back a more comprehensive report as to what those expenditures have been from the hospital, that the Commission has asked for most recently at the Indigent Fund meeting this last month of June. So we're trying to put us in a better position to track the funds and then in fact come back with a good comprehensive report to the Board of County Commissioners on where those expenditures are going.

COMMISSIONER SULLIVAN: That's all.

CHAIRMAN DURAN: Any other questions of staff. What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

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COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion to approve, with a second. Any further discussion?

The motion to approve modifications to the amendment of the MOA with St. Vincent's passed by unanimous [5-0] voice vote.

MR. LOPEZ: Mr. Chairman, I've got a few more items that I'd like to bring to your attention if I might. The first has to do with a letter we just received from the State Department of Health regarding our Substance Abuse Prevention program. Basically, we didn't utilize all of the money that was available in that grant last fiscal year but the letter that we received basically praised the program that we have in place and they were very pleased with the results of that program. So although we hadn't drawn down all of the money that was in there, they've offered that given the results that we've demonstrated so far, they would make that money available to us right now.

I believe that the total amount that might be available is \$25,000. And what we'd request your direction for is that we be allowed to continue the employment of our prevention specialist, Betty Cardenas, who has been a term employee, and we will bring back the appropriate documentation and instruments on the meeting of the 30th to formalize all of that, but we'd like to keep her on board in the interim, if the Commission would agree.

CHAIRMAN DURAN: Is that okay?

COMMISSIONER TRUJILLO: That's fine.

CHAIRMAN DURAN: You guys okay with that?

MR. LOPEZ: Secondly, as Mr. Anaya just mentioned relative to the PRC's role that we'll be taking and relative to some questions that have been raised about an accounting of MOA expenditures, we understand that the Commission wants such an accounting and we would just ask that the PRC be given an opportunity to develop that accounting and that we present it to you, hopefully in the month of August.

Then the third thing that I wanted to bring up was that last year, we set aside some money and we reauthorized it for those year's budget because it was not expended for last year for the purposes of rewriting our Code. I think it was a total of \$70,000 and our intent, last time we spoke to you was to issue an RFP and try and get someone to do that project for us. Since then, we've kind of rethought how we'd like to do that project, and we'd like to bring a lot of that work internal and do it with our own staff. So we'd like to get your authorization to utilize that money in part for some clerical help and some professional services agreements to help our internal efforts, but to utilize that money internally as well.

COMMISSIONER TRUJILLO: What do you mean by, Mr. Chairman, rewriting the Code? Is that incorporation of the ordinances that we need to implement within the approved general plan?

MR. LOPEZ: Mr. Chairman, that's correct. There's an awful lot of clean-up that has to be done, bringing all of the Code into one consistent format, incorporating—making it all consistent with the growth management plan, other amendments that have been done, just incorporating those into the body of the Code itself.

COMMISSIONER TRUJILLO: So we can start using it.

MR. LOPEZ: Yes, so it would be a much more useful document. And also I think that there's probably a lot of additional—as we go through this process, I suspect that there's going to be a lot of additional clean-up that we might be able to do that it would be an appropriate time to do that.

COMMISSIONER TRUJILLO: Okay.

MR. LOPEZ: So then are you all right then with us using that money internally?

COMMISSIONER CAMPOS: I think it's a good idea.

MR. LOPEZ: Mr. Chairman, those are the issues that I had to discuss.

CHAIRMAN DURAN: Okay. Since I missed my chance under Matters from the Commission, I was wondering if I could just take one minute to talk to you about one issue. I like to contribute \$10,000 of my \$35,000 to help the RPA refocus their goals and the vision that the City and the County relative to regional planning. I think that we're very fractured right now and I would like that \$10,000 to go towards hiring a consultant to come in and help us redefine our vision and our goals, similar to what we did when the new Commissioners came on board, we talked about the vision, our water goals. So could you get with Steve Burstein on that and maybe send a letter to the Mayor and the other members of the RPA to see if they might be interested in using that money for that purpose and if so, that's fine, and if not, I'll give it to someone else.

MR. LOPEZ: Okay, Mr. Chairman, I'll do that. Mr. Chairman, I would recommend that we break for lunch or for dinner at this time. The presentation is scheduled to start at 6:00 and when we come back for the presentation, if it's all right with the Board, what I'd like to do is have the projector set up front and have the Commissioners sit in the front row here so that all of the public can see the same thing that you'll be looking at and have an opportunity to do the presentation in that format if you would be agreeable.

CHAIRMAN DURAN: Sounds good. We'll be back at six. And thank you for indulging me one more time.

COMMISSIONER TRUJILLO: Are we going to do executive session now?

MR. LOPEZ: Mr. Chairman, I forgot to mention during the agenda that we don't need an executive session. We can table that.

[The Commission recessed from 5:35 to 6:15.]

VII. Presentations

A. "A regulatory perspective on the reuse of reclaimed water" by Steven Borst, P.E., Program Manager, Maricopa County Department of Environmental Services and Arizona State Department of Environmental Quality

CHAIRMAN DURAN: Gary, I'd like to just turn the mike over to you so you can just give the public and our viewing audience a brief explanation of what this is all about.

MR. ROYBAL: Thank you, Mr. Chairman. My name's Gary Roybal. I'm the Public Utilities Director for the County of Santa Fe. With me today is Steven Borst, P.E. from Arizona Maricopa County. He's here to talk to us about the use of reclaimed water and how that is done in Arizona and other areas. He will give a regulatory overview of the process. Following his presentation is Dr. Peter Fox, as the Chairman said, Associate Professor at Arizona State University, and he will be giving a technical presentation on reclaimed water, the injection process and other technical aspects on aquifer recharge, storage and recovery.

CHAIRMAN DURAN: I'd like to welcome a few of our distinguished guests. State Engineer Tom Turney is here, and I saw Councilor Rebecca Wurtzberger. Was there any other Councilors here? Okay, well thank you all for joining us.

MR. ROYBAL: Just one other item. We will have a follow-up presentation to this presentation by the Office of the State Engineer and the Environmental Division on the state perspective on the use of reclaimed water, aquifer injection, storage and recovery, and those dates will be firmed up later on when we can get with the appropriate people to get their schedules and set an appropriate date for that. Thank you.

STEVEN BORST: Thank you, Gary. My name is Steven Borst. I'm here from Maricopa County, Arizona. How this started out is some of your folks came over to Arizona to look at some of our specific reclaim projects and I had an opportunity to address them when they were there in Arizona. And some of the questions I got made me realize that the answers were out of my scope of experience. My view is mostly from a regulatory view. I have worked at the state Department of Environmental Quality as a reuse manager, and I also work now at Maricopa County and approve public utilities for reclaimed water, the distribution of that water, mostly, and also the design of recharge wells.

So I have about six to seven years experience with use of reclaimed water in Arizona. And what I'm going to go through now is pretty much a history of Arizona and reclaimed water and how we started out. And pretty much we started out—did anyone see the recent news clips about indoor plumbing and where it compared New Mexico with Arizona, and we weren't near the top. But nonetheless, we have come a long way and there are some water definitions that I would like to start off with because many times, how we discuss these depends on our definition of terms.

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Blackwater is usually sewage. It is the things that come from toilets, many times they also include the kitchen sink, in garbage disposals especially if they're there. Graywater, many times people think graywater is reclaimed water. It is not. Graywater is untreated water from things other than blackwater sources. And it's debatable as to what you can include in that category. Some people include showers. Some people include clothes washers. And it's usually an application that's residential in nature.

Reclaimed water is water, essentially blackwater which has been treated to certain standards, and those standards can vary. And then we have drinking water. Drinking water standards are set by the federal government under the Drinking Water Act and pretty much every state, when you talk about drinking water, it is water that meets those federal—they call them MCLs—maximum contaminant levels.

Now, what I told you before was different types of water. Now we have other names for waters and for example, surface water. Surface water is usually lakes, streams. Then we have groundwater. Now, groundwater is usually that which we get from the ground, but many times we find that groundwater is under the influence of surface water or vice versa, surface water is under the influence of groundwater.

And what are those other waters? Well, there are some other waters out there and one of them is reclaimed. You could also look at industrial discharges, after treatment as being an other water. By an "other water" I mean that the rights to it are not assigned. For many decades, there's been this statement that every drop of water in Arizona is owned by someone, whether it's groundwater or surface water. But when these other waters started appearing, a question of who owns this water came about and I'll discuss that a little later.

Arizona in the eighties, we saw large industrial needs for water, good, clean water. We saw large residential needs for water. We were experiencing a large residential growth in the mid-eighties that kind of subsided in the late eighties and is now upon us again. In the early eighties they were starting to realize the extent of contamination of our local drinking water sources. All of our drinking water sources during this time primarily came from groundwater sources. These contaminants were of varying nature. They were somewhat industrial sources, solvents, petroleum from leaking underground storage tanks, pesticide residues, and over application of fertilizers.

Notice I didn't mention septic tanks because there is some discussion, some places where there is a direct correlation between septic tanks and contamination and groundwater and there are many places where it is inconclusive.

The valley, by the valley I mean Maricopa County, Arizona and its associated municipalities, started experiencing measurable ground subsidence, and I believe this was also the case down in Tucson. And this subsidence, as I understand it is quite significant and I've seen pictures of around 20, 30 feet, where the ground has actually shrunk that far down. We started to realize that we were basically taking out more groundwater than could be sustained, sustained by natural sources for that matter.

There are two pieces of major legislation that came out in the eighties. One was the Groundwater Management Act of 1980. This established the Department of Water

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Resources and began the assignment of water rights to new development, also to new industry or anyone else that wanted to use water. Also, there was the Environmental Quality Act of 1986. This was a result of water quality problems. The Groundwater Management Act of 1980 was more related to who owns it. The Environmental Quality Act sought ways of setting standards for groundwater and methods of treatment if necessary.

I'll talk about the Groundwater Management Act first. As I said, it established the Arizona Department of Water Resources. Anybody that drills a well has to go to this department and get permission to do so. If you have a subdivision within an AMA, which they call an Active Management Area, you must go to this department and assure them that you have a 100-year assured water supply before you can begin that development. AMA stands for Active Management Areas. There have been several designated within Arizona. Primary ones are in Phoenix, Tucson, Prescott and Pinal. Pinal's actually a county.

The Groundwater Management Act grandfathered all existing rights, particularly if you had rights for irrigation, you had farm land, water rights associated with it. Those were locked in. The goal of the act and the agency, the Department of Water Resources was to have a safe yield, i.e., recharge equals withdrawal, a balance by 2025. And as ADWR goes along with these regulations they get more and more strict because they're really attempting to meet this goal and I don't know if they're really on track to do that yet but they're certainly striving.

The Environmental Quality Act of 1986 established the Arizona Department of Environmental Quality. This was primarily motivated by the need to do something about our groundwater quality. The department was pretty much based on that although it does many other things like air pollution, hazardous waste, solid waste now. It was primarily set up for the protection of groundwater, and they established something called an Aquifer Protection program, which was really established and motivated by the governor at the time, who was Governor Bruce Babbitt and our former Interior Secretary. This is, I'm sure, on his resume as setting up one of the first groundwater protection acts in the nation.

The act regulated all potential discharges of groundwater. The big word is potential. That's interpreted by the agency to even include things like potential discharges from sewer mains. They established a method of determining compliance for these discharges where they measure at a point at the property boundary, typically, where you monitor the groundwater at the depth or somewhere downgradient of where you are discharging to determine that you do not impact, or basically do not change the quality of the existing water in the ground.

They established aquifer water quality standards and they established, I guess set a national precedent for the state Groundwater Protection program, because if you look to the EPA for protection of groundwater, you'll only see it indirectly. You'll see it through their Safe Drinking Water Act and protection of wells. You'll see it through their RCRA act and the regulation of underground storage tanks, but you don't see a Clean Water Act at the federal level for groundwater. It's mostly a state program if it exists at all.

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A lot of negotiation about the standards that were to be set for groundwater, especially in these Active Management Areas. After much negotiation they pretty well set them at drinking water level standards. And they can reclassify the aquifers in the state. There are many, and they are all considered to be drinking water sources.

These are some of the events that took place in the eighties that I thought were noteworthy as all this legislation was taking place. A great deal of reclaimed water was being produced by—at first we have a centralized sewage treatment facility, which takes wastewater from many municipalities and brings it to one place, and from that place they treat it and they discharge it. They were previously discharging to a river bed and a nuclear power plant came under construction and diverted a great deal of that water for industrial cooling purposes. The rights to this water came into question during this time as to who owns this water, as I mentioned before. The courts came back with a ruling in '86 saying these are other waters. The rights to that water does not belong to the people or whoever that first generated it from the ground; it belongs to the people who generated it, I imagine. But it was an important court case that set up reclaimed water as an other water.

As a result of the Groundwater Management Act, municipalities in establishing an assured water supply had to look to reuse and recharge projects to offset withdrawals. And they started planning for future growth in accordance with this. And you started seeing some very large master plan developments with turf irrigation solely reliant on reclaimed water. That's where these developments had a chain of lakes, which were basically conveyances for this reclaimed water that went throughout these subdivisions, was pumped out for irrigation, whether that irrigation is for a golf course, a park, and one of the developments even went so far as irrigating residential lawns. They found that to be somewhat problematic and they have gone back since to just irrigating large turf areas, but they did try that for a while. They also tried that down in Tucson.

Now we'll move into the nineties. As we start dual plumbing for residential services, and by dual plumbing I mean you have water pipe, your drinking water piping going out for drinking water purposes, potable purposes, and you also have another system going out distributing reclaimed water for irrigation. And these standards were developed to keep the two apart. They were developed by the California and Nevada AWWA and UPC, the Uniform Plumbing Code also adopted standards for design of these type of systems, irrigation systems, but UPC is primarily for use of it in buildings where they actually use it for toilet flushing.

Many municipalities in assuring their water supply started creating ordinances and those ordinances mandated that if you're going to have any turf whatsoever, I think it's something like 10 square yards, you have to use reclaimed water. You have to find a way of going to it and bringing it to your turf irrigation. And there's some areas, some municipalities where they have to retain stormwater onsite that creates large turf areas and as a result they have to go to reclaimed water.

Previous to this point, treated wastewater, getting rid of it was a problem and they just in many cases just wanted to get rid of it. It was given away for free or in exchange.

But what you see now in municipalities, especially those with dual plumbing they are charging for it. It is a resources. It is a revenue, a structure that can help support the continuing distribution of reclaimed water for irrigation.

In the nineties we started seeing a lot of pilot projects related to recharge and I believe there were a lot of experiments, particularly in the eighties where they tried it with shallow wells and they weren't real successful and the design and engineering behind them has increased a great deal and so has the experience.

For some of the things that are going on right now, we're developing, we just developed State Reclaimed Water Quality Standards. They go A, A+, B, B+, C, C+ and the plus really means denitrification. A is tertiary disinfected, which means you've taken all your solids out, you've filtered it, you've disinfected it and you've removed the nitrogen down to drinking water standards, essentially, and that water has been approved for every use except direct consumption and swimming.

There's something else I didn't mention on the first one is the MAG technical standards. That's what I'm personally involved in and I'm developing the standards for the plumbing, this dual plumbing. We have it now for utility systems under roadways but we're actually going into how to prevent cross connections in parks and other areas.

I mentioned the tertiary disinfected, that's A+, that not A-. The permit is unlimited pretty much. What else we're seeing is we're seeing decentralization of reclaimed generation and recharge, where before I mentioned we had much of our wastewater going to one plant, now, as we develop particularly to the west side, we're seeing more regional plants and where the water is being withdrawn, it's being treated and it's being recharged in that region rather than being sent all the way down to some river bed and lost for reuse anyway.

What I'm seeing now on the west side, particularly, is that recharge is a primary discharge method for new wastewater treatment facilities. Prior to that, I saw that most of them were using irrigation, such as golf courses, parks and evaporation that comes from that consumptive use of water as their major method of discharge and recharge was only secondary, such as in the winter months, you don't need to irrigate so much. It was a way of offsetting the demand that occurs.

But now I see a lot more recharge projects and a lot of that has to do with the Groundwater Management Act and setting up a 100-year assured water supply for the new subdivisions coming in out west.

This is pretty well the end of my conversation, my presentation if you will, and I wanted to leave you with a few thoughts on the future needs for the beneficial use of reclaimed water. Number one is the one I'm working on is developing good design standards for dual plumbed communities. Continuing to sustain a positive public perception as reuse and recharge move from central to regional. Pretty much whenever I go on a golf course, most golfers pretty well accept the idea that the golf courses in Arizona use reclaimed water and it's not a matter for them. There are major master plan communities where their parks, ballfields, soccer fields are irrigated with reclaimed water. The

perception of the public has been positive and we're trying to keep it positive.

We have some situations where people will use reclaimed water for other agendas. There's two cases, one that I can recall right now. One was a brewery in California where their water withdrawal point was going to be too close to a recharge point and they didn't want people to think a can of beer had a circle of life or something like that. So they were more concerned about the perception of their product and not of the hazards associated with reclaimed water, yet a negative campaign came as a result.

Also one of the communities in Chandler. I had a gentleman call up and complain that he had told his wife, or he believed that he had got venereal disease from being exposed to reclaimed water.

We need improvements to recharge methods and design standards for direct and indirect recharge. We've been working on how to design a recharge well. How to not only design it, but how to keep it operating, and operating at a predictable efficiency. And another future need, and my segue to Dr. Fox is that we should continue to fund soil aquifer treatment studies and as he is well funded by the EPA for many of his studies as well as many municipalities in Phoenix, when we start talking about recharge, I thought it was more appropriate for him to be here and I'll let him take it from here. Thank you.

VII. B. "Practical applications for soil aquifer treatment and indirect potable reuse" by Peter Fox, Ph.D., Associate Professor, Department of Civil and Environmental Engineering, Arizona State University

PETER FOX: Hello. As Steve gave a nice introduction here and I appreciate the kudos, Steve. A couple things that weren't mentioned, Steve was talking about Miller Brewing Company, actually, which did cause a lot of controversy there in the Los Angeles area. Los Angeles and the Orange County areas have really been leaders in groundwater recharge with different types of reclaimed water and other types of water in the US for many, many years. Another interesting part of that is that Miller Brewing Company of course is headquartered in Milwaukee, near where I grew up, so they want all their beer to taste the same, right? So they actually take the water in Los Angeles, pull it up out of the ground, treat it to almost distilled water purposes with reverse osmosis, and put salts back into it so it matches the same water that they have in Milwaukee so it all tastes the same before they brew it. It's really quite interesting that they got so upset over this project.

I'm going to be talking to you, a mixture of presentations. We had put together a workshop that was based on the last five years of my research. I was presented at the joint Water Environment Federation, American Water Works Association conference on water reuse in Las Vegas this last January. So my presentation is going to follow the introductory material presented there. It's going to become more technical as we go on.

What we're talking about is mostly the product—this symbol here stands for National Center for Sustainable Water Supply. This center was created as a consequence of

a National Academy of Science report that was published about six years ago where they examined indirect potable reuse, and they were saying that people were drinking reclaimed water in one fashion or another, usually after it had been recharged in the ground and sometimes after it had been put in surface water. And what were the possible consequences of that? Many gaps in the research. So we designed a consortium of researchers that were headquartered at Arizona State University to try and solve some of those issues that were brought up by the National Academy.

This consortium was headquartered at Arizona State University and included researcher at the University of Colorado at Boulder, the sanitation districts of Los Angeles County, actively involved in this and I think they've even done epidemiological studies there to demonstrate that there were no adverse health effects associated with drinking reclaimed water. We have researchers at Stanford University and at the University of Arizona at Tucson. We also work quite extensively with some folks in Europe at the Technical University of Berlin.

Most of the funding, which was appropriated by Congress, was routed through the EPA Office of Water Quality out of Washington, DC and was also jointly administered by the American Water Works Association Research Foundation, which is the largest drinking water organization in the world.

An overview of my presentation. First I'm going to talk about some of the advantages associated with aquifer recharge and then I'm going to discuss some of the different types of methodology, surface type recharge basins versus direct injection and some of the economic aspects. Then I'll talk about some of the practical applications in terms of the benefits of different types of water quality improvements that occur as a consequence of groundwater recharge activities.

First off, I'm going to give you kind of an overview that this is not just a southwestern problem. I'm going to go a little more global at the beginning and then become more and more focused on some of the more technical aspects of this. One of the things that comes up, if you look in Denver, there's been a lot of controversy there about building dams and really when we talk about groundwater recharge we're talking about creating a new storage reservoir, one that is not above ground and all this controversy led to recognizing that they should really start taking the water from the South Platt River, which they say is a surface water but many times there is much greater than 50 percent reclaimed water in it and start recharging it into the ground and looking at that as a new water resource because of the dire environmental consequences that would occur if they were to go ahead with building the dams they were talking about.

Another issue that occurred here was in Long Island. So when you think about Long Island, New York as being, you kind of think of it as the East Coast, kind of a wet place, but because it's an island they have very limited water resources and ways of capturing the water. So despite its abundant rainfall they had big problems with the rapidly declining water table. And what they started to recognize there is that while everybody was also septic tanks and they were really wasting a good water resource. And they decided,

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and it's probably not coming through there, that building a central sewage treatment plant and just dumping all the effluent in the ocean to try and solve the problem of groundwater contamination was not going to work.

So what they've done is put a bunch of small plants in, what they call decentralization where they take a group, take them off septic tanks, put them on small treatment systems, and put the water back in the ground in a localized area, keep the groundwater table up and stop wasting a valuable resource.

Another thing I want to point out is what I call the big disconnect. Steve went back and talked about the history of laws going back to 1980. Well, the EPA is only about 30 years old. And the meat of the EPA came from 1972, the two major acts, the Clean Water Act and the Safe Drinking Water Act. But there's a real disconnect between them. When we think about the Clean Water Act, we have the NPDES permit that allows us to discharge a water into a surface water, typically, and the main goal of that NPDES permit is to protect the quality of the drinking water—not the drinking water. To protect the quality of that river so that the fish don't die and there's no harm to the environment. There's no consequences on potential drinking applications afterwards.

The Safe Drinking Water Act simply establishes maximum contaminant levels. Now, for most times, if you were to take a typical sewage effluent and look for the long list of 100+ chemicals that have to be monitored, that there are maximum contaminant levels for, you'll see that 95 percent of those chemicals show up at low levels much lower than the maximum contaminant levels. In fact almost all the organics end up being lower than that and only maybe bacteria and nitrogen exceed the maximum contaminant levels. So we have a case where Pittsburgh discharges Cincinnati's drinking water. Albuquerque's discharge is probably El Paso's drinking water and this is very common.

You go down the Mississippi and they say, well, where's some of the best tasting water in the US? It's New Orleans. Look at where it's coming from. And the way we deal with that, one of the ways to deal with that is go to Cincinnati, we have very advanced type water treatment systems there to try and protect us from some of the chemicals that are in the Ohio River. So we have expensive treatment systems that go well beyond our normal type of surface water drinking treatment systems such as these activated carbon columns.

Now, if you want to take the low tech approach, you can go to Europe. In Europe their rivers have been full of sewage for many, many years. The population density is much greater, five times higher than the United States, and they've had to deal with this. I've worked a lot with Germans and believe me, they don't like to drink water; they drink beer. And they grew up with that mentality that they shouldn't drink water. So what they do in many cases, it's called bank filtration. So here we have the River Ruhr, and instead of pulling this water straight out and trying to treat it by some type of high tech surface water system, they pick the water, they might do some minimal peat treatment and put it in recharge basins here, where there'll be a sandy type of aquifer and then there's a collection basin down here and collection wells along the side here. So they don't directly pull the

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water out of the river they basically do what we call bank filtration, suck it through the ground so it goes through the aquifer, and many times they only do minimal treatment before they put it in the drinking water system. In fact the City of Berlin uses this and they have about 50 percent reclaimed water in some of their lakes that they pull the water out of and they don't even disinfect the water before they put it in the distribution system.

This is a picture again of one of the rivers in Europe with these sets of banks, of recharge basins located along the side and if you go out further there'd be wells along here for collection.

This is Orange County. This is not a very good figure, but we'll show you some nice pictures in a second. We go up here, we have the Santa Ana River coming in here. In the summer time, the Santa Ana River is about 90 percent reclaimed water from Riverside County and the other counties from up above. And of course, located over here is our favorite Disneyland area. This is the Anaheim Forbey and down here, as we go towards the ocean is the Orange County water district and Orange County Sanitation District's infamous Water Factory 21.

So what happens here is that almost all the water that enters the river goes through the ground and is recovered in wells as it moves through. And then we come down here. They produce wastewater. The Orange County Sanitation District has a wastewater treatment plant here. A large amount of this presently goes into the ocean, but they had another problem that developed here, and this is one of the first direct injection projects in this country. And the reason why this was put in is that as they started to suck down the water here, and we have the Pacific Ocean here, what happened is we started to get seawater intrusion into the aquifer. And of course you don't want to have seawater intrusion because you're going to have a hard time pumping seawater and using that for a potable drinking water supply.

So the Water Factory 21 produced a very high quality water using a combination of lime and reverse osmosis. Now they use microfiltration and reverse osmosis. So they take the wastewater from the Orange County Sanitation District and they put it in a series of injection wells that go down to 1000 feet deep here, and they have varying depths. Some of the inject—there's like three different aquifers that they protect at three different levels, and they create a hydraulic barrier that stops the seawater from intruding into the main aquifer basin here. If we go further north now there are more of these aquifer injection barriers set up in Los Angeles also.

This is a picture of the Anaheim Forbey located along the Santa Ana River. You see these spreading basins exist. They also have a wetlands as part of the treatment system here. In fact when I toured there you had to be careful because they sell some of the blinds there to hunters for \$500 a day. And this is another picture of how they've integrated habitat along with some of the lakes and streams that are in the area. Of course, when you go to Disneyland now you know what you're drinking. I just took my kids there last year. The water actually tastes pretty good.

Okay, so that's my broad-based introduction about how we do different types of

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groundwater recharge. Now, let's look at some of the advantages of aquifer recharge. A big one is we prevent some of the negative environmental and social impacts from dams. They're not going to be able to develop many new water resources through the building of dams these days. And while we have tremendous amounts of storage under ground and we need to be able to figure out how to take advantage of that. These include damage to fisheries and ecosystems, increased salinity from evaporation, land subsidence from overdraft of aquifers and if we look at some of the huge project like going on in China, they had to relocate one million people as a consequence of building a dam. There's no need to relocate people.

There are other advantages, especially when we're dealing with reclaimed water for storage. When we store reclaimed water above ground, we can have several negative effects. One of them is we lose water to evaporation. There's low risk of secondary contamination, which actually if you look at coliform standards, one of the hardest things to do is meet coliform standards throughout an entire reclaimed water distribution system because a few birds come by and the droppings go in and there are different types of coliform there and you have to go to very advanced methods to distinguish between a human source versus a bird source. No alga blooms, which can deteriorate quality, and then when we use groundwater recharge the soil itself provides a unique type of treatment system to improve water quality.

Other aspects of aquifer storage and recovery include, if you think about aquifer storage and recovery in the broadest sense, we're not just talking about reclaimed water. In fact Las Vegas has a billion a day capacity system where they simply take their treated Colorado River water, store it in the ground for times when they don't have high amounts of water available to them from Lake Mead and they're not allowed to withdraw. So you can recharge water during periods of high surface water flows. When you have those huge spring flows that come through you can turn up your water treatment plant maybe as high as possible, process as much of that water as possible, inject it in the ground and then reclaim it later in August when you're in drought situation and you have very low flows in the river.

Hundreds of cities are recognizing this as a way of getting around their storage issues, using the underground versus building above-ground reservoirs. And it's very classic that water demand is often low during periods of high surface water flow. When it rains a lot, nobody wants to use it for irrigation. When it's not raining, everybody wants it for irrigation. That's just a common paradox that we have to deal with for storage issues.

When we think about most water reclamation projects and groundwater recharge projects, the big costs aren't always associated with treatment. Even when we go all the way to reverse osmosis, the big costs can often be said to be associated with conveyance systems. In fact there's an interesting analysis for the Scottsdale water campus, which Gary visited and I don't know if they told you this fact, but it actually costs more money in terms of energy to take the water from the Colorado River, put it in the Central Arizona Project Canal and bring it to the Phoenix area than to process the reclaimed water through

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the reverse osmosis system with our modern membranes which don't require great amounts of energy.

So conveyance systems are typically the biggest costs associated with this and the costs also tend to increase as your original water resources planning is more centralized and was not focused on trying to deal with the issues associated with using water more on site. We talk about the three major, there are several different methods for aquifer recharge. Recharge basins, which are commonly used are very land intensive. So going back to this example of the Scottsdale water campus which uses very high tech methods. The land up in this area is very valuable. It's \$100,000, \$200,000 an acre, so it's no way are they going to put that land aside for recharge basins so they decided they had to go to some type of direct injection as a consequence of that.

Now direct injection wells tend to be expensive and require more advanced technology. Because once you drill one of those wells, if it clogs it might be very difficult to retrofit it and get it back into operation. And if you lose operation of it then you've got to start all over again. The hybrid that's emerged between are vadose zone injection wells. It's an emerging technology. If you look at—there are three different types of systems. Here we have a recharge basin and a so-called vadose zone injection well. In a recharge basin, your classic type of system, water enters a basin, percolates down and it's going to enter an unconfined aquifer and it could be recovered at some point downgradient.

In a vadose zone injection well again, the water would enter what is essentially what we call a dry well like you might use for disposal of water around here. These are about six feet wide, maybe about 100 to 150 feet deep and these can get about a million gallon a day capacity, depending on the types of aquifers that they go into. And the water here percolates through the vadose zone, enters an unconfined aquifer. Direct injection wells, the bottom is cut off here but this can enter an unconfined aquifer but you can also put these at different levels. As a matter of fact you can have direct injection wells that could go into several different unconfined aquifers at once.

If we compare these different recharge technologies, first off, the aquifer type, we have for recharge basins, require unconfined aquifers. The vadose zone injection wells also require unconfined aquifers. Going to direct injection really doesn't—you can go into unconfined or confined aquifers. The pretreatment requirements for recharge basins would be typically low technology, meaning secondary or possibly tertiary treatment. For vadose zone injection wells, you really have to make sure you remove the solids and it's not totally certain what the best pretreatment requirements are at this time. There's still some experimentation going on there. And for direct injection wells, a lot of these really use high technology. Most of those that are used for seawater intrusion actually go all the way to reverse osmosis and when they're using drinking water sources of course they go through the normal drinking water treatment plant before they enter then.

The estimated major capital costs associated with recharge basins are the land and the distribution systems. The vadose zone injection wells, it would be the conveyance system and about \$25,000 to \$75,000 per well. Of course these numbers here are a little

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skewed. They really depend on the depth of the wells, but direct injection wells, deep ones, ones that are 1000 feet deep can run about a million dollars.

In terms of capacity, recharge basins can put in 1000 to 20,000 meters cubed per hectare-day. Vadose zone injection wells, the cvs number is 1000 to 3000, it would be about a million gallons per day. And direct injection wells might be one to two million gallons per day.

Maintenance, recharge basins are pretty minimal, just drying and maybe once a year going through and scraping. Vadose zone injection wells might be drying out periodically and disinfecting. The disadvantage of these or uncertainty is you can't reverse the flow in them like you could in an injection well so if they did clog we really don't know what would happen. We don't have any way to really rejuvenate them. And with direct injection wells, usually maintaining a disinfectant and then practicing periodic flow reversal if there is some kind of solids clogging, flow reversal can be practiced to flush the solids back out.

Estimated life, for recharge basins, it would be 100 years or more. Vadose zone injection wells, presently they've been designed for five years. Some of them have been in operation longer than that. The projected life may be 20 years. Direct injection wells, some of them have been involved for 25 years now and the projected life might be up to 50 years.

An example of the issues that can come up with conveyance systems. Here is a map of the Phoenix area. Down here is our major source of reclaimed water, the 91st Avenue wastewater treatment plan, produces about 150 million gallons a day. The main area of overdraft that is occurring is over here, below the Agua Fria River and presently most of the large water recharge projects are up here in north Scottsdale with the water campus where the groundwater is about 500 feet deep so there's plenty of storage capacity there to help handle growth in this area.

There's another large project here where the Colorado River water and Salt River water being recharged into the ground. It's the Granite Reef underground storage and recovery project. This is a very large one. They're putting 150,000 to 200,000 acre-feet in. The problem is, the groundwater levels can stabilize or might even be rising in this area but they're still sinking here and that will cause ground subsidence. In order to bring water up here, the first studies that were looked at here where they were talking about putting maybe 90 million gallons a day up in this area was going to cost \$60 to \$70 million just to build the pipeline. That kind of nixed that project. Now they are looking at different projects with mixtures of it where they'll bring in surface waters from up here, which would be Colorado River water, mix them with lower flows, probably 30 million gallons a day from the wastewater treatment plant and mix those and blend them together and create a system kind of like what I showed you in those pictures from Orange County. They will actually recreate habitat when they put in the system.

Recharge basin locations, if we look at what happened in California, what they recognized is that they had to have flood control, so they put aside lands for flood control,

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and starting after World War II they said, Well, groundwater is starting to go down. Let's start taking some of those floodwaters and divert them into recharge basins located in these flood control areas. So they started recharging a lot of the flood control waters. Then they said, Well, we need to recharge more water and they started adding state project water and Colorado River water as that came in, and then in the early 1960s they started putting reclaimed water into the blend also. So it's kind of historically what's happened there and if you look at the amount Montebello Forbey which is in Los Angeles County, they've got surface water, stormwater, reclaimed water, all three of those might be going in at the same time. This really gives them versatility and creates an efficient use of the land.

The emergence of vadose zone wells really came as a consequence of the high land costs in areas where they wanted to do recharge, and they proved, they even said they were going to be economical, even with just a five-year life-cycle. The advantage is here we can locate them right adjacent to the source waters. You can do it almost wherever you want. You can also get soil aquifer treatment as a benefit.

Let me point out one more thing before we get into more technical uses is laws and regulations that promote aquifer recharge—the Groundwater Management Act that Steve mentioned calls for so-called water banking which means not only are you required to be at zero groundwater mining by the year 2025, but if you're putting in more water, you can sell it to somebody else that's not putting in that much water. So there's economic incentives to recharge water. And another thing is that the development only with a 100-year water supply, and requiring irrigation with reclaimed water were forcing all new developments to decentralize. So anybody that wants to put in a new development all of a sudden they aren't going to tap into the main sewer system, they're going to say, okay, with this new development, the only way I can show I'm going to have a 100-year water supply, and if I want to have some parks and golf courses, is I have to put in my own wastewater treatment plant that's going to serve this new development and we're going to keep all the wastewater right there and it's going to create our parks and our golf courses and during periods when we don't need that water for irrigation, we'll recharge it in the ground and we'll get our groundwater credits and maintain our groundwater table that way.

So if we look at this and look at the recharge water it's like money in the bank and people that don't manage to do that, the groundwater users that exceed and have to pay those that have put the water in the ground.

It's just kind of classic demand curve that we see in areas. This is actually from Utah. It's typical for the arid west where we have low demands in January and February. Demands can go way up in the months where irrigation is highest and then come back down. So this is the difficulty we have in meeting these demand curves. One of the advantages to also using reclaimed water that wasn't mentioned is reclaimed water is considered to be a drought-resistant source of water. Why is that? Well, you always flush the toilet, right? And you might cut off your irrigation use and try and conserve in some ways but you almost always produce the same amount of wastewater. So your reclaimed water supply curve would just go straight across like that.

So in summary of the first part of this presentation, groundwater recharge is considered to be really an integral part of water resources planning, if you really want to have a sustainable water supply in the arid west. Now the advantages are far greater than the potential disadvantages. Banking really provides economic incentives. Once land subsidence has occurred, you really lose groundwater capacity. It's not easy to reverse.

Conveyance systems tend to be a major expense, so location, adjacent to existing conveyance systems is the optimal way to go in terms of cost, and decentralization has many advantages also in terms of cost of development.

This is a site that is kind of dear to my heart. Up here is the Salt River. You'll see it flows a lot in Arizona. No fishing allowed. This is the 30 acres of recharge ponds from the Mesa Northwest water reclamation plant. There's a golf course that's supposed to use water from the area. And the groundwater that receives this recharged water flows below here. They also discharge water into the river here when they have excess flows, and as a consequence of that, that's kind of what I think Steve was referring to as indirect recharge. So they get 50 percent credit for the water they push into the river and allow it to just recharge on its own, and they get almost 100 percent credit for the water that goes into these basins under controlled recharge conditions.

I'm going to give you a little overview of what they call practical applications or results of the research. When we think about design variables for different types of recharge systems, one of the first ones and key ones is effluent pretreatment. How well do you have to treat the water before you put it into the ground? If it's a vadose zone injection or surface spreading basin, what's the vadose zone depth and what's the importance of that? We really don't think it matters. You get about the same amount of treatment whether or not you have saturated or unsaturated conditions. And then if we are dealing with above ground systems, what are wetting/drying cycles.

So for direct injection systems, really the effluent pretreatment and the time in the subsurface is probably the only real important design variables that affect final product quality. Now, the goals of soil aquifer treatment which don't show up there really is to put as much water underground as is practical and to get as much improvement in water quality as possible. When we looked at our project, we decided we wanted to look at a broad range of systems, so we looked at a number of different types of pretreatment technologies. These included activated sludge with nitrification/denitrification, so we had long, solid retention time biological treatment systems for above-ground treatment. We had activated sludge with partly nitrified effluents and we had trickling filters with no nitrification and then oxidation ditches, more like small community treatment systems that had nitrification/denitrification also.

Investigative field sites were mostly in Arizona. We had two in Los Angeles County, one in Riverside. Two in the Phoenix area, actually, Mesa and Phoenix and two in the Tucson area, and then we also went to the City of Houston for some specific reasons regarding their drinking water sources. The site characteristics, we had rates of infiltration, these were all surface water sites which range from 0.5 to 10 feet per day. We had depths

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to vadose zone where basically we had no vadose zone all the way to greater than 100 feet. And wetting/drying cycles, we had continuous infiltration systems to ones that might have been on the order of several weeks wetting, several weeks drying.

Our approach to try and solve the problems we've had in this type of research is that every time you go to a different field site the soil is not the same, the underground structure is not the same, there's a lot of so-called heterogeneities. And how do we make a comparison? We say, Well, the water quality improved here this much at this site and improved this much at this site. If we flip-flopped them, would it be the same or how would we know how much different it would be? One of the ways we got around that was we went to the laboratory and we took one type of soil that we knew was kind of conservative and would improve water quality. It's a relatively clean sand in the Agua Fria River in Phoenix. We put them in these soil columns and we just operated them under saturated conditions, meaning that there was no air pores in it. We actually took all of the oxygen out of these water and we operated under anoxic conditions. One of the reasons we did that is that we wanted to preserve the original water quality but also a lot of the systems do behave that way over time. The oxygen becomes removed from the aquifer.

If you compare that to aerobic systems with so-called biologic—this is a test that you actually use for drinking water treatment where you have this biologically reactive sand, then also we had these aerobic soil columns which would imitate treatment in an aquifer where oxygen was present.

So in kind of an outline I talk is first of all, how do you monitor some of these systems to ensure that you're really getting the treatment that you want before you withdraw the water, and then, what are some of the issues with effluent pretreatment? How does that influence the fate, change in the redox of the aquifer, which is whether or not oxygen is present, mainly? And how does it change our three major potential contaminant that might be present? The organics, the nitrogen, and the pathogens.

The objectives of monitoring is when you go and you do a recharge project, you want to be able to get a groundwater sample that is representative of what you recharge. So you have to be able to answer the question, is this sample really representative of what you recharged? One of the ways you can do this is that there's a lot of intrinsic tracers. There are things in reclaimed water that aren't harmful but are present that aren't in your other drinking water sources. These could just be different salts. Maybe sulfate. And one of those also might be boron, since we all use some boron from our detergents and boron comes from mainly one source, mostly in Death Valley. If you've ever driven through Death Valley, you know there's a borax mine. This has a very unique isotopic signature.

So if we look at this boron, we can tell whether or not this boron is from reclaimed water or if it's from some other source. And there's a number of other different ways of doing this. A lot of times, just ionic composition, the differences in the ions is good enough to tell the difference between the reclaimed water and the background water.

The next thing is have the natural processes attenuated any contaminants there were originally present? And there's different ways of looking at this. When we talk about

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organics, actually one of the original motivations of our research was organics because the bulk parameter, dissolved organic carbon, a measure of all the organics in the system is something we measure at the milligram per liter level. But if we look at the California Department of Health Services on groundwater recharge, they use this as a surrogate for all the organics that are present. And we argue that this is not a great surrogate, meaning it really is not a good representer of all the organics.

Our concern would be health effects possibly associated with trace organics, but these things are present at levels that are much, much, much lower than the bulk organic concentration. So we're talking—now we can find things at nanogram per liter levels. What's a nanogram per liter? It's an awfully small amount. It's one dollar compared to one trillion dollars. It's like going to the Federal Reserve Bank and giving them a dollar and saying we're doing something about the debt. It's an extremely small concentration. But we have the capability to measure that and that means we can find things. We find them in our drinking water sources as well. They're not necessarily just unique to reclaimed water, that we couldn't find ten years ago.

Then we have nitrogen and pathogens, and the difference here is that when we talk about nitrogen and pathogens, we're usually talking about nitrate. We talk about pathogens we're talking about things that can get you sick. So both of these things, there's potential of acute health effects with these and so we can't tolerate any of these things at all because if we know that if we do have a problem we could get sick right away. With organics, there's a whole lot of uncertainty. We're exposed to organics all the time. Here we're talking about chronic effects, things that would build up over a lifetime.

One of the things that whether or not you have a surface spreading basin or a direct injection system, is how do you go about monitoring? Well, when the water hits the top of an aquifer like this, in this case you have an upper alluvial unit and a middle alluvial unit. The upper alluvial unit has a higher hydraulic conductivity than the middle alluvial unit. That means that the water can travel easier through this upper alluvial unit. And so it fills up the upper alluvial unit and then passes downgradient but it doesn't mix much with the layer below. And so when we take samples here, we see that if you look at these multiple depth sampler, this cluster of wells here and these represent streams at these different points, we'd find that this point here and this point here are almost 100 percent reclaimed water, this point here might be 50 percent reclaimed water because over time, we get a little dispersion down into it. Then we go down here and we find no reclaimed water at all.

So at this site we had a whole array of wells. This was actually a former superfund site over here and we could track this water and get samples that might have represented a travel time underground of six months all the way up to ten years.

An example of what we see when we say breakthrough, we see a transition from our original water source to the reclaimed water source, in this case the background groundwater had a sulfate concentration of 60 mg/l, the reclaimed water especially because it had some Colorado River water and other higher sulfate water sources in it, had about 150 mg/l. We can see a very distinct breakthrough at one of the wells. It shows that we

went from almost 100 percent background water to almost 100 percent reclaimed water. And this was a simple way of identifying that yes, we were looking at reclaimed water.

When we think about groundwater recharge, your typical recharge rates, natural rates, when you compare them to your natural rates, you're typical recharge rates in an artificial system are going to be orders of magnitude greater than the natural rates. So it's only logical that the area you're injecting it into is going to be dominated by the reclaimed water. And dilution and mixing during saturated flow is a relatively slow process. It's a dispersion-limited type of process. So when we asked the question why dilution? Why everybody sees dilution? Usually they sample from a monitoring well that's screened over a very wide interval, that's screened from—if it's a production well it might be screened over several hundred feet and you're only injecting over a 50-foot zone, you're pulling up a huge mixture of water when you take that sample.

So the fact that most production wells are screened over large depths means they don't make very good monitoring wells to see what's happening and multiple depth monitoring downgradient is the way you really have to go.

Let's talk about effluent pretreatment and its potential impacts on the aquifer. We think about a typical secondary effluent. It has a lot of oxygen demand in two forms. It has biological oxygen demand, which is the carbon, nitrogenous oxygen demand, which is the ammonia. When we add that up, there's more than 100 mg/l of oxygen demand there, but you can't have more than 8 mg/l of oxygen in the water. So quite clearly, we're going to send this aquifer into an anoxic state if we put this water into the ground. We just can't get enough oxygen in. And when we do above-ground treatment, when we do surface spreading, we do allow oxygen to get back in the system during the drying cycle, but once it hits the aquifer in anoxic condition, it's very difficult to get the oxygen back in. It doesn't mean it affects treatment in any negative way.

In nitrified effluent we're only dealing with then the carbonaceous BOD and therefore it's very possible to maintain aerobic conditions. And we have nitrified/denitrified effluent, we basically remove the majority of nitrogen above ground and now we typically have cases where sometimes there's enough ammonia, because the ammonia contains a large amount of oxygen demands still. It has over 3 mg/l oxygen demand per milligram nitrogen, so just a couple milligrams per liter can still send you into anoxic conditions.

So since the mechanisms for oxygen addition in the saturated zone are limited, if you do remove the oxygen it's going to be hard to put it back in.

One of the things we've investigated heavily is what is the impact of effluent pretreatment on organic carbon. The organic carbon that you have in a reclaimed water is a mixture of three things. There's a lot of easily biodegradable organics. There's actually the originally natural organic matter that was present in the drinking water. Persisted in the surface water, persisted through the surface water treatment plant, and it's going to persist right through your water reclamation processes. And then we have things we call psi microbial products and they're just very similar to natural organic matter. They're

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produced by the bacteria that do the treatment. And then we have our trace organics, which would be our anthropogenic compounds which would really be our compounds of concern.

The major impact of effluent pretreatment is on the easily biodegradable organics. If we have very long hydraulic retention times, we do remove a more significant portion of the trace organics and the first thing that happens usually is the easily biodegradable organics are the first thing that are removed during soil aquifer treatment.

Now we look at what happens here. The residual DOC, what we after soil aquifer treatment is just our original natural organic matter. We have these psi microbial products. We've done a lot of characterization to show these are the two major components. This is 99 percent of what the organics are, and then we have a small group of trace organics, the anthropogenic compounds that can still be present. Both organic carbon, what we refer to as the natural organic matter and the psi microbial products, when we get into long time scales, the longer we keep the water in the ground, these concentrations go down and the trace organics, the majority of them disappear and only maybe a handful of them might persist after a time period of about six months. So these degrade what we call co-metabolically. Nothing can actually live on these directly but there's enough there for them to degrade.

For example in Mesa, the drinking water source has an average drinking water dissolved organic carbon concentration of 2 to 3 mg/l and the water after treatment has an organic carbon concentration of less than 1 mg/l. So if you just used DOC as your parameter of how good the water is, it's actually better than the original drinking water source. The effluent pretreatment for organic carbon, well, the majority of the trace organic carbons are removed during soil aquifer treatment. The time scale though of six months or longer is really what's required to make sure you really get that removal. And removal, as I said, is probably not direct but it's a co-metabolic type of reaction.

What's one of the other potential concerns? Well, one of the potential concerns is the same one we have with drinking water treatment and if we pull the water back out of the ground, add chlorine to it, to disinfect it, we can get the same types of disinfection byproducts that we got at our drinking water treatment plant that you presently get. The concern is well, is there anything different about these organics that would cause different types of disinfection byproducts to be formed. And the answer from our works extensively: no. We have about the same reactivity as we had with natural organic matter. So there's nothing different in terms of the reactivity after soil aquifer treatment as compared to the original drinking water source.

The only potential concern is that there's a little higher level of bromide in reclaimed water as compared to the original water and that's actually a site-specific issue. But with higher levels of bromide, almost all that bromide gets incorporated into the disinfection byproducts. So we'd have the same levels of disinfection byproducts but they'd be more brominated. If future regulation changed, it might be a potential issue if they start regulating individual compounds. Right now they just lump them into different groups—tri-

halomethanes, halo-acetic acids, and so it's not a concern.

Probably for time sake, I'll skip some of the nitrogen, even though it's one of my more interesting topics. We did find some very novel mechanisms going on there. When we look at pathogens, probably most of the work was done, we were looking to very, very advanced methods. Because the historical research that was done with the Los Angeles County Sanitation Districts, from their treatment plants, using traditional methods to look for enteric viruses, which is going to be our biggest concern for groundwater. Natural filtering should take care of most types of cysts and larger types of pathogens such as bacteria, but viruses could potentially be transported over longer ranges. But they never found—I shouldn't say never—but one out of something like 1,000 samples from the treatment plants, was the only positives that they found for an enteric virus using traditional methods.

So we went to some more advanced methods using genetic techniques, actually genetic techniques were the reason why the whole Miller brewing issue came up in Los Angeles. And what we found is that yes, you'd occasionally see a positive, but using the same techniques in areas that weren't affected by recharge water, yes, you'd occasionally find a positive. These techniques are so sensitive we see things we didn't find before. And we couldn't really distinguish the areas that were impacted by groundwater recharge from areas that were not impacted by groundwater recharge. So I think one of the things that we always have to say when we're doing water reclamation projects, ask the question, is the product of the water better than our existing or alternative water supplies. That's kind of the benchmark that we should be using. That's something that we usually have been able to show.

We talked about using surface spreading versus direct injection, what happens in the vadose zone versus the saturated zone, the vadose zone, things we know happen very consistently from our results but we know that the flow paths are very, very inconsistent. They're very variable flow paths and travel times. Things are much more difficult to predict. We can make things cycle between aerobic and anoxic. We can't do that in the saturated conditions. Things are much more consistent in terms of the flow path and travel time in a saturated zone. Easier to predict. We do have the issue that we can make the aquifer anoxic if we deplete the oxygen.

What we really found though is that there is no relationship between transformations in the vadose zone as compared to the saturated zone, except for nitrogen. And we compared actually aerobic versus anoxic degradation rates and we found that after 30 days, we had about the same product. The time scale of an SAT system, 30 days is not that long since usually we have a goal of about six month storage time. Since the major form of oxygen demand, again, is ammonia, we see that the vadose zone is really a prerequisite for ammonia removal since some of that ammonia has to be converted to nitrate before it can go through the rest of the nitrogen removal cycle.

So that is the one case where if you do want to have nitrogen removal as part of the system where you do need to have a surface spreading type project.

Wetting/drying cycle, that's just an above-ground treatment system issue. If you're interested in that we can ask more questions. In summary, the removal of organics and nitrogen is a sustainable process that's apparently driven mostly by microbial processes. By sustainable I mean microbial driven. Nothing appears to be accumulating in the soil. Some of these bank filtration systems in Europe have been in operation over a hundred years and they've sampled those and shown that actually the organic levels in those soils is lower than some of the neighboring soils. SAT is a fairly robust process that can function over a wide range of characteristics and effluent pretreatment. It needs to meet the type of injection system.

The existing criteria now, this is a criteria that's set by the California Department of Health Services in their proposed guidelines, which requires a six-month travel time from point of injection to a point of recovery. That is actually set based on the potential for an enteric virus to survive. An enteric virus can only survive and grow in a mammalian host. So if it's in an environment where it doesn't have a mammalian host—there certainly aren't any mammals living in the aquifer, right? then they can't survive, it's been shown longer than six months, so they set that criteria and the idea that well, even if some viruses did get done there that they could not survive more than six months and they'd have to die off before they got to that point. But I also think that's a very good criteria in terms of getting organics removal.

Any questions? I ended where Steve began.

CHAIRMAN DURAN: Are there any questions? Please raise your hand and Mr. Fox can answer your question.

COMMISSIONER SULLIVAN: I had one question for either or you. How do you handle the chemicals from medicines, medications?

DR. FOX: Pharmaceutically active compounds and endocrine disrupters are probably the two hottest issues to associate with organics. Most of our research so far shows that endocrine disrupting activity goes down to levels lower than some of our drinking water sources after soil aquifer treatment. This is logical because most hormones which are the major suspected compounds are very insoluble in water and they'll absorb to the soil and they are very easily biodegradable.

Pharmaceuticals, there's a whole host of these compounds. I've actually proposed that we go and start testing these things as the FDA approves them and see them for their biodegradability. Most of them do biodegrade. If you test sewage effluent, and you can go down to nanogram per liter levels now, we can see a wide range of these. After soil aquifer treatment, we see the same results that have been shown with bank filtration in Europe, which is I can list about five different compounds that we know persist. There's two anti-epileptic drugs that show up at about 100 nanograms per liter. Maybe one sulfonamide antibiotic, an x-ray contrast agent, actually a derivative, it's not the original compound.

The thing you have to remember about these and I'm actually—I was in the emergency room Sunday morning in Minneapolis because I had a massive infection, my

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ear was out to about here and I'm still not hearing too well out of this ear, but as I take a dose right now, I think I'm taking 500 mg three times a day. That's 1.5 grams. And we're talking about one or two nanograms per liter. I haven't done the calculations but if I were to drink that water throughout my entire life I'd be getting about one-millionth of one dose that I take per day right now. And so these are all things that have been approved for our consumption and ingestion already. Now of course if there was tens of thousands of these that were showing up, I would be a lot more concerned. But probably the one concern about antibiotics persisting is not after soil aquifer treatment most of them go away, but when we discharge these into the open environment as we do presently in our rivers, are we creating a whole host of bacteria that are becoming antibiotic resistant because they're getting exposed to these things? That's a whole different issue though than the drinking water side. That's probably the biggest concern that most people have in the health community now.

COMMISSIONER SULLIVAN: So has there been research, in other words, some of these medications may be good for some people but maybe I shouldn't be taking them. Basically what you're saying is you think they're in small concentrations.

DR. FOX: Yes. There's something that we call a threshold level, which means like, if you take some vitamin C it's good for you. If you took a huge dose it would be bad for you. I'm not saying that low concentrations of these things would be good for you but at these concentrations they can't even induce an effect on your body. The reason why they are persistent and they show up is because they are water soluble, which means that they are things that are very easily flushed. You ingest them in your body. They're aren't compounds that can accumulate over a lifetime, which is usually our biggest concern with organics. Something like DDT which of course isn't very water soluble but if you're exposed to it, there's no way your body can get rid of it. If you were exposed to it over a lifetime it would accumulate in your organs and cause toxicity. But these things can't accumulate in your body. They're way too water soluble.

COMMISSIONER SULLIVAN: The other question I had was could you explain or just give the definition of what a vadose zone is?

DR. FOX: A vadose zone, that's a good question. If we start out at the ground surface here and we have an aquifer down here, it would basically be the depth of the ground down to the aquifer. There is a zone here where there is a little more water right above the aquifer that is unsaturated. It's still considered to be part of the vadose zone. So it's an area that the soil is not completely saturated with water. So there are air pores present in the soil.

COMMISSIONER SULLIVAN: So in the Phoenix area where they are injecting this water into the vadose zone, and then taking it back out again, are they drinking that water, or is it being used on golf courses, or what do they do with that water?

DR. FOX: In the Phoenix area, when it's recovered it's mostly being used for irrigation. There is some areas where, people don't want to admit it but it is incidentally used for drinking. It's extensively being used for drinking in Los Angeles and

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has for a long time period.

COMMISSIONER SULLIVAN: In Phoenix, how far do you generally go down to get to drinking water?

DR. FOX: Our wells are typically screened for depths from maybe 150 to maybe 900 feet deep in some cases.

COMMISSIONER SULLIVAN: And the vadose zone would be up in the 100 foot category?

DR. FOX: Yes. In the area up in Scottsdale, actually, they're creating a new aquifer with this water. It's going right onto bedrock. They drilled 500 feet and didn't even find water to places that they're putting the water back in.

CHAIRMAN DURAN: Any other questions?

UNIDENTIFIED SPEAKER: One of the big issues in New Mexico is the interconnection between groundwater and surface water and in particular trying to protect the surface flows from depletions from groundwater cones of depression heading towards the river. One of the applications that is often described to try and address that would be injection of reclaimed water or other water to try and intercept those cones of depression, maybe in the same way that that barrier you showed in Orange County is used to keep seawater out. What sorts of issue do you see that we should think about in terms of that kind of an application?

DR. FOX: You mean in trying to create a hydraulic barrier to protect the surface water? I think they've done that in some cases in Europe. I'd have to look at that. Some friends in Switzerland I know gave some presentations where they're showing results of tracer tests. They were trying to demonstrate they were truly being effective at it. I think probably the most effective method is to be at a sustainable yield for the basin so you're managing it in a way that you're not actually doing that, although I am a big believer in bank filtration, I think it's more effective to pull the water from the river through the ground and produce it that way than to use a surface water treatment plant also.

CHAIRMAN DURAN: Any other questions?

ZANE SPIEGEL: I have a question for Mr. Borst. Could you tell me why it is that in Arizona, since 1980, that all the lawyers, or at least 51 percent of the lawyers, the legislators and the hydrologists believe that there is a safe yield that is more than zero? In other words, why does the Arizona law completely disregard what happens to the natural recharge without—before well development occurred? Where did it go and who does it belong to? Did it belong to prior irrigators, such as the various Native American tribes on the lower Gila? Did it belong to the environment that used that water? And if you take all the recharge as safe yield law permits you to do, what happens to that original natural recharge that belonged to somebody else? In other words, the original natural recharge was the original natural discharge. Do you understand what I'm asking?

DR. FOX: Yes, I do. Water rights—I'm more water quality. There's tons of lawyers out there on water rights. Would you like to try?

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MR. BORST: I guess my first answer to that is safe yield is achieved through artificial recharge. [inaudible remark from audience] Well, that's the way of achieving it though. I guess the second answer to that is that natural recharge, combined with the activities of the Hohokam Indians basically wiped out the Phoenix area. The Phoenix area was a saltwater marsh 100 years ago, and it wasn't until modern technology and pumps came in that they could pump the saltwater down that agricultural started to take over. Now, they got carried away and pumped it down several hundred feet in many cases as development occurred. So that was obviously not safe yield. But they dammed up the rivers completely and now we have an artificial—what we have is an artificial system where we use that water that's dammed up and we are putting it back into the ground and if groundwater levels are rising, which they are in many cases, in many areas, then we are clearly somewhere above zero yield or above safe yield.
[inaudible remark from the audience.]

MR. BORST: Yes, I said that the Hohokam Indians did it.
[inaudible remark from the audience.]

CHAIRMAN DURAN: Thank you very much, sir. I'm going to ask for the next person who has a question to please—

UNIDENTIFIED SPEAKER: Dr. Fox, can you comment on any studies that have been done to identify the least or most desirable soil structures for recharge?

DR. FOX: Well, we've looked at a wide range of soils. Actually, previous research was looking at different soil types and have not found that the soil type or soil structure is all that important. Now, clearly, we don't want to end up in a karst type situation where you're just going to have basically the underwater flow that it is in pipes but we find that it is the contact time, the amount of travel time through a—if you have an alluvium like you have here, it's going to give you about the same type of treatment because it is a biological process and in most cases you are not surface are limited. If you just had a bed of gravel, then I'd question whether you'd still get as good treatment. But as long as you have a sandy type of alluvium, and certainly clay soils which are going to slow the water down is going to give you an extra safety factor.

UNIDENTIFIED SPEAKER: Have studies been done on the percolation time or travel time to translate, for example, the number of linear feet required from the recharge zone to the withdrawal zone?

DR. FOX: That's a very tough question and you must be quite knowledgeable to ask that. You would usually—the best way to answer the question is to do a tracer test to understand the travel time, which is a fairly big and expensive proposition. But you do develop fairly high flow rates in the region of the recharge. In Orange County where they did tracer tests, they had that system so artificially set up now that the water is flowing at ten feet per day in some cases. Which, naturally, I've only seen in Hawaii.

CHAIRMAN DURAN: Okay, well, Mr. Borst, Mr. Fox, thank you very much for joining us this evening, and I'd like to extend an invitation to all of you that

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came tonight to please give your name to Katherine Yuhas who's going to be at the back of the room to take your name so that you can be notified of when we plan our next meeting to discuss this issue. I really think that reuse of reclaimed water and soil aquifer treatment and indirect potable reuse is something that we need to consider using in this community or at least exploring it to a point where we can make an educated decision on whether or not we want to pursue something like this. So thank you very much and we'll be in touch with everybody. Thank you.

XI. Public Hearings

A. Land Use Department

2. Ordinance No. 2002-__ . An ordinance amending Article VII, Section 6.2.2.c, and adding a new section, 6.2.2.d to the Santa Fe Land Development Code (Ordinance 1996-10) to require proof of a valid water right permit for Type I and Type II subdivisions, and Type III subdivisions of more than twelve lots. Type III subdivision to allocate more than 0.25 acre-feet per year per lot, and non-residential developments using more than 1.0 acre-feet of water annually

CHAIRMAN DURAN: Katherine, can you explain what it is we're going to be talking about here? I have a different question first. This was tabled by the EZC for lack of a quorum.

MS. YUHAS: The CDRC.

CHAIRMAN DURAN: CDRC. So what does that do to the process that we're following here?

MR. ABEYTA: Mr. Chairman, my understanding after speaking with Legal, that because two public hearings are required, we could have the first public hearing this evening, then go to the CDRC at the end of the month, and then come back to the Board for the second public hearing.

CHAIRMAN DURAN: So CDRC doesn't require two hearings?

MR. ABEYTA: No.

CHAIRMAN DURAN: Oh, okay. Good. So can you explain what it is we're doing here? For those who don't know, which includes me.

MS. YUHAS: Mr. Chairman, Commissioners, if it's okay, I'd like to tell you about the three handouts I have you first so you can follow along with what those are. The first one just explains what the three types of subdivisions are that will be affected by this ordinance. [Exhibit 2] Type I and Type II subdivision already require water rights. The changes are occurring in the Type III subdivision area.

The second thing that I handed you lists what types of commercial projects could be developed with one acre-foot of water per year. [Exhibit 3] And the third is a brief

overview of roughly the amount of water rights and cost of water rights in different areas of Santa Fe County. [Exhibit 4]

CHAIRMAN DURAN: Okay.

MS. YUHAS: So briefly, as briefly as I can at least, what this ordinance is trying to target is our concern about the proliferation of domestic wells in Santa Fe County. Much of the development that occurs in the county occurs on domestic wells, both for subdivisions and for commercial development.

CHAIRMAN DURAN: And Katherine, how is changing it from 24 lots to 12 lots going to do that?

MS. YUHAS: Mr. Chairman, currently, most of the subdivisions that we get are 12 lot subdivisions that propose to use domestic wells. It's thought that if we bring this back to a smaller number that these larger subdivisions that are 13 to 24 lots, they'll now be required to have water rights and this will help alleviate the problem of development on domestic wells.

CHAIRMAN DURAN: And the—go ahead and finish your presentation. I have a lot of questions.

MS. YUHAS: Thank you. According to the State Engineer's database that I've looked at, there are 13,321 domestic wells in Santa Fe County, and there are 1,196 other types of wells. And estimates are that there are approximately 1,000 lots that have yet to apply for drilling permits within the county. Domestic well permits are issued automatically by the Office of the State Engineer as required by state statute 72-12-1. There are six different types of domestic well classifications. They are multiple domestic, or shared wells, prospecting and mining, public works, stock wells, sanitation for small businesses, such as restaurants and gas stations, and finally, individual wells.

If each of the domestic wells that is in Santa Fe County uses a quarter acre-foot per year, that's approximately 3,330 acre-feet per year that's being used up and is not accounted for by a water right. If they each use one acre-foot per year, that's 13,321 acre-feet per year that is not accounted for in anybody's water rights. So essentially, it's taking without paying.

In 2000, the Office of the State Engineer issued a report on the impacts and problems associated with domestic wells. It states that existing domestic wells in the state may currently deplete stream flow by as much as 5,700 to 16,000 acre-feet per year. Now, that's a very wide range but they have trouble pinpointing some of the wells and this is obviously not a site-specific study. It's across the whole state, an estimate.

CHAIRMAN DURAN: So how would that apply to this community? How do we apply that statement to what's happening in this community?

MS. YUHAS: Mr. Chairman, you could take it as the number of wells that are in this community and extrapolate kind of back to what that would be doing to stream flow within Santa Fe County.

CHAIRMAN DURAN: Okay.

MS. YUHAS: Also, the reports states that domestic wells compete with local water rights and community water systems, interfere with one another, stressing groundwater

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availability, capture local groundwater pollution from a variety of sources, and become a public hazard if they are improperly constructed or abandoned. Domestic wells have become an increasing problem in suburban areas surrounding urban areas where community water and wastewater systems are not yet available. As I stated before, much of the development in Santa Fe County is happening using domestic wells.

The Santa Fe County Code currently requires Type I subdivisions and Type II subdivisions to obtain water rights. The proposed changes would require that any Type III subdivision with 13 to 24 lots obtain water rights. That any Type III subdivision where lots are to be allocated more than a quarter acre-foot of water annually obtain water rights, and any non-residential development that proposes to use more than one acre-foot of water per year would have to purchase water rights.

In addition to the handouts that I gave you, the County's contract attorney, John Utton is preparing a memo that I will have for our next hearing on the procedure for transferring water rights and the viability of doing that within Santa Fe County. Questions?

CHAIRMAN DURAN: I have a couple. So do you believe that by restricting Type III subdivisions to 13 lots or less will have an impact on the number of wells drilled, if we require water rights to be transferred?

MS. YUHAS: Mr. Chairman, I think it will have an impact on the number of domestic wells that are drilled, yes. They may drill the same number of wells, but transfer water rights into them to supply.

CHAIRMAN DURAN: I think what we're basically doing here is promoting serial subdivisions. Do you know what a serial subdivision is?

MS. YUHAS: Mr. Chairman, yes.

CHAIRMAN DURAN: If I had the potential of doing 20 lots, and I came in to subdivide it and you told me well, the ordinance now says you have to go out and get water rights, I'd go out there, I'd try and find water rights and I would discover that nobody wants to sell them. Everybody wants them right now so there's a premium on them and so I would basically be unable to develop those 20 lots. So what I would do is I would do 12, and I'd sell the other balance of the property to somebody that would go out and do the eight. So where have you protected that aquifer at all?

MS. YUHAS: Mr. Chairman, I completely understand your position. There are water rights—to address the water rights question, there are water rights on the market. They are not inexpensive, but as far as the serial subdivision part of it goes, this question has been raised by some of the people in the development review staff and it's certainly something we need to discuss here.

CHAIRMAN DURAN: Well, there is not—proving a serial subdivision is almost impossible. You have to take the person to court. You have to prove that it's not an arm's-length transaction. I think this does nothing—if the goal is to protect the aquifer, this is not the way to do it. What we should be doing, in my opinion is coming up with ways of conserving or managing the resource. We already require that meters get placed on the wells, right?

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MS. YUHAS: Yes.

CHAIRMAN DURAN: We should start making sure that they don't exceed a quarter acre-foot. We should implement new building code requirements so that water conserving devices—the ordinance that we were supposed to talk about earlier, before this is really the one that's going to save the water. All this ordinance is doing in my opinion is going to promote serial subdivisions and it's going to tie up our Legal Department and our Land Use Department because people are going to want to make sure that these serial subdivisions aren't taking place, and they're hard to enforce. They're just impossible to investigate and prove that that has happened.

MS. YUHAS: Mr. Chairman, I agree with you about the difficulty of that. If we could look at the second part of the ordinance that looks at any subdivisions that propose to use more than a quarter acre-foot per lot, if we examine that, that doesn't necessarily bring in the serial subdivision issue quite as much, I don't think. So perhaps we could look at that aspect of it.

CHAIRMAN DURAN: What happened to a scientific approach to determining whether or not there was a 100-year supply of water? What's wrong—what happened to our requirement for development to prove that there's a 100-year water supply? What you're basically saying here is that we don't care what the geo-hydro says, if it proves that you can have a main house and a guest house, which is what a half acre-foot needs, we don't care. We don't care that you can prove that there's adequate water.

I understand that there are some areas where the water is a little bit more—there's not as much water, for instance out in the Eldorado area, Madrid, those areas, but there are other segments of this county that have ample water and I think that this ordinance, it's doing away with—just because Commissioner Sullivan wants to, or Commissioner Campos wants to find ways of limiting growth. I don't think this is the way to do it. Or even to protect the aquifer, because I don't think it does that at all. I think what it really does is just promote serial subdivisions and I'm opposed to it.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just to address your first question about the serial subdivisions, as I read this, reducing it down to 12 lots on a domestic well permit simply is a mathematical function of a quarter acre-foot times 12 units, gives you the three acre-feet you can have in a domestic well. So that allows an applicant to make full use of a domestic well for a subdivision of up to 12 units.

CHAIRMAN DURAN: What if he wants a guest house?

COMMISSIONER SULLIVAN: Okay. Well, let me talk to the serial subdivision issue. We have the same problem with serial subdivisions now, only they're twice as large. If a developer wants to go over 24 lots right now, he or she has to get water rights. So what do they do? They do, if they have enough land for more than 24 units they do just what you say. So what we have now is the potential for serial subdivisions which are just twice as large. So if serial subdivisions are going to occur under these new proposals from the staff, at

least they'd be half the size and I think, again, we in the review and the master plan phase and in the review phase should be able to pick up on that by requiring master plans that encompass the entire proposed development. We can see what the proposed intent of the developer is.

I think we have the potential for serial subdivisions now. We have the potential for serial subdivisions under these changes. I don't think this ordinance addresses that one way or the other. It just cuts the potential down in half because within any one subdivision at 12 units you can only use one domestic well. We can't have multiple domestic wells in the same subdivision, so that cuts our wells back.

So that I think would respond to the serial subdivision issue. I think as Katherine pointed out, what water rights do is they balance the use over our entire basin. So at this point in time we're allowing commercial uses up to three acre-feet. That's free water. We're not—they don't have to pay for it. It can be depleting the aquifer, it can be depleting traditional acequias. It can be depleting any other well because there's no requirement that that well be looked at in terms of its impact on other wells. Once you apply for a water right, then at least there's the requirement that that be looked at for its impact on other wells. And all of these uses that Katherine has presented here make it clear that with one acre-foot you can do a great deal of development.

Now in terms of the 100-year geo-hydro, we put that out as our technological answer, yet whenever someone comes, and there's one on our agenda tonight, and it's going to get approved, that's requesting a waiver of the geo-hydro to prove 100 year. It's going to get approved tonight. So we put that up as our answer and then we waive it. So I think we need some more substantive and reasonable approach to our aquifer management. You say that water rights aren't available and Katherine's research in the Santa Fe Basin they are. They do cost between \$12,000 and \$15,000 an acre-foot. I think water has a value. I think we need to put a value on water and we need to protect impacts on other users by placing a value and by having a requirement that water rights be obtained.

CHAIRMAN DURAN: Do you have a list of these people who are selling water rights?

MS. YUHAS: Mr. Chairman, no. I don't have lists of everybody who's interested in selling water rights. A list such as that does not exist.

CHAIRMAN DURAN: So how did you find out that there were people that would sell their water rights for \$20,000. I spoke with people who work in the field. There's a note at the bottom of the list. So I did want you to be aware that there is not—

CHAIRMAN DURAN: So this is all hearsay then.

MS. YUHAS: Mr. Chairman, if that's the way you'd like to interpret it, yes it is.

CHAIRMAN DURAN: I have been trying to find water rights for months and I can't find any. Maybe you can find the water rights where people can pay \$20,000 for them. So if you're going to base your presentation to us tonight on sheer hearsay, I don't think that's right.

MS. YUHAS: Mr. Chairman, I'll let you know who I spoke with.

CHAIRMAN DURAN: I don't want to know who you spoke with. I asked Gary to make me a list of what water rights were available and who owned them. That's what I wanted to know, because I needed to make a decision about whether or not I felt that what the Commissioners were proposing was reasonable.

MS. YUHAS: I don't think it's possible to do that.

CHAIRMAN DURAN: Because they're not available. My point is what we're basically doing is proposing to adopt an ordinance that basically might as well just say no more development. And if you want to have a guest house on your property, forget it. We're not going to let you have a guest house. Because that's basically what it is. If I'm going to do a 12-lot subdivision, even if I'm going to do an eight-lot subdivision or whatever size of lot, whatever number of lots I'm proposing to develop, this restriction that I'm only limited to a quarter acre-foot doesn't allow me to have a guest house, like almost everyone else gets. And I don't think that's fair.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to hear from Commissioner Trujillo and Gonzales as to what their views are about the issues raised by this proposed ordinance. I think it's part of the discussion we need to have now so we can shape it if there is a consensus to move forward.

COMMISSIONER GONZALES: Mr. Chairman, I think generally, I'd like to wait and see what comes out at the CDRC and continue to see this at the second meeting, but I've got some concerns about forcing the issue of water rights for subdivisions that are at the 12-lot stage. I think that again, we need to set our priorities and determine how we want to control growth in this community, if it's by requiring developers to go out and get water rights, and if they can't they can't participate in the development of this community that's one thing. Or if it's the County actually taking a leadership role in determining where growth is going to occur, how it's going to occur and how we're going to support that type of growth, whether it's through our own water system or whether it's through some other tool that's out there.

But I'm undetermined at this point. I have concerns about lowering it from the 24 to the 12, but I'm willing to sit and listen it out and see how in the big picture scheme this is going to accomplish or address some of the water constraints that we currently have. If the issue is to limit growth, then I think we can use our zoning powers to do that. I think that we can identify areas that we don't want to see an abundance of wells go in, change the density and go from there. But if it's a matter of using or requiring individuals to go out and acquire water rights that are difficult to acquire and to find then I think that may not be the best route to go.

COMMISSIONER TRUJILLO: From my perspective, Mr. Chairman, I think that what is imperative at hand here is that we find a sustainable source of water. I think that this proposal is talking to the issue that there is a real concern out there that we're depleting the water table, that we're essentially mining the water table and there's nothing going back to replenish what we're using. And the issue at hand is to find that sustainable source of water and that we need to do with in cooperation from a regional perspective with the City of Santa Fe, with Las Campanas, if that is an option. But in order to regulate development or sustain existing development, we need that diversion point, we need a sustainable source of water and we need

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to stifle mining the water table, depleting the water table without anything going back into it. And sustainability to me is of paramount importance.

CHAIRMAN DURAN: I agree with you, Commissioner. I think that we've already addressed the water issues in the areas of our community that are very suspect to drought and depletion and that's the Community College District. We've already agreed that the Community College District will only be serviced with community water. We currently have water zones, the Basin Fringe, the Basin, what are the other ones?

MS. YUHAS: Homestead and Mountain.

CHAIRMAN DURAN: And they're all based on water availability, based on wells and actual data that we have that proves that the—that actually proves to us the quantity of water in that aquifer. So if we start limiting the growth across the board, we're doing it in conflict with the information that we have available to us. The northwest quadrant, there is an abundance of water up there. The Tano Road area. And I'm just concerned that if we're trying to protect the aquifer that we're just doing like we're taking a sky is falling approach to the problem. I think that there are ways of dealing with it—

COMMISSIONER TRUJILLO: With all due respect, Mr. Chairman, we don't have the quantitative information that we need to make reliable determinations on the basis of water. Hydrology and water and geo-hydrology are enigmatic sciences. We don't have the quantitative information and that's what I've asked for. I've asked for a comprehensive water availability and water quality study across Santa Fe County that we can use as a tool to make decisions, land use decisions. We don't have that information. I don't know how long it will take that information source forward, but it's something that we need to make appropriate recommendations and decisions.

CHAIRMAN DURAN: We do have it and it has taken the form of the zones that we've created, the Basin Fringe, the Fringe, the Homestead, the Mountain zone, all of those are hydrological zones based on the information that we have relative to the aquifer, which has been time and time again proven to be relatively accurate. I think to just do a broad brush ordinance limiting the rights that the community has out there, I think it's the wrong thing to do. I think there are other ways of protecting the aquifer and managing the resource without infringing on the rights people have to, number one, build a guest house, have a guest house on their house. And being able to use the water in a responsible way.

COMMISSIONER TRUJILLO: Why don't we—this is the first public hearing and I'd like to open it up to the public and understand where the community's coming from. Get their perspective.

CHAIRMAN DURAN: I'd like that too. So let's do that. It's a public hearing. Is there anyone out there that would like to address the Commission relative to this ordinance? He is the public and he deserves as much respect as everyone else.

JIM SIEBERT: Did I miss something?

COMMISSIONER SULLIVAN: I give him plenty of respect. I was just asking him if you were the public, Mr. Siebert.

MR. SIEBERT: Yes, I am the public. My name is Jim Siebert. My address is

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718 Juniper Drive, Santa Fe. Just a few comments. Commissioner Campos and Commissioner Sullivan were good enough to invite me to a committee discussion of this and I guess I'll make the same comments here as I made at the committee, is I'm still not entirely sure what the purpose is. If the purpose is to protect the aquifer, I don't see that this does it. You're continuing to use the same groundwater as if it were on 72-12-1 wells, so I don't see how if the goal is to protect the groundwater system I'm not sure how this actually accomplishes that. If it is the idea to achieve some kind of sustainability then I think maybe you have to look at a different approach. An approach would be that maybe some subdivisions have to put in dry lines in areas that—a water system to County standards and as a condition as to such time as County water is out there then they are required to connect onto County water.

If you have something like then, then you're not using the aquifer; you're saving the aquifer. There was discussion of the cost and I think that's right. Water rights are all over the board but they're probably somewhere between \$15,000 to \$20,000 an acre-foot is my guess, but what's not calculated into that cost is the cost of the transfer. The cost of the transfer is generally equal to the cost of the water right, which makes it a very expensive and a very time consuming process. You're probably looking at two years in order to accomplish that.

In terms of the serial subdivision, I think there was some discussion of is this actually a growth management technique. If it is, I don't think you're going to accomplish that because it wouldn't be a serial subdivision at all, it would just be a matter of somebody breaking down the lot far enough so that you could do 12 lots. It's not a matter of the serial. He keeps one lot, he can develop 12 lots, and then the remainder of the lots can be developed by other people that he's sold to as an arm's-length transaction. That's not a serial subdivision. There's no connection.

So I guess the bottom line is I'm just a little confused by the purpose.

CHAIRMAN DURAN: Is there anyone else out there that would like to address the Commission? Please state your name for the record.

KARL SOMMER: Mr. Chairman, members of the Commission, my name is Karl Sommer. I'm an attorney here in Santa Fe and I do a fair amount of land use practice. I'm familiar generally with the ordinance and I tend to agree with what Jim has said, that the purpose behind this ordinance is difficult to understand. I think that Commissioner Gonzales hit the nail on the head when he said, Are we trying to manage growth? If so, we have better tools than this. I think that the County has undergone literally a decade of planning and laudable planning. I know in the term that Commissioner Gonzales and Commissioner Trujillo have been on the Board, and you Commissioner Duran, planning in Santa Fe County has been transformed into several items. One was, there was a comprehensive general plan that relied heavily on community planning, so that general plan was implemented as you know successfully in almost one-third the time that the City took to implement their plan.

Then, what came along and has continued to come along is the idea of community planning in the various districts so that there was community input as to the level of growth that would be acceptable and I'll just use by way of example, La Cienega. They have a plan and I believe they have an ordinance on the way. Tesuque, they have a plan, they have an ordinance.

And it's not actually a serial subdivision; the laws permit it completely. The existing laws at the state level and here at our County allow us to divide property and have someone else develop it. We'll not get away from the problem of perceived serial subdivisions through this kind of ordinance, I believe.

I want you to also understand that we have on our books the strictest regulations in our state for construction of wells. They're stricter than the state standards. This is something that you guys adopted in 1997 I believe. I was just reviewing them again today. So we're not in the backwoods on these kinds of issues. Another thing that's been happening, not through something on the books, but through wise guidance of your County Hydrologist is you're requiring shared wells in most situations. So if I came in with a request for a 16-lot subdivision, the most I would be allowed is for shared wells, built to the highest standards that our community requires. So I do want to keep you informed as a person who knows those rules pretty well that we're very lucky in that we've got very insightful rules and some things on the books really to protect our community.

I am concerned that there are—it's difficult to purchase water rights. It's also very difficult to transfer them. And I also recognize that our community, meaning our County, needs water rights. And I'm concerned that by requiring more projects to have water rights, which seems to be the direction you may be considering, you're going to create more competition for yourselves and the price the public is going to pay for the water rights that our community needs. I'd only just close by saying what we do have on the books today are very impressive as far as protecting our water resources. We have achieved 20 years ago what the state of Arizona is trying to achieve in the next 20 years. That's partly why we're in as good of shape. Why we don't in the Tano Road area have depletion of wells.

We do have problems in some areas. Possibly that's related to practices before our ordinances went into effect. But I think since our ordinances have been in effect and since they've been upheld, we've seen some good results and we're finding that in general, our community is doing well with our domestic wells. Thank you

CHAIRMAN DURAN: Thank you. Is there anyone else that would like to address the Commission? Well, this is the first of two hearings. When's the next one?

MR. ABEYTA: Mr. Chairman, there'll be a public hearing before the County Development Review Committee on the 25th at 4:00 p.m. here in the chambers. And then the second public hearing before the Board of County Commissioners will be on August 13th.

CHAIRMAN DURAN: Can you make sure that it starts at 6:00? We had the presentation. I think that this ordinance is important enough to at least be heard early on in the meeting rather than 8:30 when nobody's here. Either for or against.

MR. ABEYTA: Mr. Chairman, we'll do that.

CHAIRMAN DURAN: Is that okay with the Commission?

COMMISSIONER CAMPOS: It's fine with me.

COMMISSIONER SULLIVAN: That's fine, Mr. Chairman. You set up the 6:00 presentation. It's your call.

CHAIRMAN DURAN: Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman, I'd just like to add that I think that, and we always appreciate the interest and the expertise and the comments of our development community on these issues, which all three of those speakers represented. I think we have to keep in mind what we're doing is water is no longer free. When water rights are brought to a project from a basin, they're retired from somewhere else. It's a fixed—it's kind of like taxi-cab licenses in New York. There's only so many of them and one gets retired to another. So we don't create more taxi-cabs. The use of domestic wells for larger subdivisions and commercial applications is in essence creating more taxi-cab licenses. It's providing free water when that's a limited resource. So I think we are accomplishing that by bringing a water right to a project which retires it somewhere else. So I think it's not just putting a requirement on a developer to do something arbitrarily, but it's for the greater public good.

CHAIRMAN DURAN: And I think that staff has indicated—not staff, but there's been testimony that indicates that this ordinance will do nothing to prevent that from happening. It just means that they're going to be smaller divisions of the land. When Oralynn, she stated when she was the engineer with the Land Use Department that there were more small lot subdivisions approved than 24 lot subdivisions or greater. So again, as we move forward on this, I want to just make sure that we're adopting something that's going to have an impact on what your goals are, I think what all of our goals are. I just don't see that happening with this ordinance.

COMMISSIONER SULLIVAN: Well, I would certainly encourage you, Mr. Chairman, to propose some additions or substitutions here that will provide some sustainability to our aquifer. We know what's happening in La Cienega. We know what will happen in the Community College District. And if—

CHAIRMAN DURAN: Well, why don't we work together on it?

COMMISSIONER SULLIVAN: And just saying it doesn't provide guest houses, well, I think at some point in time we have to say, maybe yes, we should limit guest houses where there's water shortages. At some point we have to realize that we have a finite limit on the amount of water that's in the aquifer and we have to impose upon ourselves some restrictions that make that water available for future generations. I'm certainly open to any other—and not me personally. I'm sure the staff and the other Commissioners are open to any other suggestions and any methodology you would have to help do that.

CHAIRMAN DURAN: I'm more than willing to participate in the process. Okay. That ends the public hearing. This will be heard again on the 13th of August, and maybe we'll have some new ideas. Thank you, Katherine.

- XI. A. 6. **EZ Case #S 01-4221. Sena Vista Heights. Paul and Mary Jo Parker, applicants, Jim Siebert, agent, request a master plan and preliminary development plan and plat amendment and final development plan and plat approval for a 72-lot residential subdivision on 15 acres through a transfer of development rights as**

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set forth in the Santa Fe Metro Area Highway Corridor Plan. The property is located off of the I-25 frontage road across from the Santa Fe Downs, within Section 26, Township 16 North, Range 8 East

VICKI LUCERO (Review Specialist): Thank you, Mr. Chairman. On July 24, 2001, the BCC granted master plan and preliminary development plan and plat approval for a 70-lot residential subdivision. The applicant is now requesting a master plan and development plan amendment with final development plan and plat approval for a 72-lot subdivision. The applicant owns 7.19 acres of property at the intersection of State Road 599 and County Road 62, which lies within the Highway Corridor area where commercial development is discouraged.

Under the Highway Corridor Plan there is a provision to allow the transfer of development rights to a more suitable location. Under the TDR Ordinance, the applicants' property qualifies for the transfer of development rights program. The applicants' 7.19-acre parcel is located within an area that was designated as a potential commercial node by the EZO prior to the Highway Corridor Plan. In this specific area the applicant will be allocated 12 TDRs per net sending acre to be developed at one of the receiving areas as designated in the TDR ordinance. The applicant wishes to transfer the development rights to the 15-acre parcel within receiving area number five as designated in the TDR ordinance. The maximum allowed density in area 5 is five dwellings per acre.

The minimum lot size in this area is 2.5 acres per dwelling unit, therefore the applicant is automatically allowed six dwelling units. The allowance of the additional dwelling units will come from the transfer of development rights from the Highway Corridor property at a rate of one TDR per one dwelling unit. The applicant will transfer 66 TDRs for a total allowance of 72 lots.

Recommendation: The applicant is requesting a master plan and development plan and plat amendment to increase the density from the previous approved 70-lot subdivision to 72 lots, which is in conformance with the Extraterritorial subdivision regulations and the transfer of development rights ordinance. Aside from the number of units requested, all other matters are in conformance with the previously approved master plan. Staff's recommendation and the decision of the EZC was to recommend approval of the master plan and preliminary development plan and plat amendment, and final development plan and plat approval for a 72-lot residential subdivision under the TDR ordinance, subject to the following conditions. Mr. Chairman, may I enter the conditions into the record?

CHAIRMAN DURAN: Please.

MS. LUCERO: And then I just have two slight modifications. Condition number 20, the list of review comments, I want to add the Technical Review Division to that list. And then on condition number 21, just a modification to 72 lots rather than 74.

[The conditions are as follows:]

1. All redline comments must be addressed and all original redlines must be returned.

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2. A land division plat creating the 15-acre parcel that is being purchased by the applicant must be recorded prior to final plat recordation.
3. Road names and rural addressing must be approved by the County prior to recording the final plat.
4. The standard County water restrictions, final homeowners documents and disclosure statement must be recorded with the final plat.
5. The developer must pay the solid waste fee in accordance with subdivision regulations (\$44.71) per lot, prior to recording the final plat.
6. All lots are subject to the Santa Fe County Fire and Rescue impact fees. this must be clearly noted on the final plat.
7. The TDR easement must be recorded prior to final plat recordation.
8. A deed of transfer of the development rights from the sending area must be recorded prior to final plat recordation.
9. Written confirmation that the development rights on the sending area property have been extinguished must be submitted to the TDR manager prior to final plat recordation.
10. A deed restriction designating the sending area as permanent open space must be recorded prior to final plat recordation.
11. A contract with Santa Fe County granting water and sewer service must be submitted prior to final plat recordation.
12. Restrictive covenants shall address development standards as set forth in Section 14.D.5.c (transfer of development rights standards) of the EZO.
13. The applicant must submit a contract from a licensed solid waste disposal service prior to final plat recordation.
14. All utilities must be underground.
15. The applicant must provide proof of legal access through Valle Vista Boulevard prior to final plat recordation.
16. Signage plan must conform to EZO and Highway Corridor Plan regulations.
17. The applicant must submit an engineer's cost estimate and financial guarantee for all required improvements (i.e., street and traffic signs, park amenities, fire protection, construction testing, etc.) A schedule of compliance projecting time period for completion of improvements must be included. Upon completion, the applicant must submit a certification by a registered engineer that improvement have been completed according the approved development plan.
18. The developer must have a pre-construction meeting with the Technical Review Division staff prior to final plat recordation.
19. A grading and drainage plan must be submitted for individual lots in the overall subdivision.
20. Compliance with applicable review comments from the following:
 - a. State Engineer's Office
 - b. State Environment Department
 - c. State Historic Preservation Office

- d. Soil & Water District
e. State Highway Department
f. County Hydrologist
g. County Development Review Director
h. County Fire Marshal
i. County Public Works
j. Technical Review Division
21. All 72 lots must be sold as affordable housing units as defined by County Ordinance 2000-11.
22. The final plat shall not be recorded until the developer has entered into an affordable housing agreement with the County. The affordable housing agreement will describe how homes and/or lots will be marketed and sold to eligible buyers as well as place restrictions on the future sale of homes and/or lots within a three year period. The agreement will also describe how the County and/or the County-designated affordable housing organization will monitor compliance with the affordable housing agreement. Any decision or determination made by the County-designated affordable housing organization may be appealed to ~~the Extraterritorial Zoning Authority.~~ Board of County Commissioners. 2189003
23. The applicant must address staff concerns regarding drainage on lots 28-30 and 34-37.
24. Road grades at intersections shall not exceed 3 percent for 100 linear feet.
25. The final plat shall reflect a decrease in the number of lots from 74 to 72.
26. Water use will be restricted to 0.25 acre-feet per year per lot. Water restrictive covenants must be recorded with the final plat. Water meters must be installed on each lot. Annual water consumption reports must be submitted to the County Hydrologist by June 30th of each year.

City Conditions:

1. The applicant will be required to obtain approvals from the City Traffic Engineer prior to obtaining a development permit from the County Land Use Department.
2. Comply with conditions outlined by the City Subdivision Engineer and Traffic Engineer.

CHAIRMAN DURAN: Thank you, Vicki. Any questions of Vicki? Vicki, is this the same plan that came before us last year?

MS. LUCERO: Mr. Chairman, it's similar, other than the fact that they're now requesting 72 lots, it's the same project.

CHAIRMAN DURAN: And are there deed restrictions? Have they provided you with covenants?

MS. LUCERO: Mr. Chairman, they did provide covenants as part of the submittal.

CHAIRMAN DURAN: Are they in the package?

MS. LUCERO: Mr. Chairman, I believe the disclosure is in the packet. It's

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Exhibit F.

CHAIRMAN DURAN: Okay. I'll look through it. Any questions of Vicki? Is the applicant here?

[Duly sworn, Jim Siebert testified as follows:]

MR. SIEBERT: Mr. Chairman, my name's Jim Siebert, my address is 915 Mercer, Santa Fe. The plan has actually changed a little from the plan that we presented to you before. One of the concerns that we had was the area of the park, which now actually the park land exceed the park dedication requirement. We now have two parks. One here, and the idea here is that this would be more of a tot lot type to bring the children further away from the traffic areas. And then we have a centralized park, because that was one of the concerns was why not bring the park more into the central part of the development. And what happens is that there is a trail system which links—this is part of the trail system here—links the homes both through sidewalks will be constructed along the roads and this trail system that's outside the roadways to the park areas, creating a complete loop.

We also reconfigured some of the lots here. We had a loop road. Now we have two cul-de-sacs making this configuration probably a little more normal. The two lots we're proposing to drop would be lot 39 and 40, which are at the end here. And with that, I'll answer any questions you may have.

CHAIRMAN DURAN: How much open space is there? What do the parks represent relative to open space?

MR. SIEBERT: Well, total park area is 2.2 acres, and the total, also the land area, before we had 15 acres, now we have 16.77. So we've also made the lot sizes a little bigger and made the open space bigger than the previous plan. So it's increased by 1.7 acres.

CHAIRMAN DURAN: And what's the percentage? I don't have my calculator.

MR. SIEBERT: I didn't calculate that out.

CHAIRMAN DURAN: Is it less than 15 percent?

MR. SIEBERT: 1.6 acres would be ten percent. So 3.2 would be 20. So it's somewhere between 10 and 20 percent.

CHAIRMAN DURAN: What's our open space requirement under our general plan?

MR. ABEYTA: Mr. Chairman, we have an open space requirement of 30 percent, but that only applies within the Two-mile EZ area. There's not an open space requirement outside in the county where this property lies. There is a requirement to provide a park or recreation within subdivisions, but there's not a 30 percent open space requirement.

CHAIRMAN DURAN: So it's 20 percent now?

MR. SIEBERT: What the requirement is that we're conforming to, or have actually exceeded, is that the County Code requires 10 acres of land per thousand residents. So we're basing our park dedication requirement on that and even if you take an average of three persons per household, it still exceeds that requirement. Census actually says it's 2.6 for the county.

CHAIRMAN DURAN: Are there architectural guidelines? Are mobile homes

allowed in here?

MR. SIEBERT: There was a question last time about what are the units that are going to be placed here? One of the conditions is that no home can exceed a value of \$132,000, home and lot.

CHAIRMAN DURAN: Because I remember when we talked about transferring development rights—I'm sorry, extending the transfer of development rights to this property and then also allowing some of our water to be used towards that that we were assured by you that the property would have decent covenants. That it would be more than just an affordable housing development, that it would represent—let me back up. Because it was an affordable housing project that it didn't indicate, that it didn't turn into a substandard subdivision, that you would adopt architectural guidelines and assure to this Commission that it would be a subdivision that we could get behind. Because we really developed this program the transfer of development rights program and the water rights so that you could create a subdivision out there that was representative of the goals and vision of this Commission based on their desire to provide affordable housing. So I guess my question is does this project do that?

MR. SIEBERT: Well, let me tell you how—we've looked at three different products. We spent a lot of time in Albuquerque going around looking at products that would be either premanufactured homes or an actual home that would conform to all the building codes. So there's three different products we're looking at. One would be something that would be a stucco home that would conform to all elements of the building code. It would be brought in from off-site. The other product we're looking at is something that would be stuccoed that would meet the manufactured housing standards but not necessarily building codes. And then the other product would be something—and that would be a stucco exterior. And the other product we're looking at is something that would be a wood siding exterior that would meet the manufactured housing codes but not the building codes. So it would be one of those three products or even perhaps a mix of those products that would go on this particular site.

We're limited in a sense, and one of the reasons why we can't say to you now, yes, we can absolutely guarantee that we can put a stucco-sided house that meets the building code requirements is that we don't—we're not sure exactly what the costs are. And the reason for that is until we get through final plat, we can't ask the utility companies to give us the cost for the utilities. So we have a pretty significant factor that we're missing in the overall cost of the subdivision. But the intent is through the regulations to provide for consistency in the architectural style of the project.

CHAIRMAN DURAN: How big are the lots?

MR. SIEBERT: The lots vary in size from 5,000 square feet to around 8,700 square feet.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: I also recall, Jim, you coming before the Commission and assuring that any development that was going to occur there, obviously was going to be of a quality nature. Being that this would actually be the first successful transfer of

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development right program that people would look to and the importance of making sure that it was a quality subdivision because of the fact that it was something that everyone wanted to be proud of. I know Mr. Sena has indicated on a number of occasions that clearly has been goal from the start.

In this particular area though, you also have a client that's working on developing some level of commercial property to this is actually going to be an area where people will be able to live and access some type of commercial activity. And being the planner, I'm assuming that you're also working to try and integrate the two so that they're complementary of each other and hopefully find some continuity between the two. Are you doing that?

MR. SIEBERT: Well, the one thing, that's absolutely correct, that there is a commercial development that's taking place. This is the high voltage line that's back here that has a 50-foot easement to it. What we've done is that the developer will retain ownership of that and the idea is to provide a pedestrian linkage through this open space area here that would allow for a walking connection between the commercial development and the residential development behind it. And there's kind of natural physical transition which takes place too, as the property just short of the high voltage line begins to drop off.

COMMISSIONER GONZALES: And the commercial development is also situated near Valle Vista. Is that correct?

MR. SIEBERT: Well, Valle Vista actually sits down here, so the residential sits closest to Valle Vista. So what you have is you have these lots here are actually larger in size and the lots that are—well, part of this is County housing and part of it is Valle Vista. County housing kind of goes from here to about here.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: You thought you were going to get away with it, didn't you?

CHAIRMAN DURAN: I was going to ask a quick one but you beat me to it.

COMMISSIONER SULLIVAN: Mr. Siebert, the proposal is to tie into the Valle Vista sewer system. My understanding from Public Works is that that system is on the verge of collapse and cannot take any more tie-ins to it. Will the developer be contributing to upgrading that system or how does that work?

MR. SIEBERT: We've had several discussions with Doug Sayre on this and I'm sorry, I didn't get the same impression.

COMMISSIONER SULLIVAN: It's a package plant system that's long past its useful life and needs not only renovation but expansion, is my understanding. I could be corrected.

MR. SIEBERT: Mr. Roybal's here. Oh, did he leave? I don't think I would want to take the risk of telling you what condition the plant is.

COMMISSIONER SULLIVAN: Well, then let's just move on to the second part of the question.

MR. SIEBERT: We do have a commitment from the Utilities Department to allow for that connection to take place.

COMMISSIONER SULLIVAN: And will there be any participation from the developer on the capital costs of the additional capacity needed for that plant?

MR. SIEBERT: We haven't had those discussions at all with the Utilities Department. No.

COMMISSIONER SULLIVAN: That would, obviously, normally be covered by an impact fee, which of course Santa Fe County doesn't have, other than for fire. So there's no participation on upgrading that system.

MR. SIEBERT: That's correct.

COMMISSIONER SULLIVAN: All of the lots in the subdivision will be categorized as affordable housing, is that correct?

MR. SIEBERT: Correct. We have, one of the conditions, we have to meet the County standards for affordable housing, which is presently approximately \$132,000.

COMMISSIONER SULLIVAN: Okay. And did you have any problem understanding that ordinance? Do you feel comfortable? Do you understand how it works?

MR. SIEBERT: Well, I don't think it's ever been implemented to my knowledge, so my guess is that since this is the first case that's going to be using that standard, we're probably going to have to all work together to figure out what it really means.

COMMISSIONER SULLIVAN: There was another developer in the Community College District that couldn't understand it. But you've managed—

MR. SIEBERT: I don't guarantee you that I understand it either until we go through it administratively.

COMMISSIONER SULLIVAN: You can work with it and provide the affordable housing under that ordinance.

MR. SIEBERT: Certainly.

COMMISSIONER SULLIVAN: Maybe this is a question for staff. Condition 23 in your memorandum of July 9th, could you explain that to me? It starts off with "Determination made by the County..."

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I don't believe it's a separate condition. I think it's a continuation of condition number 22, that any decision or determination made by the County-designated affordable housing organization may be appealed. And in this case, it would have to be changed to the Board of County Commissioners. It's a standard condition that has been placed on projects that are required to submit an affordable housing agreement. So I think the number 23 needs to be stricken because it's all part of condition 22, and we need to change Extraterritorial Zoning Authority to Board of County Commissioners.

COMMISSIONER SULLIVAN: I was wondering why it would go to the EZA. This is not in the EZA, is it?

MR. ABEYTA: That's correct. This is in the County Commission jurisdiction.

COMMISSIONER SULLIVAN: And then you would just renumber the others

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up through 26.

MR. ABEYTA: Yes, Mr. Chairman.

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

CHAIRMAN DURAN: Jim, did you work closely with Robert Anaya on this?

MR. SIEBERT: I've had discussions with Robert Anaya regarding the actual ordinance itself.

CHAIRMAN DURAN: And the affordable housing?

MR. SIEBERT: The affordability aspect of it, yes.

CHAIRMAN DURAN: Okay, good. Because I remember at the meeting asking you to work with him on that. Any other questions of the applicant. Okay, it's a public hearing. Is there anyone out there that would like to speak for or against this proposal? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move for approval of EZ Case #S 01-4221, Sena Vista Heights, with all the conditions.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Second by Commissioner Gonzales. For discussion, I have a question. Are you going to do anything to the parks or is it just going to be dirt?

MR. SIEBERT: It's actually in the report itself. The parks will be developed so that they will have, for example, the tot lot area will be developed with swings and tot lot kinds of equipment. And then the other one, the larger one will be developed with picnic tables and landscaping and a covered area.

CHAIRMAN DURAN: So they'll be usable?

MR. SIEBERT: Yes.

CHAIRMAN DURAN: Good. Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman, on that same question, in your submittal, you asked, because of the water shortage that development of those parks be delayed. Is that correct?

MR. SIEBERT: Well, actually what we've requested is, and this is where we have had discussions in terms of the participation and improvements to the plan. What we've requested is the reuse of the wastewater from the Valle Vista plant equal to our—what goes into it from this development. Because it's my understanding that the water that's out there now is used for return flow credit. So we can't acquire that water, but we would ask, we have been in discussions to upgrade the plant to the point where, through a tertiary treatment process, that we could reuse that treated effluent for landscaping within this development.

COMMISSIONER SULLIVAN: It's been Public Works policy that the effluent accrues to the County. I hope you're aware of that. That's been the provision that they got into with San Cristobal and all the others.

MR. SIEBERT: I would hope that we could leave that door open to come back—if that's a policy of the Commission then we would hope that we could leave that

door open and come back to the Commission and request a reuse. I think it's an opportunity to begin to test some of the things that you've heard here tonight.

COMMISSIONER SULLIVAN: Of course the County has the same interest, which is that that water or that effluent provides us with additional water rights potential that we can use to expand the County water system. So it works on both sides of the coin.

MR. SIEBERT: I serve on the City water conservation committee. We're going through this same dilemma. One thing that coming out of it is that in fact it may be more advantageous to reuse that effluent as close as you can to the actual discharge point, rather than have to go through the whole process of requesting return flow credits. you accomplish the same thing. You may even accomplish more because you begin to recharge the aquifer.

COMMISSIONER SULLIVAN: This is final development plan, right?

MR. SIEBERT: Yes.

COMMISSIONER SULLIVAN: Aren't you supposed to have a water and wastewater contract in place at final development plan?

MR. SIEBERT: We have a commitment from the—in terms of the water, the County has set aside 18 acre-feet for this development, which is the reason that it's 72 units.

COMMISSIONER SULLIVAN: Right. I've seen the contract.

COMMISSIONER SULLIVAN: In terms of the wastewater, we don't have an actual contract. We have a written commitment from the County Utilities to provide sewer service.

COMMISSIONER SULLIVAN: Let me ask Roman. Is that all that's required at the development plan stage? Final development plan stage?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we need, at the final development stage, a commitment letter, and we have a condition that before recording the final plat, we need the contract in place.

COMMISSIONER SULLIVAN: Okay. Then say you can't come to agreement over this reuse issue or whatever that might be. What would occur then?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we have condition 17 that requires that the applicant provide us with a financial guarantee for the landscape improvements. So if he can't work anything out with the County to us that treated effluent for his landscaping, he'll need to install the landscaping via other means. And we got that financial guarantee to assure that it happens.

COMMISSIONER SULLIVAN: Okay. Thanks. Getting back, Mr. Siebert, to my question about the landscaping. So you had asked for a delay in the landscaping of the parks. Did I read that correctly in your submittal?

MR. SIEBERT: Well, during the drought we would ask for that delay.

COMMISSIONER SULLIVAN: I haven't been notified as to when the drought's going to be over yet. Is there some schedule that these parks will be developed, drought or no drought?

MR. SIEBERT: Well, we're going to have to put up a bond for the cost of the

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improvements within the park. So the bond is good for a year and that guarantees the improvements to the park.

COMMISSIONER SULLIVAN: So then drought or no drought—

MR. SIEBERT: Drought or no drought, we're still obligated according to the bond.

COMMISSIONER SULLIVAN: It will have to be built including landscaping of the park within a year. Is that the issue?

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN DURAN: But if we didn't want them to do the landscaping, we could limit them. We wouldn't want them to do landscaping if we're still in a drought, would we?

COMMISSIONER SULLIVAN: I don't know.

MR. ABEYTA: Mr. Chairman, in that case, we would ask them to extend the bond for another six months or another year.

CHAIRMAN DURAN: Well maybe you could do the hard stuff—not the hard stuff, but the benches, the toys for the kids and stuff like that. Maybe hold back on the landscaping.

MR. ABEYTA: Mr. Chairman, that's exactly what we would do and again, we would require that the financial guarantee be extended for the rest for another six months or a year.

COMMISSIONER SULLIVAN: Could I just make a clarification on the motion that—was that with the amendment to paragraph 23 that substituted the BCC for the Extraterritorial Zoning Authority.

COMMISSIONER TRUJILLO: I have one more friendly amendment. I want to make sure that junk cars don't end up in the front yard and that those lots have three or four cars on them, three of them that don't work and one that does, and that the road isn't littered with a bunch of inoperable cars, like what happened in that subdivision, gosh, it's off Airport Road. It's right by Lopez Lane. I forget the name. Tierra—

MR. SIEBERT: Tierra de Zia?

CHAIRMAN DURAN: No, it's a different one. It's not that. Whatever it is, whatever it's called. I just don't want this to turn into a junk yard haven. So do you have any restrictive covenants that prevent that, and if you don't, I'd like to ask the maker of the motion to make sure that before the plat is recorded that there's some language in there that restricts the number of inoperable cars on the lots.

COMMISSIONER TRUJILLO: Mr. Chairman, I think that's going a little bit over and above. That's a little austere, a little extreme. If we're going to require that of this subdivision, why don't we just require it across the board of Las Campanas and of other subdivisions too.

CHAIRMAN DURAN: Then call for the question.

COMMISSIONER TRUJILLO: I don't agree with that amendment. I think

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that—

MR. SIEBERT: Mr. Chairman, maybe to clarify. We already have that. Vicki was good enough to point out to me that section of the covenants that already restricts that. So it's part of the covenants.

CHAIRMAN DURAN: What does it say?

MR. SIEBERT: It says No lot shall be used in whole or in part for the storage or dumping of any property or object that will cause such lot to appear in an unclean or untidy condition that would be obnoxious to the eye, for example, inoperable vehicles, nor shall any activity be carried on or substance, material or thing kept upon a lot that will emit foul or obnoxious odors, that will cause unreasonable noise which may become a nuisance to the other owners.

CHAIRMAN DURAN: Is there a homeowners association?

MR. SIEBERT: Yes.

CHAIRMAN DURAN: So it's not going to be the County's responsibility to enforce those, is it?

MR. SIEBERT: Well, not the covenants. Certainly not the covenants because the covenants are only enforceable among those members of the group that share the covenants. And to my knowledge, the County is not in the business of enforcing private covenants.

CHAIRMAN DURAN: Is the homeowners association going to be collecting fees?

MR. SIEBERT: Yes. Because they still—the roads are private roads. So the roads and the park facilities are maintained by the homeowners association.

CHAIRMAN DURAN: My concern is that the developer has asked for us to give him the vehicle to get the density out there, which was the TDR program. He's also asked us to give him the water rights to develop the property at that density. I don't think that it's unreasonable to ask that if this is going to be a project that's going to be representative, again, of the vision and the goals of this Commission that you ensure to us that in the future, we're not going to have a ghetto there. And I just—I think what happens there is that you get—I'm glad that you have this inoperable car thing in there but I'd like to see something in the covenants that would—

COMMISSIONER TRUJILLO: Mr. Chairman, I just don't like to insinuate that because this is a middle class housing development that in the future it will be a de factor colonia. I think we need to respect the community and understand that they're going to live in this community and they're going to be conscientious on the way that they're going to take care of their housing development. I don't think that we can insinuate that because it's a middle class development that in the next year they're going to have a de facto colonia there. If we're going to make this requirement for this development, why don't we make the same requirement for other developments in Santa Fe County? Las Campanas, Tesuque Village, whatever. It's not for us to insinuate because this is a middle class development that it will be a dump in the next year.

CHAIRMAN DURAN: I'm sorry that you're taking it that way. The fact of the

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matter is that at \$143,000 per unit, it's going to be a very speculative development. So if you protect it, this community from this project that's been created because of this Commission, and you've protected this community and people that are going to buy in here that they're not going to buy in here and the four lots surrounding them are owned by someone who lives in Las Campanas or who lives some place else and has them as a rental unit, and all the tenants are in there with junk cars. What protection do you have?

COMMISSIONER TRUJILLO: Give these people the benefit of the doubt.

CHAIRMAN DURAN: On a speculative basis there is no protection.

COMMISSIONER GONZALES: So being what they indicated, are you wanting to just add that as a condition, or—

CHAIRMAN DURAN: I would just want some kind of protection that there won't be—I'm not being derogatory. I'm trying to protect the people that are buying in there. If I bought a house in there any everybody around me had cars in their front yard—it happens. It happens all over the place.

COMMISSIONER GONZALES: What else are you asking for outside the covenants that have already stated that that can't be in place? And our own ordinances that don't allow for junk cars?

CHAIRMAN DURAN: Just some assurance. People violate restrictive covenants all the time. Does it say in there that if there is a violation that the homeowners association has the right to remove the car?

MR. SIEBERT: Yes, and place a lien on the property.

CHAIRMAN DURAN: Okay. I'm okay.

COMMISSIONER TRUJILLO: The great inquisition. Call for the question.

CHAIRMAN DURAN: Any other questions, concerns?

The motion to approve EZ Case #S 01-4221, Sena Vista Heights, passed by majority [4-1] voice vote with Commissioner Campos voting against.

CHAIRMAN DURAN: Okay, Mr. Sena, good luck with that.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I'd like to use this just as an example or an opportunity to suggest that we move forward on impact fees, because we're dealing with situations here where we're utilizing an out of date County sewage facility that can't sustain this development much longer, or its own development, the Valle Vista development. I'm not implying that the developer is doing anything illegal. There are no impact fees so he's not required to contribute, but what have we done? We've assumed an obligation and a liability that should I think have some developer participation. So where are we on impact fees? I know that we were dealing with the City, there was a committee that was looking at this, was there not, Roman, and that's the last I've heard of it for six months.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's my understanding

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that the City is working on an impact fee ordinance or conducting a study that would affect the Two-mile EZ and subdivisions outside of the Two-mile EZ. I'll contact the City and get an update. The last I heard, I attended a subcommittee meeting a few months back and I haven't heard back from the City. So I'll follow up with them on that.

COMMISSIONER SULLIVAN: When you say it will affect outside the Two-mile EZ, does the City have any—

MR. ABEYTA: For a subdivision, the City does. The EZ has jurisdiction all the way out to the Five-mile. So any impact fee ordinance they adopt would apply to subdivisions all the way out to the Five-mile, which this property is within.

COMMISSIONER SULLIVAN: Anything that the City adopted, or the EZ?

MR. ABEYTA: Well, the City and the County as part of the EZA.

COMMISSIONER SULLIVAN: The EZA. So what they're doing, the EZA would have to adopt for it to take effect. The City could only—

MR. ABEYTA: The City could only make recommendations and the City Council—the way it would work is the City Council would make an amendment to the subdivision regulations in the EZ and then the Board of County Commissioners would have to make the same amendment to the subdivision regs. And those would go all the way out to the Five-mile.

COMMISSIONER SULLIVAN: Okay. So you'll check on what the status is.

MR. ABEYTA: I'll check on that and report back to the Commission.

- XI. A. 8. CDRC CASE #V 02-5170 Anthony Duran Appeal/Variance.
Anthony and Donna Duran, applicants, request a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow a small lot family transfer land division of 4.03-acres into three lots; one lot consisting of 1.5 acres, and two lots consisting of 1.25 acres. The property is located at 75 Feather Road, within Section 27, Township 19 North, Range 9 East, (Commission District 1)**

WAYNE DALTON (Review Specialist): Thank you, Mr. Chairman. There are currently three homes and three septic systems on the property. There are three onsite wells. Currently one well serves all three homes. This application was denied due to the fact that the applicant was requesting to have two dwelling units on Lot 2 which would exceed the 1.25-acre minimum lot size requirement per dwelling for a small lot family transfer. The applicant has not proven that the dwellings have been permitted or are legal non-conforming. The applicant states that the home on Lot 3 will be removed. The applicant states that the second home on Lot 2 is occupied by his brother-in-law who was involved in a motorcycle accident. His injuries consisted of a broken back that has left him paralyzed from the waist down. At the present time the applicant states that his brother-in-

law is not physically or financially able to move due to this hardship. The applicant's main intent for this request is to have property available for their children to have at a later date.

Recommendation: Staff recommends the request for a variance be denied. The intent of the Code is to set minimum lot size in this area is 10 acres, or one dwelling unit per 1.25 acres for family transfer purpose. Staff also recommends that the proposed plat be amended so as only one home is located on each lot. If this done the small lot family transfer can be approved administratively and not require a variance.

On May 30, 2002, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of the variance to allow a family transfer land division of 4.03 acres into three lots subject to the following conditions. Mr. Chairman, may I enter those into the record?

CHAIRMAN DURAN: Please do.

[The conditions are as follows:]

1. Water use shall be restricted to a 0.25-acre foot per year per lot. Water meters shall be installed for all lots; this shall be noted on the plat. Annual water meter readings shall be submitted to the County Hydrologist by May 31st of each year. Water restrictions shall be recorded in the County Clerk's office.
2. No further division of this land shall be permitted; this shall be noted on the plat.
3. A plat of survey meeting all other County Code requirements shall be submitted to the Land Use Department for review and approval.
4. Failure to comply with all conditions shall result in administrative revocation of the variance.
5. There shall be a note on the plat stating that the mobile home on Lot 2 will be moved if the hardship does not exist.

CHAIRMAN DURAN: Any questions of staff?

COMMISSIONER TRUJILLO: Wayne, Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: How long has that dwelling, those two dwellings that are designated for the same lot been situated, been in place? How long has that situation existed? There are two houses on one of the lots that are 1.25 acres, right? And that situation has been going on for a while due to that specific hardship that the brother-in-law got hurt. How long has that been in place?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, I'm not sure. It's been quite a while. Maybe the applicant might be able to address that question.

COMMISSIONER GONZALES: Mr. Chairman, so it states in here that the applicant will be moving off one of the homes?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, that's correct. If you look at the proposed plat, which is Exhibit G, Lot 3, there's a mobile home on Lot 3 that will be removed.

COMMISSIONER GONZALES: When?

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MR. DALTON: Mr. Chairman, Commissioner Gonzales, I believe as soon as the family transfer is approved.

COMMISSIONER GONZALES: So the total, the number of densities and the total acreage would be in conformance?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, the reason why this was denied administratively is because he would have two dwelling units on Lot 2, which is 1.5 acres, and the minimum lot size for a small lot family transfer is 1.25 acres. So he'd be exceeding density on Lot 2.

COMMISSIONER GONZALES: But is the net of the three and the acreage, does that comply with the Code?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, yes it does.

COMMISSIONER GONZALES: Okay. So it's more so an issue of—if the Commission allowed for the two lots to go on Lot 2—is that right?

MR. DALTON: The two homes.

COMMISSIONER GONZALES: Or two homes. I'm sorry. What protections can be put in place to ensure the density isn't increased on the overall four acres.

MR. DALTON: Mr. Chairman, Commissioner Gonzales, there is a condition stating that the land shall not be further divided and that shall be noted on the plat.

COMMISSIONER GONZALES: So he might still be able to accomplish the objective of the Code here, right?

MR. DALTON: That's correct.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Wayne, the recommendation of the County Hydrologist is that a reconnaissance geo-hydrological report be done for this property. Is that going to be done by the applicant?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, the applicant would not have to conduct a geo-hydro because it does conform with the Code except for having the two dwelling units on Lot 2. Everything else does conform with the Code.

COMMISSIONER SULLIVAN: She says in her memorandum—

MR. DALTON: That's correct, Mr. Chairman. I grabbed the wrong case. But she does require a geo-hydro.

COMMISSIONER SULLIVAN: The lot proposed is approximately four acres in the Basin Hydrologic Zone where the minimum lot size that can be created without a geo-hydrological report is 2.5 acres. So her recommendation is not to approve the variance without the necessary geo-hydrologicals. My question is is the applicant going to do a reconnaissance geo-hydrological, which is the lesser expensive one?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, I don't see a

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recommendation from the County Hydrologist on this case.

COMMISSIONER SULLIVAN: Dated March 18th. It's in our packet, Exhibit F.

MR. DALTON: Okay. So she does state—yes, you're correct, Mr. Chairman, Commissioner Sullivan. That is correct. I believe the applicant, Mr. Chairman, Commissioner Sullivan, would not be able to afford to do a geo-hydro. That's why he's come forward today.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, if I may clarify. I believe that what the hydrologist requires for a reconnaissance geo-hydrologic report is a well log from the existing well, and then she would compare that to the information that she has in that area. So I don't believe that the reconnaissance geo-hydrological report would be that big of a deal for the applicant to do, especially in regards to cost.

The other thing that works in the favor of this applicant, which I don't believe Ms. Yuhas understood is that this is a family transfer and the lot sizes being proposed comply for family transfers. So again, I don't believe that a reconnaissance geo-hydrological report would be that in-depth because he complies other than the two dwelling units on one lot.

COMMISSIONER SULLIVAN: So the lot size complies with the family transfer, if they didn't have two residences on one lot.

MR. ABEYTA: Exactly.

COMMISSIONER SULLIVAN: But notwithstanding that, still a reconnaissance geo-hydro needs to be done, according to the ordinance.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes. But again, the reconnaissance is very minimal. At the most she would review his existing well record to see the depth of it and then compare it to the information she has and then make recommendations based on that.

COMMISSIONER SULLIVAN: Okay, and since that's not a very onerous requirement, is that one of our conditions?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I don't know if it is or not.

MR. DALTON: Mr. Chairman, Commissioner Sullivan, that is not a condition.

COMMISSIONER SULLIVAN: And is it a condition, Roman or Wayne, that the staff is recommending?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's a condition that Ms. Yuhas recommended and it just didn't make it into our staff report.

COMMISSIONER TRUJILLO: Mr. Chairman, Roman, you're saying that because it satisfies the minimum lot size for a family transfer, that condition should not even be required.

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, I don't believe that the Code requires it for a family transfer. But I do know that a reconnaissance report isn't as detailed as a full-blown hydrology report and so I think if Ms. Yuhas would have known

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this was a family transfer, she may not have required this.

CHAIRMAN DURAN: Wayne, one of the lots, the lot that has the two structures on it, the road goes in between the two structures, right? So it kind of creates its own little—

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

CHAIRMAN DURAN: And there's a septic on the mobile home that's on that small piece? There's three septic or—

MR. DALTON: Mr. Chairman, there's three septic on the property.

CHAIRMAN DURAN: And does the third dwelling—let me back up. So there's three wells and there's three septic. Except that one well is servicing all three houses.

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

CHAIRMAN DURAN: And where is that well?

MR. DALTON: Mr. Chairman, the well, you can see on Lot 2 is labeled well house, on Lot 2 which is 1.5 acres and it is labeled well house. That's where the well's located.

CHAIRMAN DURAN: Lot 2. I see a shed.

MR. DALTON: It's right next to the road.

CHAIRMAN DURAN: Oh. Well house. Okay. And how far is that from the septic on the east side of that lot where the trailer is? It's supposed to be 100 feet away from the well house. The septic is.

MR. DALTON: Mr. Chairman, the applicant has said that the septic is approximately 200 feet away from the well.

CHAIRMAN DURAN: Okay, I'll ask him when he gets up here. Any questions of Wayne?

COMMISSIONER SULLIVAN: Mr. Chairman, one further question. There's three wells and three septic tanks on the lot now. Once one structure or one mobile is removed, shouldn't that at least one of those wells be capped? Or if not, both? Aren't we requiring as a condition that all three serve off the same well?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, I think the applicant's intent is to have three individual lots for his children and therefore each lot would be allowed to have its own well.

COMMISSIONER SULLIVAN: We were just talking earlier about our forward-looking ordinances and how we have shared wells, so we wouldn't have a shared well in this situation? There's other lots in new subdivisions that are individual fee-simple lots that have shared wells. There's no reason that you need a separate well for each lot.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, this case is different only because the three wells exist. And so we didn't recommend a condition that the wells be capped. What we did recommend was that overall water use be restricted to a quarter acre-foot per year per lot. But I think that because there were already three existing wells, that's why we didn't put a condition on there. Had it been vacant, we would have

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recommended that all three lots share one well, had there not been any wells. So if the Board likes, the Board can impose that condition.

CHAIRMAN DURAN: Can I just kind of respond to that? Do you mind?

COMMISSIONER SULLIVAN: No.

CHAIRMAN DURAN: Are we requiring a quarter acre-foot per house?

MR. ABEYTA: Mr. Chairman, yes. We have condition number one that states water use shall be restricted to a quarter acre-foot, this says per year per lot.

CHAIRMAN DURAN: So what does it matter if they take it out of three wells or one well?

COMMISSIONER SULLIVAN: Well, it's the same thing on a new subdivision. You could say the same thing for a new one, where you require four lots to connect to a community well. The issue is you take two wells out of operation. You reduce the potential contamination.

CHAIRMAN DURAN: But the usage is the same.

COMMISSIONER SULLIVAN: The usage would be the same but you reduce the potential for contamination because two of those wells are going to be closer to the septic system.

COMMISSIONER TRUJILLO: But they're 275 yards away.

COMMISSIONER SULLIVAN: Right, but the other ones aren't. The other ones are closer.

COMMISSIONER TRUJILLO: I thought that the closest one was 275 yards away.

COMMISSIONER SULLIVAN: I think if we're increasing density, which we obviously are here, that we should take every opportunity to, since the applicant doesn't need the other wells to minimize the impact on the aquifer and on the surrounding neighbors in terms of contamination.

COMMISSIONER TRUJILLO: This is a family transfer. There are already existing wells there. There's already three mobile homes there, three houses. There's no increased density. They're using the—and they're limited to .25 acre-feet of water usage. So I don't see why we should cap two of the wells. It's a family transfer. There are three existing wells. They're limited to .25 acres on each well. It's not going to be sold. It's for the purpose of giving the land to his offspring. So where's the increased density here?

CHAIRMAN DURAN: Let's go to the public hearing. Do you want to?

COMMISSIONER SULLIVAN: Did we let the applicant speak?

CHAIRMAN DURAN: No, no. That's right. Is the applicant here?

[Duly sworn, Anthony Duran testified as follows:]

ANTHONY DURAN: It's Anthony Duran, P.O. Box 3405, Santa Fe. It's out in Pojoaque.

CHAIRMAN DURAN: Any questions of the applicant?

MR. DURAN: No, just the fact that my brother-in-law was paralyzed in that motorcycle accident and it was always his intention to be there for a couple of years.

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Him and his fiancée were going to build a house and after the accident she left and there's no way that he could leave at this point. If something changes with him, that would be the first thing I would do is move that mobile home out of the there and it would stay with the three houses per lot.

CHAIRMAN DURAN: A house per lot.

MR. DURAN: That would be correct.

CHAIRMAN DURAN: Presently, he lives in the mobile home.

MR. DURAN: He lives in the mobile home.

CHAIRMAN DURAN: On that little piece across the street.

MR. DURAN: Yes, that's correct.

CHAIRMAN DURAN: So you would ultimately move that off some time?

MR. DURAN: If at one point Larry would be able to move or something would happen—

CHAIRMAN DURAN: Okay. Any questions of the applicant? Okay, this is a public hearing. Is there anyone out there that would like to speak for or against this proposal?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Move for approval of CDRC Case 02-5170, Anthony Duran variance, with all the conditions.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Any further discussion?

COMMISSIONER SULLIVAN: I'd just suggest an amendment that since the applicant is only using one well serving the three homes that that be a condition. That that remain that only well be used for the three homes.

CHAIRMAN DURAN: Do you accept that?

COMMISSIONER TRUJILLO: I don't accept that because there's already a condition that each well is limited to .25 acre-fee of water usage per year.

CHAIRMAN DURAN: Okay, the motion stands.

COMMISSIONER CAMPOS: If that's a motion, I'll second the motion and we can vote on it separately.

CHAIRMAN DURAN: That was an amendment to the motion that wasn't accepted by the maker of the motion.

COMMISSIONER CAMPOS: If he makes a motion, I'll second it and we can vote on it.

CHAIRMAN DURAN: Okay, it's not a motion. Well, it can't be a motion. We're in the middle of a motion.

COMMISSIONER TRUJILLO: We can't make a motion in the middle of a motion.

COMMISSIONER SULLIVAN: Let me under discussion ask a question.

COMMISSIONER CAMPOS: The City does it.

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CHAIRMAN DURAN: Well, yes. Look at them. I didn't mean that.

COMMISSIONER SULLIVAN: We're requiring two water meters. Water use shall be restricted to .25 acre-feet per lot and a water meter shall be installed for both lots. So one lot we have two homes, correct?

MR. DURAN: That's correct.

COMMISSIONER SULLIVAN: And so you'll be putting in one meter that will serve both that house and your—is it you brother?

MR. DURAN: My brother-in-law.

COMMISSIONER SULLIVAN: Your brother-in-law. Will that be one meter that will serve those two until his trailer is removed?

MR. DURAN: That's correct.

COMMISSIONER SULLIVAN: So there'll be one meter there. And then there'll be one meter on the other lot that's also occupied.

MR. DURAN: Right now there's a mobile home on one of the other lots that's there, that's been there since probably 1980. That one, nobody's living in that place right now. There's a well on that lot but it doesn't—nobody's occupying that place.

COMMISSIONER SULLIVAN: Okay, but the requirement is that there be two meters. So there's one that goes on each lot whether anyone's living there—

MR. DURAN: On the existing—there's three wells, one on each lot. I'm not sure what you're saying about two meters.

COMMISSIONER SULLIVAN: Well, because one of the requirements is—the restriction is .25 acre-feet per lot.

MR. DALTON: Mr. Chairman, Commissioner Sullivan, that condition should read, A water meter shall be installed for all lots. So there should be three meters placed on—one meter for each piece of property.

COMMISSIONER SULLIVAN: Are we creating three lots or two lots here?

MR. DALTON: Three lots.

COMMISSIONER SULLIVAN: Three lots.

MR. DURAN: That's correct.

COMMISSIONER TRUJILLO: And he has enough land to create three lots.

CHAIRMAN DURAN: He just has an extra dwelling on one of them.

COMMISSIONER TRUJILLO: One of the lots, due to hardship.

COMMISSIONER SULLIVAN: So that the lot, the .25 acre-feet on the lot that has two dwellings, and may have two dwellings for some time, depending on how long your brother-in-law is there, is that—are those two restricted to .25 acre-feet, or does each of those get .25 acre-feet?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, the way the condition is imposed is that it would be .25 acre-feet for that lot. It was imposed like that because it doesn't—this is not supposed to be a permanent thing on this property. Once the hardship does not exist, then we would want a quarter acre-foot for that lot, because the other home would not be there. That's the intent anyway. If the Commission has any

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suggestions—

COMMISSIONER TRUJILLO: I think it's clear.

COMMISSIONER SULLIVAN: It's clear to me now. I just wanted to be sure that it was clear to the applicant too. So what Wayne was saying is condition one is requiring the installation of three meters now on each of the lots, even though there's only one well. There's three wells but there's one being used. So are we hooking the meters to each well? Is that the intent here, or are we hooking up meters at each residence from the one well?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, the intent is so that each residence or lot does not use more than a quarter acre-foot. So however we accomplish that, whether it's by having three separate meters. Do you use three wells or one well for these lots?

MR. DURAN: Right now we only use one well.

CHAIRMAN DURAN: I think each house needs to be metered somewhere.

MR. ABEYTA: Mr. Chairman, yes. Then the meters would be for each home.

CHAIRMAN DURAN: And if you decide to hook up one of the houses to one of the other wells then you need to meter that one.

MR. DURAN: That will be good.

CHAIRMAN DURAN: So that each dwelling is metered separately. But at this point—

The motion to approve CDRC Case #V 02-5170 passed by majority [4-1] voice vote with Commissioners Sullivan and Campos voting against.

- XI. A. 9. CDRC Case #V 02-5200. Jim Lestyk Variance. Jim Lestyk, applicant, requests a variance of Article III Section 2.3.3 (Height restrictions for dwelling or residential accessory structure) of the Land Development Code to allow a 29-foot atrium for a residence to be constructed on 78 acres. The property is located at 390 B Anaya Road, within Section 7, Township 10 North, Range 10 East**

CHAIRMAN DURAN: Is that close to the Inner Journey Circle? I just thought that was funny.

COMMISSIONER SULLIVAN: It might have been at 3:00 this afternoon.

MR. DALTON: Thank you, Mr. Chairman. There's currently a mobile home, a shop, garage and a septic system on the property. The property is served by an onsite well. The applicant has signed an affidavit stating that he will remove the mobile home upon completion of the new residence. The applicant states that he is planning to

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build a new residence. The applicant requests a variance to allow a portion of the house to be 29 feet in height. This allows the applicant to create an atrium or a glass-sided courtyard.

Recommendation: Staff's position is that this application is not in accordance with Article III, Section 2.3.6 of the Land Development Code. Therefore staff recommends denial of the variance. On May 30, 2002 the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of a variance to allow a 29-foot atrium for a residence to be constructed on 78 acres, subject to the following condition. Mr. Chairman, may I enter that into the record?

CHAIRMAN DURAN: Yes.

[The condition is as follows:]

1. The applicant must remove the mobile unit within 30 days upon completion of the new residence.

CHAIRMAN DURAN: Any questions of Wayne? Is the applicant here? Please step forward, state your name for the record, let the recorder swear you in.

[Duly sworn, Jim Lestyk testified as follows:]

JIM LESTYK: My name is Jim Lestyk.

CHAIRMAN DURAN: So I just have a question for Wayne. That's five feet above the acceptable height. Is that correct?

MR. LESTYK: That's correct.

CHAIRMAN DURAN: Do you have anything to add?

MR. LESTYK: We're four miles off of 41. We're 177 feet from the closest property line and I wouldn't think that—we've gone through the procedure of notifying adjoining property owners. I'm not aware of any negative comments from them. In that open area, the parcels of land are approximately the same size or even larger, so I don't think a person if they stood off, they couldn't tell five feet. You wouldn't be able to tell if the structure was 24 feet or 29 feet or 31 feet. I don't think it impacts anybody.

CHAIRMAN DURAN: Okay. Any questions of the applicant? This is a public hearing. Is there anyone out there that would like to speak for or against this proposal? What's the pleasure of the Board?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I have a question for Mr. Dalton. Would granting this variance create any kind of impairment or negative effect on the views, on the neighbors?

MR. DALTON: Mr. Chairman, Commissioner Campos, it's kind of hard to say. I would say no because it's in the middle of an 80-acre tract and I believe all the property out there is pretty big in size. I would say the tracts around him are pretty much the same amount of acreage.

COMMISSIONER CAMPOS: So essentially, your position is that because the

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Code says 24, there is no harm. Staff is just looking at the Code literally and saying you need a variance but we don't recommend one.

MR. DALTON: Mr. Chairman, staff does recommend denial of this variance.

COMMISSIONER CAMPOS: That's what I'm saying. A denial based on the 24-foot standard.

CHAIRMAN DURAN: They never recommend approval of a variance.

COMMISSIONER CAMPOS: They have to abide by the Code just like most people.

CHAIRMAN DURAN: Luckily they have us.

COMMISSIONER TRUJILLO: I have a feeling somebody's going to vote for a variance.

CHAIRMAN DURAN: I don't think so.

COMMISSIONER CAMPOS: I don't know about that.

CHAIRMAN DURAN: What's the pleasure of the Board? I'll move for approval.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? With staff recommendations. Conditions.

The motion to approve CDRC Case #V 02-5200 passed by unanimous [5-0] voice vote.

- XI. A. 10. **CRDC CASE #APP 02-5180 Joe Miller Appeal.** Joe Miller, applicant, is appealing the County Development Review Committee's decision to uphold the Land Use Administrator's decision regarding the status of the Cimarron Village I, Cimarron Village II, and Lot C-1. The Property is located at the intersection of US 285 and Colina, within Section 16, Township 15 North, Range 10 East

MR. ABEYTA: Mr. Chairman, after careful review of the Land Development Code and meeting with the Legal Department, the Land Use Department has determined that the master plan for Cimarron Village I and Cimarron Village II are still valid. The only issue left on this case is there are four or five mobile homes on the property and so because the master plans are valid, staff would like those mobile homes to be removed, and we would recommend that they be removed within 45 days. I met with the applicant yesterday. I believe he is willing to do that, but he wanted to come forward before the Board and maybe clarify or get the Board's opinion as to the mobile homes, when they would need to be removed and the master plans.

CHAIRMAN DURAN: Mr. Miller, please step forward. Good to see you

again.

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

CHAIRMAN DURAN: Commissioner.

COMMISSIONER SULLIVAN: What about Lot C-1, Roman?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, Lot C-1 would be included. The commercial status would still be valid on Lot C-1 also.

COMMISSIONER SULLIVAN: How does this affect the provision or the requirement that the applicant comply with the moratorium?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it is still staff's position that he would have to comply with the provisions of the moratorium if he wants to proceed forward. But I'm sure Mr. Miller—he may or may not agree with that, and that may be one of the issues he may want to discuss before the Board.

CHAIRMAN DURAN: Is he serviced by the Eldorado Utility?

MR. ABEYTA: Mr. Chairman, yes, he is. But he's a little different. His situation is a little different than others in that one, he's got a well in which he has transferred to the Eldorado Utility and water rights. So he would use the Eldorado Utility to pipe the water to his development, his own water. We do have an amendment to the Eldorado moratorium that we adopted to address this situation. So he can try to come in for development under that provision.

CHAIRMAN DURAN: Were the water rights that were transferred, were they transferred specifically to provide water to this site?

MR. ABEYTA: Mr. Chairman, it's my understanding that it was, but that would be something we would have to look at when he brought forward his development plan application.

CHAIRMAN DURAN: Any other questions of staff?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I don't have the full story here. I'd like a little context from Mr. Abeyta, if possible. Give me a little history on it.

MR. ABEYTA: Mr. Chairman, Commissioner Campos, on June 26, 1995, a master plan was recorded for Cimarron Village I, which is a commercial development, which was granted approval by the Board in 1993. Then, on November 22, 1996, another master plan was recorded for Cimarron Village II. On July 25, 2001, Mr. Miller rescinded his master plans, or tried to rescind his master plans for Cimarron Village I and II so he could place mobile homes on the property, which he has done. So then what happened was Mr. Miller came back to the staff and said that the master plan rescension was not valid.

So we looked at that. Our first interpretation was that you rescinded the master plan. That's why we gave you mobile home permits, so the master plans were rescinded. Since then, we've talked with our Legal Department and we've determined that only the Board can rescind master plans. Because of that, then the next issue is okay, it's not—the master plans aren't rescinded, what happens to those mobile homes, because those mobile homes do not comply

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with the zoning that's on the property if the master plans are still valid. So it's staff's recommendation that since we are recognizing the commercial status still is in place, that the mobile homes be removed.

CHAIRMAN DURAN: Are there people living in the mobile homes?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, it's my understanding there are in four of the five, and we've talked to Mr. Miller about a reasonable time period to have them removed. We suggested 45 days. Perhaps he needs more time but that's something that we would want direction from the Board on.

COMMISSIONER CAMPOS: Thank you.

COMMISSIONER SULLIVAN: Mr. Abeyta, has there been any development plan submittal on these properties?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's my understanding that a development plan was prepared but then the issue of the moratorium came about right before his development plan was heard. So that put things on hold for a number of years. That determination has been appealed by Mr. Miller in district court, and from district court it's been appealed even further. So that issue is currently in front of a court right now as to whether or not he's subject to the moratorium. It's staff's position that he is, but since that's taken place, staff has amended the moratorium to include a provision that would allow Mr. Miller to use some of his wells and water rights, transfer them to the Eldorado Utility and have them supply him the water.

COMMISSIONER SULLIVAN: Had the County Commission approved a development plan for this property?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's my understanding that they County did approve the existing gas station that is out there, the Chevron station.

COMMISSIONER SULLIVAN: But that was the only thing?

MR. ABEYTA: That was the only thing. On one of the master plans there's the Country Store that was grandfathered in or legal non-conforming.

COMMISSIONER SULLIVAN: Anything else that would be built out there would require the applicant to come forward with a preliminary and final development plan.

MR. ABEYTA: Yes, and comply with—

COMMISSIONER SULLIVAN: To the BCC.

MR. ABEYTA: Right. And under the existing amendment for the Eldorado moratorium.

COMMISSIONER SULLIVAN: So the prior Commission approved the gas station and the general store was grandfathered in. I guess what I'm getting at—the only other things that are on site that exist then is a master plan approval, if that's what the Commission determines.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes.

COMMISSIONER SULLIVAN: The reason I'm trying to clarify that is Mr. Kopelman has

always told us that there are no rights conveyed to an applicant until final development plan approval. I'm getting at this issue of being subject to the moratorium. It sounds like whether we do or don't have master plan, the applicant is still required to abide by the moratorium, as you indicate that has been amended—actually almost specifically to allow his circumstance to be accommodated as I recall.

MR. ABEYTA: Yes, that's correct.

COMMISSIONER SULLIVAN: Well, that clarifies that. Thank you.

CHAIRMAN DURAN: Okay, Joe.

[Duly sworn, Joe Miller testified as follows:]

JOE MILLER: There's several things. I don't know where to start. The master plan was approved, but as Commissioner Sullivan says, it doesn't give you any rights to do anything, and likewise, it doesn't take any of your rights to use your property in the meantime. A master plan is kind of just held in abeyance. It's a plan for what we do; it doesn't give us the rights to do anything. And the same thing, it doesn't take any of our rights away from us to do the project that we could have done before the master plan was approved. It doesn't give any rights, doesn't take any away either.

We thought, we tried to do this thing, this is an old project that started back in 1990. And we've been through the mill, through two court proceedings and one of the court proceedings is one that probably should have been all it took. I have copies of those things here, if I could pass them out to you people maybe it would help. It would explain some of this stuff.

CHAIRMAN DURAN: Joe, we really want to stay focused with the issue here and I guess I'm not clear what the issue is.

MR. ABEYTA: Mr. Chairman, we agree with Mr. Miller that the master plans are still valid so I think therefore the appeal goes away. I asked him to withdraw his appeal because there's no need for it anymore but he still wanted to be heard. I guess the only issue in staff's mind is whether or not the mobile homes can remain on the property, and if not, how long he has to remove them.

CHAIRMAN DURAN: So you're really here to discuss a non-issue with us. We agree with you that you have your master plan approval and that they're in place. What do you plan on doing with the mobile homes?

MR. MILLER: Well, we want to proceed to develop the property, but if we can't develop it, then the mobile homes should stay on there until we can develop it. That's our position.

CHAIRMAN DURAN: Well, you're not here tonight to discuss the development of the property with us though. We have no information relative to your ability to develop the property. We don't know what you're doing. We don't know what you want to do.

MR. MILLER: Of course, what we want to do is develop the property. We want to move forward with the master plan is what we want to do.

CHAIRMAN DURAN: There's no reason for you not to do that. As Roman

told you, just go ahead.

MR. ABEYTA: Mr. Chairman, he just needs to meet with staff and we need to talk about the amendment to the moratorium that he would apply under and see whether or not he would comply with that.

COMMISSIONER TRUJILLO: I think also what needs to happen, we're recognizing that this is a commercial development and it's a valid commercial designation, and I think there needs to be some sort of guarantee that the application process will proceed without any obstacles. I understand and I conjecture that in the past there have been some issues regarding litigation, some issues regarding court cases, issues regarding other things. I think that Mr. Miller should be treated like anybody else, and that his development should be looked at on its own merits. And if it conforms with the Code, especially in light of the new amendment to the moratorium that other cases are being considered, other projects are being considered by, that he, the same things apply to him. I think that's what his concern is that things are not being applied in an egalitarian, fair manner. And I'd like to see that happen.

MR. MILLER: Our contention is that we should be permitted to move forward. The moratorium should not have any effect on us whatsoever. There was an appellate court ruling, and you have copies of it there, that was made back in 1995. The appellate court ruling said that we can go forward. There was a challenge to the zoning at that time, and we were held up and could not go forward with our master plan until that was resolved. The appellate court ruled that the zoning was in effect and it was zoned a neighborhood center district, and it also says that Mr. Miller is entitled to develop his entire parcel, subject to the provisions of the current ordinance. He referred to the current ordinance on another page as the ordinance of 1990.

This was all prior to the moratorium. And we've been trying even since then to get the County to honor this court order. It's the subject right now of a suit. We are in appellate court again and we're just waiting for a date to have a hearing to get back to the appellate court and find out why the County would not honor their order.

CHAIRMAN DURAN: So Joe, we're in agreement that you have master plan approval, and I guess the question I have is how does the placement of those mobile homes—is he in violation of any ordinance?

MR. ABEYTA: Mr. Chairman, I think that's something that the Board can interpret one way or another. The Code isn't really clear as to whether or not they can remain on the property.

CHAIRMAN DURAN: Well, what does our Legal Department say? How can we require this man to take those mobile homes off there if we don't have an ordinance, or if we don't have any police power to require him to do that?

COMMISSIONER TRUJILLO: He was given permits legally to situate those mobile homes, so he falls under the Code.

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, we gave him permits because he had thought his master plan had been rescinded. When you get master

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plan approval you rezone the property. And so the question is, is that enough to not allow residential dwelling units if they're not in conformance with that new zoning on that property? But then the flip side to that is since there's no guarantees or no vested rights, why can't he keep them on the property until maybe he gets maybe development plan approval or some more of an assurance that it can be developed.

CHAIRMAN DURAN: You have to go through the public hearing process. You have to go through that whole thing, Joe.

MR. MILLER: Yes, but I don't know what the problem is with the mobile homes. The Code is very clear. It says just black and white that residences can go anywhere in the county. Period. It doesn't say unless it's zoned industry, unless it's zoned commercial. It can go anywhere in the county.

CHAIRMAN DURAN: Or unless you have master zoning approval.

MR. MILLER: No, it doesn't say anything about that. It just says -

MR. ABEYTA: Mr. Chairman, it's open to interpretation. You could look at an example is if I had four mobile homes on my property. I came in and got zoning approval. I could honestly say we would not recommend that you remove those mobile homes until you actually got a development plan approval. So again, I think it's up to the Board. If the Board wants—again, the Board could interpret it that since the property has been zoned, then the mobile homes are no longer valid, don't comply with that zoning, or they could rule that the mobile homes can remain until he receives development plan approvals. Again, it's up to the Board and staff can live with either interpretation.

CHAIRMAN DURAN: Joe, when do you plan on making a submittal, master plan submittal?

MR. MILLER: Well, we've been trying to make a submittal for—

CHAIRMAN DURAN: When do you plan on doing it some time in the near future?

MR. MILLER: We have a submittal already in right now and we were on the agenda. You have the mylars, you have all our submittals and everything's there and it was all set up for a hearing. And it was scheduled for a hearing in April of 1996. On that date they put a moratorium on. And then they would not hear us. So you still have all our submittals and everything's right there.

CHAIRMAN DURAN: Your submittals are out of date.

MR. MILLER: Well, they're out of date because the moratorium was put on. I thought you passed amendments on the moratorium and suspends that.

COMMISSIONER TRUJILLO: All you need to do is update the submittals and resubmit them for today.

MR. ABEYTA: Mr. Chairman, that's correct. We can go back, take a look at what we have and then give him a list of what we would need in addition to update what we already have.

COMMISSIONER TRUJILLO: The Code changes.

MR. ABEYTA: Right. We could work with him in that regard.

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Roman, this was the—the original master plan was approved in '96?

MR. ABEYTA: There's two master plans. Cimarron Village I was approved in '93 and Cimarron Village II was approved in '96.

COMMISSIONER SULLIVAN: Okay. And has there been a request for an extension on those master plans, after the five-year period?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, no, because when the moratorium came into effect in '95 it put a hold on that. It stayed that approval, so there was no need to ask for an extension.

COMMISSIONER SULLIVAN: But Mr. Miller claims his development wasn't subject to that hold.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, we don't necessarily agree with him on that point, or at least that was an opinion that was given in the past and that's subject to—we're in litigation over that right now.

COMMISSIONER SULLIVAN: So what he should have done is requested an extension if he felt it was still applicable. I think those master plans are dead, that he needs to submit a new master plan.

COMMISSIONER TRUJILLO: I don't think so.

MR. MILLER: There was an amendment to the Code that suspended the five-year time while the moratorium was on.

COMMISSIONER SULLIVAN: So you were subject to the moratorium?

MR. MILLER: It was suspended because of the moratorium. People who had master plans at the time were suspended.

COMMISSIONER SULLIVAN: My suggestion is this. My suggestion is this. I suggest just as Roman has recommended. We've gone through considerable effort to modify the moratorium ordinance to accommodate you and your situation. If you are ready to move forward with your master plan, we're ready to hear it. I feel in good faith, those trailers need to go. They are not consistent with the zoning that the master plan conveyed on that property. Now, we can continue in court until hell freezes over. Or we can work together and help you get a reasonable master plan and you in turn will work with us. What's your choice?

MR. MILLER: Well, for the last ten years, eleven years now, I've been trying to work with you. It's not that I haven't put the effort to work with you people. The record will show that we've done everything we could. Right now, like I say we are already in court. We are waiting for a hearing and I'd like to be able to get out of that and not have to go to that hearing and all we'd have to do is have the County recognize and honor the court's previous order.

COMMISSIONER SULLIVAN: Well, I don't think we can make a recommendation on a legal issue without jeopardizing what may be our court's position.

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I'm prepared to make a motion to acknowledge your master plan as recommended by staff as being valid and current, with the condition that all of the trailers be removed within 60 days. Are you agreeable to that?

MR. MILLER: No, I won't do that. These people moved into those homes and they're there. They've been there a few months. I'm not going to say, No, you have to get out, and put them out. It costs money to move mobile homes in and move them out. It's just not right. We're dealing with people here and we've got to treat people fairly and right.

CHAIRMAN DURAN: How much time do you need?

MR. MILLER: We need until we get final development approval.

COMMISSIONER SULLIVAN: Well, I think that's just trying to hold a gun to our heads. Now, you're either going to work with us or you're not. There's, as Roman as said, two sides to this. We're either going to work it out or we're going to both stay in court until hell freezes over again.

MR. MILLER: Well, that's your decision.

COMMISSIONER SULLIVAN: My decision and my suggestion is that we try to move forward with the master plan that you want with the zoning that you want and the zoning that you want doesn't provide for the installation of trailers. And if you're willing to work on that, if 60 days isn't right, then we'll work a time period. Whatever's reasonable. If you're not willing to accept any time period, until you get what you want from this Commission, that's blackmail. I'm not going to vote for that.

COMMISSIONER TRUJILLO: I don't think Mr. Miller has gotten what he wants from this Commission by any stretch of the imagination.

COMMISSIONER SULLIVAN: That's why the time will continue.

COMMISSIONER TRUJILLO: And I think that Mr. Miller was forced to situate those trailers there by this Commission. I think at the very least that those trailers should stay there until final plan approval for this development. Like staff said, there's no legal problem with that. It can happen either way. My recommendation is that those trailers stay there until final plan approval for these projects.

CHAIRMAN DURAN: We have nothing to force Mr. Miller to move those trailers.

COMMISSIONER SULLIVAN: Well, except the opinion of staff that it is zoned, and he indicated that there could be two different opinions on that. But once master plan approval is given, that conveys a zoning to the property.

CHAIRMAN DURAN: Joe, I'm going to give you three more minutes and then this thing is tabled—not tabled. There's no action for us to take on this thing.

MR. MILLER: Let me use those three minutes then to say a few things. One of them is, as far as the change in the ordinance was concerned that Commissioner Sullivan is referring to, that was changed, but that was changed after our master plan was withdrawn, long after, so it wouldn't help us in any way at all. The second thing, as far as, we do need another legal opinion. Can residences go in commercial? Or can't they? The

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Code says clearly it can go anywhere. And that means anywhere. It doesn't refer to the zoning. Commercial zoning, you can always downgrade commercial zoning. You don't need an application. You can put residences, you can put multi-families or anything else in commercial. You can put single family into an area that's zoned commercial. And you probably want to check with your attorney on that, but I'm certain that residences can go anywhere in the—and likewise agriculture on the page, it says agriculture can go anywhere in the county.

It doesn't say unless it's zoned for a different type of zoning. I can't just get up there now and tell those people to get up and move out for several reasons. One, they came in good faith. Two things, where are they going to go? This county has no place at all, anywhere in the county where a person can take a mobile home, only in the mobile home parks and the mobile home parks won't take mobile homes unless they're of a recent age. And most of those homes are all in the late eighties, early nineties. They won't qualify. Those people have no place to go if I kick them out.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: Just, I've been observing from next door, but just correct me if I'm wrong. The issue before the Commission tonight just strictly relates to the master plan. I mean the Commission can't take any action on affirming or denying the trailers tonight.

MR. ABEYTA: Well, Mr. Chairman, Commissioner Gonzales, we would want direction from you.

COMMISSIONER GONZALES: But it wasn't noticed for that type of discussion.

CHAIRMAN DURAN: We can't give you direction.

COMMISSIONER GONZALES: I think if the issue centers around Cimarron Village, I think it's basically, per what you've indicated tonight, Joe can go in and basically begin to submit the proposal. I think that if he is currently in your opinion violating the Code because it's been zoned for something other, then wouldn't the proper route be to issue some type of enforcement process and have him appeal that up to the Commission for some type of decision?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, I guess it would be staff's position then that the master plans are valid. We'd have to go back, talk to our legal staff and make a decision on those trailers ourselves and then depending on what our decision is, Mr. Miller can then have the option at that point to appeal that. We can do that.

COMMISSIONER GONZALES: It seems like that might be a clean process as opposed to—looking at this I didn't see anything in discussion. It would be nice to give you direction but I just don't know if it would be in our purview to do it.

CHAIRMAN DURAN: Okay. Well, thank you, Mr. Miller. We'll be seeing you soon, I'm sure.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I think we should give staff direction. I think it's appropriate. It's simple direction. The Code is apparently unclear. We're not getting any opinion from staff that it is black and white. It's basically ambiguous.

COMMISSIONER TRUJILLO: I've given my direction.

COMMISSIONER CAMPOS: I would agree with Commissioner Trujillo. I think they should stay there for a while any way. Because they moved there in good faith. They're housing people. Four of them are occupied.

MR. MILLER: I want to say one thing. I don't like the mobile homes there. It's not compatible with what we had planned for that property. But it's the only thing that the Commission would let us do there or it would sit idle. It sat idle now that area for over ten years and we're just done. We're going to do something with the property. Now, if that's the only thing we can do, that's what we did. I'm certainly glad that we could have done something else. We sure tried for ten years to do something else.

CHAIRMAN DURAN: I don't really want to go here but when you came forward with this project, this master plan approval, the reason that you weren't allowed to go forward because we determined you were in the moratorium area, and that the water rights that you claimed you had to develop the property had already been allocated. You transferred them to the Eldorado Utility, but they had been overstated by AMREP. If you recall when Jack Frost was here. So I think that you have a much bigger animal here that you're dealing with but I think that giving staff direction to allow you to keep the mobile homes there until you have master plan approval would basically be allowing you to keep it there forever because based on the history of your project and the determination—unless you've come up with new water rights—the determination that the County Hydrologist made several years ago—isn't that reason why we're in court?

MR. MILLER: The water rights—there's two issues why we should not be governed by the moratorium. Water is one. We're not using Eldorado water. We're using our own water.

CHAIRMAN DURAN: But they say that they transferred the rights to that well to the Eldorado Utility.

MR. MILLER: We transferred the rights to the well and we reserved the first 14 acre-feet from that well. This project was assigned 13.2 acre-feet when completed. We have an agreement with them. It's spelled out that we get the first 14 acre-feet. I have a copy of the agreement if you want to see it.

CHAIRMAN DURAN: That's perfect. Then—

COMMISSIONER CAMPOS: We're getting far afield.

CHAIRMAN DURAN: Okay, then why don't you make the motion and let's move on.

COMMISSIONER CAMPOS: That's my direction. We're not in a position to make a motion.

COMMISSIONER TRUJILLO: I second that direction.

COMMISSIONER SULLIVAN: I wouldn't agree with that direction.

COMMISSIONER TRUJILLO: Well, we'll take a vote.

COMMISSIONER SULLIVAN: This well doesn't produce. It's on the Galisteo River. When the river's not running, the well doesn't produce.

MR. MILLER: There's four wells involved, not just one.

COMMISSIONER SULLIVAN: There's issues beyond what's on the agenda this evening that we don't want to prejudice our case in court. I tried to make some type of suggestion that we work together here and there doesn't seem to be that impetus. I think the issue is right where it is. I think Roman has stated it correctly. He needs to go back and discuss with Legal and the County Manager whether they feel because master plan zoning has been issued, and they've determined that now, that they should take enforcement action against these trailers. If they do that, and they Mr. Miller objects to that, then as Commissioner Gonzales said, he would come back to this Commission and request that that enforcement action be dismissed. But I think we're at a non-issue right now.

COMMISSIONER GONZALES: Just to try and find our way through this, how long is the master plan valid for?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, it is valid until the moratorium is lifted. And then once the moratorium is lifted, then he has five years or whatever he had left when the moratorium was placed on. But at a maximum, five years after that.

COMMISSIONER GONZALES: So Commissioner Duran's assertion then basically—so minus a master plan, is he in compliance with the Code with the mobile homes being up there?

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, minus the master plan, those mobile homes are permitted and he's in compliance.

COMMISSIONER GONZALES: So if he's willing to let go of the master plan, then he's in compliance with the Code.

MR. ABEYTA: Yes. And that's why the permits were issued to begin with.

COMMISSIONER GONZALES: So Mr. Miller, if you wanted to keep them there, couldn't you keep them and at the time that you wanted to come back in and submit your master plan, at that point negotiate with the staff how much longer you'd want to keep those mobile homes in place based on the amount of time it would take you to—

MR. MILLER: I don't want them there at all. I only put them there because that's all we could do. Now if we can do something else, of course we'll do that, something that's better, more improvement. We'll do whatever you permit us. But so far, up till now, that's all you would permit us to do.

CHAIRMAN DURAN: Based on erroneous information though.

MR. MILLER: No, it goes a little deeper than this. We applied for the mobile homes. They wouldn't give them to us at first. So we went to court over it and we

had a hearing. On the morning of the hearing they said [inaudible] master plan, we'll give you the mobile homes. Because we contend that just because you have a master plan, it doesn't grant you, as Mr. Kopelman says, it doesn't grant you any rights. Not at all. And it doesn't take any rights away from you. We still have the same rights after the master plan is approved as we did before. And mobile homes were permitted on there. And we were ready to go to court that day, but the staff says we withdrew the master plan we'll issue the permits. So we withdrew the master plans and got our permits.

COMMISSIONER GONZALES: Can I make a suggestion, Mr. Chairman.

CHAIRMAN DURAN: Sure.

COMMISSIONER GONZALES: Can we just suggest then, maybe to get this resolved properly is that this be properly noticed to amend the master plan to allow for a condition to be put in place to allow the mobile homes to stay on place and at that point we can actually discuss this.

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, what we would have to do is we would just have to come back with direction from the Board. Because we can't amend master plans under the moratorium for any purpose unless you—

CHAIRMAN DURAN: How about a variance?

MR. ABEYTA: Mr. Chairman, again, all it would be is direction. Can they stay on or do they need to be removed? Does granting the master plan on property, are you subject to that new zoning as far as future uses or can you continue with the existing development until you get development plan approval. That would be the direction we would seek. And we can bring that back next month.

CHAIRMAN DURAN: Okay, why don't you do that.

COMMISSIONER GONZALES: And I think that's a worthy question to pose that we haven't confronted but I think we should deal with it from a policy standpoint.

MR. ABEYTA: Okay. Thanks, Mr. Chairman.

CHAIRMAN DURAN: Kathy, did you want—I know you've been here all night. Did you want to say something? Come on up to the podium. I know you've been here all night. You're as crazy as the rest of us.

KATHY PILNOCK: It sounds like it gets worse with every step of the way rather than better some time. Kathy Pilnock, 13 El Capitan Lane, Lamy, New Mexico. I swear to tell the truth, honest to God.

I guess my concern now is that I assume you got the letter from the 285 Coalition saying that we ask you to find that his plan has not been rescinded, which you've done and that we want him to abide by the moratorium. We're hoping that the covenants would still be part of the property and that he would—and he has been working with the Highway Corridor Committee and I believe his property will be in line with those design standards. But I guess what I was wondering while I was sitting there was if there's like a sunset law on master plans that if you don't start them soon enough then they kind of go away.

CHAIRMAN DURAN: Except that—

2189035

MS. PILNOCK: Because of the moratorium it's kind of stuck on pause then?

CHAIRMAN DURAN: Right.

MS. PILNOCK: Indefinitely?

CHAIRMAN DURAN: Right.

MS. PILNOCK: Oh, my gosh. Okay, well, that's what I didn't want to hear. Because I thought that maybe since you said his master plan was there, and I thought he was able, under the moratorium to transfer the water rights to get the water for his project, but I guess maybe that's still in dispute. I just thought that the time would start ticking away now. I thought maybe he only had like maybe two years left and he had to do something or else it would go away. As far as the trailers, I agree with Commissioner Trujillo in a way more than I do with many of the residents in Eldorado who would be happy to see the trailers leave tomorrow. And if it's just an issue of time, six months, for me personally, six months or a year, at least there would be an end in sight. I don't know really what I have to say because I just get more confused the more I sit and listen.

CHAIRMAN DURAN: Thank you. As long as they don't have any junk cars, I'm okay.

COMMISSIONER SULLIVAN: Just junk trailers.

COMMISSIONER CAMPOS: They're still people's homes.

CHAIRMAN DURAN: I'm just joking. Is that it?

- XI. A. 11. CDRC CASE # V 02-5071 Richard Cordova Variance: Richard Cordova, applicant, Jon Paul Romero, agent, request 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 1.35 acres. The property is located two miles south of Española on the west side of US 84/285, within Section 13, Township 20 North, Range 8 East**

CHAIRMAN DURAN: Is this across the street from where that little old lady was denied?

MR. DALTON: No, Mr. Chairman. It's further up the road. The property currently has two structures that are legal non-conforming commercial businesses and are occupied by the owner of the property. These commercial businesses are Blue Sky Builders and Naranjo Trading. These businesses currently have business registrations. The applicant states that the majority of the developments surrounding the existing property currently have commercial development on them. The surrounding properties are not located within a commercial district therefore they are also legal non-conforming uses.

The applicant intends to construct an 8,000 square foot building for office and retail

2189036

space. The applicant's property is not located within a commercial district, therefore the applicant would not be allowed to add this proposed use on the property. The nearest commercial district is located at US 284 and County Road 88, which is a Community Center District. The applicant's property is approximately $\frac{3}{4}$ of a mile out of 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.

On May 30, 2002, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of a variance to allow commercial zoning outside a potential commercial district on 1.35 acres. Thank you.

COMMISSIONER TRUJILLO: One question of staff. Mr. Chairman, staff's position 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. Are we talking about the same Arroyo Seco? How are we going to stop—that's already there. How are we going to stop strip development?

MR. DALTON: Mr. Chairman, I believe what's there now is legal non-conforming and the applicant would not be able to add this use on the property.

COMMISSIONER TRUJILLO: But the de facto strip development exists, is there. So denying this application would not rectify the existing situation.

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, you're correct. Unfortunately though, this is the only section of the Code we have currently to follow for commercial development and this is probably outdated, especially for this area. But this is why a variance was needed in order for him to proceed with the use he wanted to do, because again, this is the only thing that exists in the Code and it probably is a little outdated, especially for this area.

CHAIRMAN DURAN: That's 8,000 square feet on 1.3 acres. In addition to what else? Are there other structures on there?

MR. DALTON: Mr. Chairman, there's two legal non-conforming businesses on there.

CHAIRMAN DURAN: So what's the total lot coverage on this? Fifteen percent? Okay. Any questions of staff?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: A question for Mr. Abeyta. This is against the Code. This would still result in an intensification of the strip development along that area. And once you keep approving projects, there's nothing you can do to remedy the problem. It seems to me that that the status quo would be better than intensification of something that we feel as a community is not appropriate. Is that the way the Code is structured? Is that the way it should be interpreted?

2189037

MR. ABEYTA: Mr. Chairman, Commissioner Campos, that is the way the existing regulations should be interpreted. However, there is planning that's in the real early stages for this area and I believe that's going to be changed and something like this probably would be allowed in the future, based on the discussions and the planning that's taking place now. We did look into that, but because it's not Code, we don't include that in our analysis. We can't until it—

COMMISSIONER CAMPOS: I understand, but that's just a probability. That's a supposition. It may or may not happen.

MR. ABEYTA: Right.

COMMISSIONER CAMPOS: Wouldn't the better course be to wait and see if the laws in fact change?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, we are recommending denial of this.

COMMISSIONER TRUJILLO: Mr. Chairman.

COMMISSIONER CAMPOS: I thought you were backing off a little bit.

CHAIRMAN DURAN: You know, the alternative is, why don't we let them build a house on there and raise a family next to the freeway. That's the only other alternative. Look at the design. It's a nice looking building. When we approved that tower which no one seemed to like, part of the deliberation was that residential use for this corridor is not—

COMMISSIONER SULLIVAN: We weren't here when that tower was approved, by the way.

COMMISSIONER CAMPOS: Don't blame us.

CHAIRMAN DURAN: Aren't you lucky.

COMMISSIONER SULLIVAN: That was a different Commission.

CHAIRMAN DURAN: Well, anyway, when you weren't here and we approved that tower, we did it because it's not a residential zoning anymore. It's commercial.

COMMISSIONER CAMPOS: Mr. Chairman, that's a legislative issue. It's not for variance determination. It's legislative.

CHAIRMAN DURAN: It's planning through the variance process.

COMMISSIONER CAMPOS: No, it's not planning.

COMMISSIONER TRUJILLO: Mr. Chairman, the County has been a culprit to intensifying the traffic and usage in that area. We've got a fire substation there. We've got a County road, Public Works yard there. So that area isn't used. Like Commissioner Duran said, I would not like to raise a family next to Highway 84/285, build a residence there. Everything around there is commercial. By denying this project it would be a taking. They would not be able to do anything else with this property.

CHAIRMAN DURAN: Is the applicant here? Please step forward, state your name for the record and let the recorder swear you in.

JON PAUL ROMERO: My name is Jon Paul Romero, 28 Guaymas Drive,

2189038

Santa Fe, New Mexico.

CHAIRMAN DURAN: Any questions of the applicant? Are you in agreement, or is the applicant in agreement with all the conditions of staff?

[Duly sworn, testified as follows:]

MR. ROMERO: Yes, sir, he is. At this time I'd like to add that I've been dealing with this project for some time on the engineering standpoint, from US 284/285. The firm that I work for has been doing a study from Pojoaque to Española to upgrade the corridor to improve the safety. I've been working real close with the Planning and Land Use Department, typically Planning, and they are meeting with the community of Arroyo Seco to try to improve on the situation out there.

There is a commercial node located right off US 84/285 on County Road 88, but along the whole corridor it has continued to develop in a commercial fashion, and it's going to continue to grow in a commercial fashion as northern New Mexico grows. The applicant contracted with me to come forward and meet with the County staff to see if this was a plausible project and they said it is but you're going to have to go through the variance portion of it first. So that's what we're doing.

CHAIRMAN DURAN: Okay, thank you. This is a public hearing. Is there anyone out there that wants to speak for or against this proposal? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Move to approve.

CHAIRMAN DURAN: I second it. Any further discussion?

The motion to approve CDRC Case #V 02-5071 tied by a 2-2voice vote, with Commissioners Trujillo and Duran voting in the affirmative and Commissioners Sullivan and Campos voting no. [Commissioner Gonzales was not present for this action.]

CHAIRMAN DURAN: Tell your client to go build a house on the highway, raise his children. No, actually, you have to come back to the next land use meeting when there's a quorum. Not a quorum, all five of us up here.

MR. ROMERO: Commissioner, that's not a problem. I'm going to be before you on the next issue where the master plan was approved with County conditions for the same problem.

MR. ABEYTA: Mr. Chairman, that would be automatically tabled because that cannot be heard until the variance is granted.

CHAIRMAN DURAN: Okay. It's been tabled. Thank you very much sir.

2189039

- XI. A. 13. CDRC CASE #A/V 02-5190. Russell Hein Appeal Variance. Russell, applicant, requests a variance of Article III, Section 10 (lot size requirements) of the Land Development Code to allow a family transfer land division of 1 acre into two lots, each lot consisting of .50 acres. The property is located at #37 Tango Road, south of Cuyamungue within Section 28, Township 19 North, Range 9 East**

MR. DALTON: Thank you, Mr. Chairman. There are currently two homes and a septic system on the property. The property is served by an onsite well which serves both homes. The applicant has completed research on the property and has proven that both homes are legal non-conforming. The applicant's intent is to give his daughter her own piece of property.

Recommendation: Staff recommends that a request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 10 acres. On May 30, 2002, the CDRC met and acted on this case. The decision of the CDRC was to recommend approval of a variance to allow a family transfer land division of one acre into two lots subject to the following conditions. Mr. Chairman, may I enter those into the record?

CHAIRMAN DURAN: Yes.

[The conditions are as follows:]

1. Water use shall be restricted to .25 acre foot per year per lot. A water meter shall be installed for both lots, this shall be noted on the plat. Annual water meter reading shall be submitted to the County Hydrologist on May 31 of each year. Water restrictions shall be recorded in the County Clerk's Office.
2. No further division of this land shall be permitted, this shall be noted on the plat.
3. No additional dwelling units shall be placed on the property.
4. A plat of survey meeting all other County Code requirements shall be submitted to the Land Use Department for review and approval.
5. Failure to comply with all conditions shall result in administrative revocation of the variance.
6. The applicant shall provide liquid waste permit from ED showing correct lot size and number of dwellings.
7. The applicant shall submit a shared-well agreement prior to approval of the family transfer. This shall be noted on the plat. [Added at motion.]

CHAIRMAN DURAN: Any questions of Wayne?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Dalton, what are the arguments made by applicants to justify the variance?

MR. DALTON: Mr. Chairman, the applicant's intent is to give his daughter her own piece of property and home to live.

COMMISSIONER CAMPOS: But how do they justify a variance under the ordinance?

MR. ABEYTA: Mr. Chairman, Commissioner Campos, they can't under the ordinance. The homes are legal non-conforming, so a case could be made that we're not going to be intensifying or making it more intense by adding a vacant lot, which then could have another home, because the two homes exist. But again, staff still does not support the request for variance.

CHAIRMAN DURAN: Can we require them to tear one of them down?

MR. ABEYTA: Mr. Chairman, we cannot require them to tear one of them down. They've proven that they're both legal non-conforming or grandfathered in.

CHAIRMAN DURAN: So this actually just allows them the flexibility of mortgaging them, the right to transfer individual ownership.

MR. ABEYTA: Right. It puts a boundary in between the two homes.

CHAIRMAN DURAN: So if we deny the variance, all they do is end up living in the same way, right?

MR. ABEYTA: Mr. Chairman, yes.

CHAIRMAN DURAN: Thank you. Is the applicant here? Please state your name for the record.

JEANETTE HEIN: Jeanette Hein, 37 Tango Road.

CHAIRMAN DURAN: Are you in agreement with staff recommendations?

[Duly sworn, Jeanette Hein testified as follows:]

MS HEIN: What, to deny it?

CHAIRMAN DURAN: Staff's recommendations for if it's approved.

MS. HEIN: Yes, yes I am.

CHAIRMAN DURAN: Any questions of the applicant?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Roman, I'm a little confused. Are the conditions recommended by the CDRC the same as you're recommending now?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes. We recommended these conditions to the CDRC if they approved it and they accepted.

COMMISSIONER SULLIVAN: The only debate on the CDRC seemed to have to do with the septic tank and the requirement for an Environment Department permit for those non-conforming septic systems. And I see that that was added to the CDRC conditions and it appears to be added to yours also. To the staff recommendation. Is that correct?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, yes. Staff will automatically forward the CDRC's recommendation to the Board on cases.

COMMISSIONER SULLIVAN: What was the issue there? Did I state it correctly that the septic tanks were of unknown vintage. Maybe the applicant can explain that.

MS. HEIN: Yes, we have applied for the new permits and there at the EID. So it's in the process. Until they get back, approve them or whatever we can't go forward.

2189041

COMMISSIONER SULLIVAN: Do you think you'll have any trouble with them being approved? Do you have the right distance from your—

MS. HEIN: We have to wait—I guess they have to sit on their desk for ten days. Don't ask me why. I have no idea. They're in Española right now and then they come to Santa Fe.

COMMISSIONER SULLIVAN: But you have the right distance as far as you know?

MS. HEIN: Oh, absolutely. The well is on the front of the property and the septic is on the back of the property and it's 200 by 220 feet.

COMMISSIONER SULLIVAN: And the two lots, once they're created, will still be served by the shared well?

MS. HEIN: That's correct.

COMMISSIONER SULLIVAN: And is that a condition as well, Mr. Abeyta?

MR. ABEYTA: Mr. Chairman, I don't believe there is a condition that talks about a shared well, but we can add that.

MS. HEIN: We've already gone to a lawyer and had it drawn up, the well-share agreement and a septic-share agreement. That has also gone to the EID.

COMMISSIONER SULLIVAN: So that you would be fine with a condition for a well-share condition to that. Thank you, Mr. Chairman.

COMMISSIONER TRUJILLO: And Mr. Chairman, each lot is limited to .25 acre-feet usage?

MS. HEIN: Yes.

CHAIRMAN DURAN: This is a public hearing. Is there anyone out there that would like to speak for or against this proposal? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman, move for approval of, Russell Hein Variance.

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

COMMISSIONER SULLIVAN: I would ask the maker to include the condition regarding the sharing—a plat provision requiring the sharing of the well.

COMMISSIONER TRUJILLO: I agree. And all the other conditions.

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

The motion to approve CDRC Case #V 02-5190 passed by unanimous [4-0] voice vote. [Commissioner Gonzales was not present for this action.]

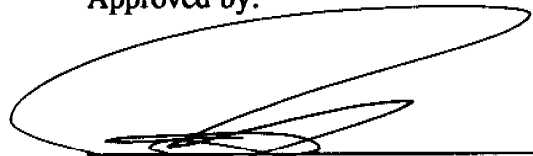
2189042

ADJOURNMENT

CHAIRMAN DURAN: This meeting's adjourned. Thank you very much. And Commissioner Sullivan, I would just like to say that I welcome the opportunity to try to come up with something that works on that water, on that subdivision ordinance for the wells.

[The meeting was adjourned at approximately 10:40 p.m.]

Approved by:


Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:


Karen Farrell, Commission Reporter

ATTEST TO:

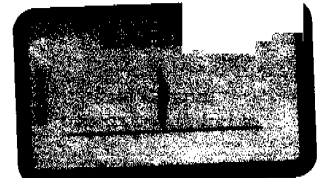
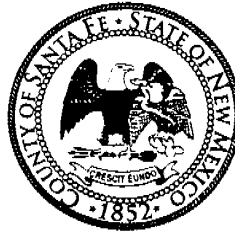

REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



Marcos P. Trujillo
Commissioner, District 1

Paul Duran
Commissioner, District 2

Javier M. Gonzales
Commissioner, District 3



Commissioner, District 5

Estevan R. Lopez
County Manager

UTILITIES DEPARTMENT

Memo

2189043

TO: SANTA FE BOARD OF COUNTY COMMISSIONERS
FROM: GARY G. ROYBAL, UTILITIES DEPARTMENT DIRECTOR *GR*
DATE: 7/9/2002
RE: REQUEST DIRECTION ON ALLOCATION OR DISBURSEMENT OF A STATE AND TRIBAL ASSISTANCE GRANTS ("STAG") OF \$300,000 "EARMARKED" FOR SANTA FE COUNTY TO ASSIST IN THE DEVELOPMENT OF ITS SMALL COMMUNITY WATER SYSTEMS

ISSUE:

Santa Fe County ("County") is "earmarked" to receive an appropriation of \$300,000 from STAG to assist in the development of Small Community Water Systems ("SCWS") in the County. Staff is seeking direction from the BCC on how this appropriation should be allocated or disbursed to SCWS in the County.

BACKGROUND:

The Environmental Protection Agency ("EPA") section of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, included funding in the STAG for specific water, wastewater and groundwater infrastructure projects. The County applied for STAG funding to assist SCWS in the County. This STAG appropriation is the first of its kind to be "earmarked" for the County to assist SCWS. Of the \$300,000 "earmarked" for the County, \$9,000 will be disbursed to EPA for the costs incurred to administer the appropriation.

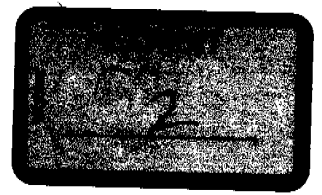
The net appropriation of \$291,000 requires a 45% local match of funds or in-kind services or a combination of both. Therefore, any SCWS receiving a portion of this grant must also have a source of local funding and or in-kind services.

Because this appropriation was not specific to any water project, Staff is seeking BCC direction for the allocation or disbursement of this grant.

RECOMMENDATION:

The Utilities Department in conjunction with the Land Use Department and the Projects and Facilities Department recommend, for purposes of this STAG appropriation, that the BCC consider allocation or disbursement of these funds to two entities: The Cuatro Villas Mutual Domestic Water Users Association ("CVMDWUA") and the Cundiyo Water Consumers Association ("CWCA").

The Land Use Department and the Projects and Facilities Department Staff are working with these communities on the development of their respective water systems. Staff is aware of the funding requirements and the status of the projects, which facilitates County administration of this fund. Because this is the first STAG appropriation "earmarked" for the County to assist SCWS, it is Staff's recommendation that a process and procedure be established to administer this type of funding. To this end, Staff recommends that the BCC consider these two communities as the "pilot projects" for disbursement of the funding "earmarked" for the County to assist SCWS. Limiting the allocation of this funding to CVMDWUA and CWCA will allow County Staff to gain experience and knowledge of the process and procedures associated with receiving the STAG appropriation and develop a process and procedure for allocation of any future grant funding "earmarked" for the County to assist SCWS.



**Types of Subdivisions Required
to Have Water Rights**

Code Reference

2189045

Type I – 500 parcels or more,
any one of which is less than 10 acres

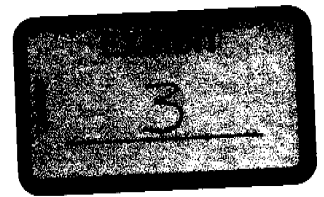
Same as existing code

Type II – 25 to 499 parcels,
any one of which is less than 10 acres

Same as existing code

Type III – 13 to 24 lots,
any one of which is less than 10 acres **and**
Any Type III lot that proposes to use
more than .25 acre-feet
of water per year per lot

Existing code is 5 to 24 lots with no
per lot water usage restriction.



**Sample of projects that could be developed
using a domestic well permit with a limit of 1 acre-foot or less:**

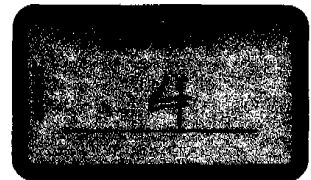
Gallery
Small restaurant or Deli
Take-out restaurant
Retail stores
Warehouses
Auto body or repair shop
Home businesses
Hair Dresser or Barber shop
Bed and Breakfast with 6 rooms or less

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**Sample of projects that could be developed
with the purchase of water rights for usage in excess of 1 acre-foot:**

Horse Stable
Hotel
Golf Course
Greenhouse
Racetrack
Spa
Large restaurant
Movie theatre
Bar/Pub
Industrial Uses
Public Swimming Pools
Laundry
Boarding Kennels

Note: This list is not comprehensive, but is meant to give an overview of the type and scale of project that will be affected by the ordinance. Also, the County may want to consider establishing a water bank to acquire water rights for sale to owners of approved commercial developments.



Water Rights Information for BCC

Galisteo Area

Approximately 70 acre-feet for sale, cost \$10-15,000/acre-foot

Santa Fe Basin

Approximately 100 acre-feet for sale, cost \$12-15,000/acre-foot, upper limit \$20,000/acre-foot

Most of these water rights are adjudicated but have not been used for many years which may raise issues regarding beneficial use and forfeiture

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Tesuque

10-15 acre-feet available, cost \$35-60,000

Nambe/Pojoaque

30-50 acre-feet for sale of short-term lease, \$12-20,000. Nambe generally costs less than Pojoaque

Middle Rio Grande

500 to 1,000 acre-feet for sale, cost \$4,500-\$5,000

These water rights would have to be transferred upstream – difficult to do

Upper Rio Grande

500-1,000 acre-feet for sale, cost \$12-\$15,000/acre-foot

These water rights would have to be transferred downstream – this may be easier than transferring upstream, but is still difficult. Any transfers across Otowi Gage will probably be protested.

Cost of Transfer

\$2,500 - \$5,000 to get through the first public hearing. If there is sufficient protest that a second (or third) public hearing is needed costs go up. Possibly to as much as \$100,000 for attorney and hydrologist fees and modeling work. In general, smaller transfers of water receive less protest and can get done with one hearing.

Note: All of this information is based on knowledge and information from people in Santa Fe County who work with water rights. The State Engineer does not maintain a database of water rights that are for sale, nor does anyone else.