



COUNTY OF SANTA FE)
STATE OF NEW MEXICO) ss

BCC MINUTES
PAGES: 254

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SANTA FE COUNTY

BOARD OF COUNTY COMMISSIONERS

MEETING

December 14, 2004

Paul Campos, Chairman
Michael Anaya
Jack Sullivan
Harry Montoya
Paul Duran

BCC CLERK RECORDED 04/06/2005

SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

December 14, 2004

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 3:00 p.m. by Chairman Paul Campos, 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 Campos, Chairman
Commissioner Mike Anaya
Commissioner Jack Sullivan
Commissioner Paul Duran
Commissioner Harry Montoya

Members Absent:

[None]

IV. INVOCATION

An invocation was given by Deacon Tony Rodriguez from St. John's Church.

V. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or withdrawn items**
- C. Consent Calendar Withdrawals**

GERALD GONZALEZ (County Manager): Mr. Chair, members of the Commission, the following changes are being suggested by staff. First of all, we've got, under Section VI, Approval of Minutes, the October 26, 2004 minutes have been resubmitted. We had a small problem with them at the last meeting. Section VIII, Matters from the Commission, we've added items B and C. Then, under Section X, Consent Calendar, item number D. has been withdrawn. Under Section XI, Staff and Elected Officials' Items, subsection B, Project

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and Facilities Management Department, item 1 is to be tabled.

Then in Section XII, Public Hearings, the evening portion of the meeting, under subsection A, Land Use Department, items number 1, 2, and 6 are requested to be tabled, and item 3 is requested to be withdrawn. And those are the only changes I have from the staff level to recommend to the Commission, Mr. Chair.

CHAIRMAN CAMPOS: Okay, anything from the Commission?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: I suggest we table item XII. A. 7 on the public hearings. There's an issue as you know that the staff has been working on regarding determination of what the appropriate documentation is for water supply and I don't think that that has been resolved. So as that currently stands, that particular application doesn't meet our current ordinances. So we should probably hear it when we have that issue clarified.

COMMISSIONER DURAN: Mr. Chair, before there's a second, I have a different interpretation. I have a different interpretation before there's a second. Commissioner Sullivan I think misstated the situation here. The ordinance that is in place right now allows for master plans to be submitted without the water right question that Commissioner Sullivan has brought up. That's why it went to CDRC and that's why it's before us tonight. So to table it for that particular reason I think would be inappropriate and not have any basis.

COMMISSIONER SULLIVAN: I would just add, Mr. Chair, that a thorough reading of that ordinance will show that the master plan section, which I think Commissioner Duran refers to, refers to and incorporates by reference the requirements of Chapter 6 which do require the transfer of water rights be accomplished prior to master plan approval. So there's discussion as to whether that's appropriate or not, but that's currently the way the ordinance reads. So to bring it forward at this point in time would not be in accordance with the ordinance. So I think the easiest way to resolve it is to provide any changes that the Commission wants to make to the language and then hear it at that time.

CHAIRMAN CAMPOS: Okay, I'll second that motion. Any other comments?

The motion to table CDRC Case #DP 04-5780 failed by a 2-3 voice vote with Commissioners Sullivan and Campos voting in favor.

CHAIRMAN CAMPOS: Okay, the nays have it. The matter is still on the agenda. I suggest that we move that to the bottom of the agenda since it may take longer than any other case. Is there any objection to that?

COMMISSIONER DURAN: No.

CHAIRMAN CAMPOS: None?

COMMISSIONER DURAN: No.

CHAIRMAN CAMPOS: Okay, is there a motion to approve the agenda as amended by the recommendations of our County Manager and moving item 7 to the very bottom of the agenda?

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COMMISSIONER ANAYA: So moved.
COMMISSIONER MONTOYA: Second.

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

VI. APPROVAL OF MINUTES:

October 26, 2004 - resubmitted

CHAIRMAN CAMPOS: Is there a motion to approve?
COMMISSIONER MONTOYA: So moved.
COMMISSIONER DURAN: Second.
COMMISSIONER SULLIVAN: Mr. Chair, a clarification. Did you make those amendments that I gave you last Commission meeting?
COMMISSIONER MONTOYA: And mine too.
COMMISSIONER SULLIVAN: And Commissioner Montoya's? So what's in the book now, includes those corrections? It does not. So we should make the motion with the corrections that the two of us submitted.
COMMISSIONER MONTOYA: Yes.
CHAIRMAN CAMPOS: There's a motion to approve October 26, 2004 with changes as suggested by Commissioners Montoya and Sullivan and these are only to correct typographical errors. Is that correct?
COMMISSIONER SULLIVAN: That's correct.

The motion to approve the October 26, 2004 minutes as corrected passed by unanimous [5-0] voice vote.

November 3 & November 12, 2004 - Canvassing Board

CHAIRMAN CAMPOS: Is there a motion to approve?
COMMISSIONER DURAN: Move for approval.
CHAIRMAN CAMPOS: Is there a second?
COMMISSIONER ANAYA: Second.
COMMISSIONER MONTOYA: Mr. Chair.
CHAIRMAN CAMPOS: Sir.
COMMISSIONER MONTOYA: I did have one correction.
CHAIRMAN CAMPOS: Is it a typographical correction?
COMMISSIONER MONTOYA: Yes. Spelling.
CHAIRMAN CAMPOS: So there's a second?

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COMMISSIONER ANAYA: Second.

The motion to approve the Canvassing Board minutes passed by unanimous [3-0] voice vote, with Commissioners Anaya and Sullivan abstaining.

November 9, 2004

COMMISSIONER DURAN: Move to approve.

COMMISSIONER MONTOYA: Second

CHAIRMAN CAMPOS: There's a motion and a second. Any discussion?

The motion to approve the November 9, 2004 minutes passed by unanimous [5-0] voice vote.

VII. MATTERS OF PUBLIC CONCERN - Non-Action Items

CHAIRMAN CAMPOS: Anybody out there who would like to speak to the County Commission concerning a matter of public concern?

ROBERT ANAYA (CHDD Director): Mr. Chair, Commissioners, thank you. I don't come forward today as an employee of Santa Fe County. I come forward today as a citizen of Santa Fe County to say to Commissioner Duran, thank you. Thank you for your service to Santa Fe County, the residents in your district, your constituents. Thank you for those things that you helped to while you were on the Commission. It's a tough thing to do in public service to step forward and do what you've done. I just want to thank you as a citizen of Santa Fe County. And then on a working basis, thank you for being candid. Thanks for telling things the way they were and the way you felt. It was helpful to me as an employee to hear things straight up and straightforward and I appreciate that and I wish you the best of luck.

COMMISSIONER DURAN: Thank you, Robert. It's been a pleasure working with you.

CHAIRMAN CAMPOS: Anybody else who would like to address the County Commission on a matter of public concern?

VIII. MATTERS FROM THE COMMISSION

1. Resolution No. 2004-156. A Resolution Supporting 211 Program Legislation and Local Implementation (Commissioner Anaya)

COMMISSIONER ANAYA: Mr. Chair, I'm going to have Steve Shepherd come up and read the resolution.

STEVE SHEPHERD (Health and Human Services Director): a Santa Fe County resolution encouraging the New Mexico congressional delegation to support the

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passage of the Calling for 211 Act. I'm just going to go ahead and read it and refer questions to Frank DiLuzio.

CHAIRMAN CAMPOS: Don't read the whole thing.

MR. SHEPHERD: Okay. Do you want me to just get to the now, therefore?

CHAIRMAN CAMPOS: Please.

MR. SHEPHERD: Essentially, this resolution calls on members of the congressional delegation to support the passage of the Calling for 211 Act, and I'd like to introduce Mr. Frank DiLuzio with the United Way who are developing this project locally and in this region.

FRANK DILUZIO: Thank you, Steve. Thank you, Mr. Chair and Commissioners for considering the resolution this afternoon. As Steve stated the resolution calls upon our delegation to support the Calling for 211 Act. What 211 provides communities such as ours is an opportunity to have an easy to remember phone number to call for information and referral about all the health and human services available in a community. You look at the wide range of services offered by federal, state, local government as well as in our case, literally hundreds of not-for-profits, it's an extremely daunting task for any individual or family in need of any social services or health services in our community and communities across America to find what services are available, what services they might be eligible for. This 211 will facilitate a national central calling number that allows citizens easy access to that information.

It's more than calling a phone number just to get a number for an agency. The staff and 211 centers are trained information referral specialists. They work with the caller to identify, clarify their needs and then based on their specific needs, make appropriate referrals to agencies that can provide the services that they're in need of. The calling for 211 Act as written would provide \$200 million in matching funds the first year nationally and is intended to provide funding for four subsequent years if passed by Congress. It was introduced in the 108th Congress. It has 31 co-sponsors on the Senate side, including Senator Jeff Bingaman, and 149 co-sponsors on the House of Representatives side with Representative Heather Wilson being a co-sponsor from New Mexico at this point.

We'd like to encourage all of the New Mexico delegation to sign on as co-sponsors as this legislation goes forward or if it ends up it will be introduced in the 109th Congress.

CHAIRMAN CAMPOS: Mr. DiLuzio, we talked about this several months ago and you said that the County would be requested to come up with a certain amount of money to get this thing going. Have you come up with a firm figure as to what you'd be asking the local government, the County of Santa Fe?

MR. DILUZIO: Right now, based on our business plan for the first half of this calendar year, we'd be hoping to get between \$12,000 and \$13,000 in support from the County and an additional \$12,000 or \$13,000 from the City of Santa Fe. That would allow us to implement and provide 50 hours a week of phone service as well as having the directory available on line 24 hours a day, seven days a week.

CHAIRMAN CAMPOS: Okay. Will that be the same after the first year?

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MR. DILUZIO: We're anticipating that going forward, the cost per capita would probably make the City and County's share at about \$25,000 a year each, with United Way putting up approximately \$50,000 a year.

CHAIRMAN CAMPOS: Okay. I guess that's something - I don't know, Steve, if you talked to our Finance people about whether we can fit this into the budget or not, but there are fiscal implications and I think we need to make sure we consider those. Any further discussion?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Mr. Chair, Commissioners, I think this is a good idea. Reading through this, the things, the basic human needs. Food bank, you can call 211. Rent assistance, call 211. Meals on Wheels, Headstart, summer camp. Those are just a little bit to name a few and it's just like everybody knows to call 911 in an emergency. When we're at home and we need something or you have a question, dial 211 and this will be a good thing for Santa Fe County. So thank you for bringing this forward.

CHAIRMAN CAMPOS: This will be Resolution 156. Is there a motion to adopt?

COMMISSIONER ANAYA: So moved.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER DURAN: Second.

The motion to approve Resolution 2004-156 passed by unanimous [5-0] voice vote.

VIII. B. Resolution No. 2004-157 A Resolution Urging the Governor and Legislature of the State of New Mexico to Fully Fund New Mexico's Medicaid Program with no Further Cuts (Commissioner Montoya)

COMMISSIONER MONTOYA: Mr. Chair, thank you. Before you is a resolution that has been reviewed and I think approved by our legal staff, Mr. Chair, members of the Commission. I've asked Kristin Sharp. She's with the New Mexico Human Needs Coordinating Council, and I didn't get your name.

ELLEN PINES: Ellen Pines.

COMMISSIONER MONTOYA: Ellen Pines. They're both here to talk briefly about this resolution, Mr. Chair.

KRISTIN SHARP: Thank you, County Commissioners, Harry Montoya, Chairman Campos, County Commissioners, I would like to thank you for considering this Medicaid resolution. I speak on behalf of the Medicaid Coalition which includes the New Mexico Human Needs Coordinating Council, New Mexico Voices for Children, Protection Advocacy, Public Health Association, Health Action, Association of Developmental Disability Providers, Pediatric Society, Medical Society and AARP.

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I also wanted to add that Alex Valdez was planning to attend today and is running a little bit late, the CEO of St. Vincent's. The Medicaid Resolution is being considered in more than a dozen other New Mexico cities and counties, including Las Cruces, Albuquerque, and Santa Fe. It's passed already by the Albuquerque City Council, Portales City Council, Roosevelt County Commission, Roswell City Council and it's also being heard by the Bernalillo County Commission this evening. And if you have any questions, I'd like to yield to my cohort Ellen Pines.

CHAIRMAN CAMPOS: Any questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: I think this is a good resolution for us to join. As you see there's a significant amount of funding that could be lost in a lot of ways to counties. Needless to say our healthcare assistance program indigent fund will be impacted should we lose some of this Medicaid funding as well and I would move for approval, and also recognize Charlotte Roybal and Lydia Peña who are also here on behalf and in support of this resolution. Thank you for being here.

COMMISSIONER DURAN: Second.

CHAIRMAN CAMPOS: The motion to adopt Resolution 2004-157, there's a motion and a second. Any discussion?

The motion to adopt Resolution 2004-157 passed by unanimous [5-0] voice vote.

**VIII. C. Discussion of Proposed US Postal Service Building in Tesuque
(Commissioner Montoya)**

CHAIRMAN CAMPOS: Commissioner Montoya, do you have any documentation on that?

COMMISSIONER MONTOYA: Mr. Chair, I would ask that we put that off until the meeting in January. We will have someone here from the US Postal Service to actually present that.

CHAIRMAN CAMPOS: Our first meeting in January. Okay, that's a motion to table. Is there a second?

COMMISSIONER ANAYA: Second.

The motion to table the discussion of the Tesuque post office building passed by unanimous [5-0] voice vote.

CHAIRMAN CAMPOS: Okay, Commissioner Duran, Matters from the Commission. What do you have to say now? This is your last meeting?

COMMISSIONER DURAN: Well, I have a lot to say but I don't think you'll

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let me. So I'll make it short. The last eight years have been a wonderful time for me as a County Commissioner. I think I've grown as an individual. I believe that I've helped the community at every point. I think I might have made two mistakes and I won't say which ones those are. But overall, I think I did a pretty good job as a Commissioner. I've made wonderful friends. I've loved working with all of you and I'm going to miss you all.

I don't know what's in store for me in the future but I do plan on staying involved. There are some issues coming up before the County Commission that I feel very compelled to work on. There are water issues. Some of the Code rewrite. Land use issues. So I plan on staying involved under Matters from the Floor. And I would like to just say to this Commission I've thoroughly enjoyed the debate. I've thoroughly enjoyed working with you. As much as we have gone head to head on issues, I think the ultimate decisions that we made as a Commission as a whole was good for the community. And I wish you all a lot of luck and I'll miss you.

CHAIRMAN CAMPOS: We have a special plaque to present to you on behalf of the County Commission and staff. It says, "Presented to the Honorable Commissioner Paul Duran in appreciation for your devotion and exemplary service as Santa Fe County Commissioner, District 2, from 1997 to 2004.

CHAIRMAN CAMPOS: Anything else, Commissioner Duran?

COMMISSIONER DURAN: That's it. Thank you.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I too am going to miss Commissioner Duran. He provided me with a lot of good counsel and guidance being a new Commissioner. I have to say, he only made two mistakes in eight years, I've already made two in two years. So I hope I don't make any more. I have no room for error here.

COMMISSIONER DURAN: I may have made more than two.

COMMISSIONER MONTOYA: And I'm really going to miss being in the line of fire between you and Commissioner Campos. I don't know how I'm going to act in these meetings from now on.

COMMISSIONER DURAN: Maybe Virginia can go head to head with him.

COMMISSIONER MONTOYA: But I wish you well, Commissioner, and I know that you're going to do well in whatever you pursue. Congratulations on your eight years. You did a lot of good stuff for Santa Fe County.

COMMISSIONER DURAN: Thank you.

COMMISSIONER MONTOYA: Mr. Chair, just briefly. I just returned from the NACo Board of Directors meeting and the legislative priorities for the National Association of Counties was discussed at that meeting and I would encourage as many of us Commissioners and other elected officials that can attend possibly the legislative conference in March to do so in order to support these initiatives which of course impact counties not only nationally but us here locally as well. And we also have the New Mexico Association of Counties board meeting last week. We had discussion on the selection of a new executive director which we are moving forward on for the association. We're planning on redoing the applications this coming Monday I believe. That's on the 20th. And then interviewing applicants on the 22nd and 23rd and

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hopefully making a final recommendation on the 27th. So we're looking at doing that in a relatively short period of time.

I'd also like to congratulate Commissioner Anaya who was elected to the Western Interstate Region Board of Directors. He'll be the New Mexico representative for us on this. Congratulations, Commissioner Anaya, and I know you'll do a great job.

I just also want to encourage the Commissioners again and other County officials, not just elected officials but all officials to attend the mid-winter conference that's coming up at the end of January. Hopefully we can all attend that and that's always something that brings in the counties from all over the state for our gross receipts tax, so let's get behind it too. That's all I have, Mr. Chair. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair. Just two items. One to invite the public to a concert from the Santa Fe Community Band, which plays year-round in Santa Fe, on the plaza and on the lawn out by the federal courthouse in the summer and in the winter has concerts as well and they have a Christmas concert coming up on December 20th. That's Monday, at seven p.m. at the Lensic Theater and everyone is invited to attend. I think it will be an enjoyable event. It will be about an hour long and light Christmas music. If you're unable to attend that there is a preview of that concert which will be held at De Vargas Mall on Saturday the 18th of December starting at 11:30 a.m. So if you happen to be shopping in that area at the time feel free to stop by. Again, both concerts are free of charge. The band also assists with the Salvation Army during the Christmas season in providing quartets and brass ensembles that play to support the bell-ringers who collect money at the various stores throughout the area.

The other item is congratulations to the Eldorado Water and Sanitation District. They have completed their long, extended legal and financial issues to enable them to now assume ownership of the Eldorado water system which serves almost 3,000 homes, and the management of that water system, we've discussed that a little in past meetings but this month they officially assumed that role and responsibility. I think that that will give the area a great deal more control and say-so in terms of what its future is going to be in terms of growth and water management. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Thank you, sir. Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Commissioners, thank you. First of all, last meeting we had, I asked – I let everybody know that there was a house that burned down in the Village of La Cienega. And I asked for donations from people, and, boy, did you all respond. I'm very excited and I'm happy. We delivered ten bags of clothes. Ten boxes, appliances, food, money. And I just want to extend my thanks for everybody responding to that. And they are still responding. So thank you very much.

I want to acknowledge some new hires, and boy do we have a lot of them. From the Fire Department, Rebecca Archuleta, the secretary, a firefighter/paramedic, Wendy Sevay. The Sheriff's Department, Victor Varela, Deputy II; a Deputy I, Ronald Crow; Deputy II, Ike Ensley; Deputy II, James Neeson; Deputy Cadet, Jeremy Parrish. In the Corrections

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Department, a registered nurse, Veronica Cristine; Life Skill Worker II, Leonard Gomez; therapist Cameron Greg; Life Skill Worker I, Randall Henson; Life Skill Worker I, Melody Montoya; Life Skill Worker I, Stephanie Hochel; Marketing Specialist, Bernadine Padilla; Life Skill Worker I, Soliza Zamora. In the Human Resource Division, we have a Clerk II, John Salazar. In the Housing, a custodian, Roman Dalton; Maintenance Specialist I, Robert Dalton; custodian Samuel Smith. In the Finance, we have an Accountant I, Patricia Vesar. In Health and Human Services, Jaime Estremera; Treatment Specialist, Carolyn Erickson; Treatment Specialist David Crixton. In Land Use, we have Dorothy McKennen. In PFMD, Andrew Alarid, Miguel Quintana. In the Treasurer's Office we have Cindy Benavides. Assessor's, Tina Salazar and Carlos Sisneros. And in the Clerk's we have Tita Vigil.

I want to welcome you all to Santa Fe County. It's a great place to work and we've got one person leaving Santa Fe County that I'd like to say a few words about and that's Commissioner Duran. Thank you for serving the eight years on the Commission. I've learned a lot from you and I respect the fact that you've attended all the meetings. You didn't skip out at the end. I appreciate that and we all do. And we've all learned. And good luck in the future in whatever you do and take care. Thank you.

COMMISSIONER DURAN: Thank you. It's been a pleasure working with you too. Who knows? Maybe you'll be my Commissioner some day. Harry is going to be my Commissioner.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: I'm sorry. I just forgot one thing. I'd just like to announce that next Tuesday the 21st at 11:00 there will be a memorial service here at St. Francis Cathedral for Sam Montoya. It's next Tuesday at December 21st at St. Francis Cathedral for people that might be interested in attending that memorial service.

That's right. This Friday, the New Mexico Association of Counties are having their open house from 11:00 to 3:00. 613 Old Pecos Trail.

IX. PRESENTATIONS

- 1. A Proclamation Recognizing the Santa Fe High School "Demonettes" Girls Volleyball Team for Their Outstanding Season, District 2 AAAAA Champions (Commissioner Anaya)**

COMMISSIONER ANAYA: Mr. Chair, Commissioners, we have some champions here today. I'd like to read a proclamation. This presentation will take about 15 to 20 minutes. I'd like to read a proclamation and then we're going to see a little video and just kind of recognize the hard-working women that are behind me. Mr. Chair, Commissioners, the proclamation.

Whereas, Santa Fe High School is an educational institution committed to education and producing a diverse group of dedicated, hard-working citizens; and

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Whereas, Santa Fe High School is supportive of extracurricular programs and encourages its students to participate in activities that promote teamwork; and

Whereas, the Santa Fe High School Demonette varsity volleyball team consists of nine team members, a coach, and an assistant coach. In 2004, the Demonettes performed remarkably, achieving an outstanding record of 19 and 3. Because of hard work and dedication became the first AAAAAA volleyball team to earn a perfect undefeated record in District 2 since the school status changed to AAAAAA; and

Whereas, in 2004, the Santa Fe High School Demonette varsity volleyball team became champions of District 2 AAAAAA; and

Whereas, the community of Santa Fe congratulates you, the Demonettes, for a victorious season. We recognize your accomplishments and honor you for your hard work and dedication.

Now, therefore, we the Board of Santa Fe County Commission hereby proclaim the 14th day of December Santa Fe High School Demonette Volleyball Day.

I want to thank the team and the parents for coming out in support of this. Your kids worked hard. I know that this was the coaches' first year. This is a special dedication from me also because I graduated from Santa Fe High School way back when. So we've got a little something to show you and then after that, Commissioner Sullivan will hand out some certificates. So thank you and enjoy this.

[Video plays.]

COMMISSIONER ANAYA: I want to recognize Don Owen, the new athletic director. Santa Fe County hereby recognizes Melissa Cesserich, Santa Fe Demon varsity volleyball team, 2004, District 2 AAAAAA champs. Congratulations on your accomplishments. Michelle Gomez, Kelly Ojinaga-Borrogo, Kristy Ojinaga-Borrogo. And by the way, we all know Corky and Renee. Corky worked for the County for, I don't know, 20 years. These are his lovely daughters. Congratulations. Amanda Ortiz, Valerie Rogers, Andrea Romero, Ella Rothstein, Raquel Wood. The assistant coach, Kiran Bhakta, and the head coach, first year, graduated from Santa Fe also, Diana Ronquillo.

Thank you again. Congratulations and we'll see you next year, same place, same time. We want to do one picture up in the front with the coach and the team.

He comes to you with a lot of years of experience and we welcome him to Santa Fe County. We also have our principal, Ms. Lumly here from Santa Fe High School -

X. CONSENT CALENDAR

- A. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:**
- 1. CDRC Case #S 04-5050 - Rosa Linda Subdivision (Approved)**
 - 2. CDRC Case #S 03-5920 - Las Animas Subdivision (Denied)**
- B. Resolution No. 2004-158. A Resolution Authorizing the County to Submit an Application to the Department of Finance and**

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**Administration, Local Government Division, to Participate in the Local
DWI Grant and Distribution Program (Health & Human Services
Department)**

- C. **Resolution No. 2004-159. A Resolution Authorizing the County of Santa
Fe to Submit an Application to the Department of Finance and
Administration, Local Government Division to Participate in the Local
DWI Care Connection/Detox Program (Health & Human Services
Department)**

CHAIRMAN CAMPOS: Is there a motion to approve items A, B, and C? Item
D. has been withdrawn.

COMMISSIONER SULLIVAN: So moved.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Any discussion?

**The motion to approve the Consent Calendar passed by unanimous [4-0] voice
vote. [Commissioner Duran was not present for this action.]**

XI. STAFF AND ELECTED OFFICIALS' ITEMS

A. Health & Human Services Department

1. **Request Authorization to Accept and Award a Professional
Services Agreement to the Highest Rated Offeror for RFP #24-57
for the Operation of Substance Abuse and Mental Health
Assessment, Case Management and Data Services for the CARE
Connection Project/\$225,914**

MARY JUSTICE (CARE Connection Project Manager): The Santa Fe County
Health and Human Services Department is requesting your authorization to award a
professional services agreement in response to RFP #24-57 for the operation of the CARE
Connection Assessment Center and to enter into a professional services agreement with
Presbyterian Medical Services in the amount of \$225,914 for operation of the assessment center
from January 1, 2005 to June 30, 2005.

The first phase of this overall CARE Connection project was to develop a central intake
and assessment center. The assessment center staff is going to be located in the Galisteo
building that has been newly renovated for that purpose. The assessment center will serve really
as the front door to treatment for people with substance abuse and mental health problems. The
contractor will conduct clinical assessments for clients for mental health and substance abuse
issues, make referrals to local providers for appropriate treatment and support services, conduct
follow-up on clients who are referred, and provide case management services. It's the
establishment of the assessment center that makes Santa Fe County eligible to participate in the

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Access to Recovery voucher grant that totals approximately \$1.4 million in vouchers for substance abuse treatment and support services. It's a federal three-year grant, the \$1.4 million will be each year for three years.

Vouchers can be issued for substance abuse treatment and support services to clients who are income-eligible and who have been assessed in the CARE Connection Assessment Center. In addition to the assessments, referrals, follow-up, and case management, the contractor will participate with the County in development of a single, integrated web-based data collection and reporting system that enables Santa Fe County providers to enter and access data through a secure and HIPAA compliant Internet connection.

Oversight of this project will be provided by Santa Fe County staff, the CARE Connection Advisory Council and the Health Policy and Planning Commission. This project has obviously been a number of years in the planning and we're very grateful to this Commission and we thank you for your support through those years. We really believe this project is going to bring a great benefit to the community through the assessment center and the accompanying voucher program.

CHAIRMAN CAMPOS: Okay, any questions or comments?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: I think this is a great move. We're getting where we're going to be providing services now and I just want to thank staff for all the work you've done on this and move for approval.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN CAMPOS: Okay, is there any discussion.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I concur with Commissioner Montoya. I think we've worked hard towards getting to where we're at today and let's just continue going and this is in the right direction. Thank you.

The motion to award a professional services agreement to Presbyterian Medical Services passed by unanimous [5-0] voice vote.

XI. B. Project & Facilities Management Department

2. Request Approval of Land Purchase Agreement between Santa Fe County and Roy and Mary Glockhoff for Approximately 430 Acres of Land Near the Village of Cerrillos for Inclusion in the Santa Fe County Open Space and Trails Program/\$516,000

PAUL OLAFSON (Open Space and Trails Director): Mr. Chair, Commissioners, before you have an agreement for the purchase of 430 acres near the

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Village of Cerrillos. It's called the Mount Chalchihuitl property. This property is significant and it contains archeological sites, historic mining sites and is one of the oldest turquoise mining sites in North America, prehistoric.

We have negotiated with the landowner to accomplish this agreement following the Board's approval of the project in June of 2001, and staff is recommending approval of the agreement. I stand for any questions.

CHAIRMAN CAMPOS: Any questions or comments?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER DURAN: Second.

CHAIRMAN CAMPOS: Any discussion?

The motion to approve the purchase of land for open space passed by unanimous [5-0] voice vote.

XI. B. 3. Request Approval of Land Purchase Agreement between Santa Fe County and the Trust for Public Land for Approximately 9 Acres of Land as Part of the Santa Fe River Corridor in the Village of Agua Fria for Inclusion in the Santa Fe County Open Space and Trails Program/\$200,000
[Exhibit 1: General Location Map]

TONY FLORES (PFMD Director): Mr. Chair, the property in question has part of our Camino Real River Corridor. It's an existing tract that has both the number one and number two archeological sites contained within it. The money for the project has been received through the state legislature and not out of the open space dollars. The project was taken to COLTPAC for their review and approval and recommendation and we bring forward that recommendation as positive and we stand for any questions.

CHAIRMAN CAMPOS: Questions or comments? Is there a motion?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Question, Commissioner Sullivan.

COMMISSIONER SULLIVAN: Tony, is the County then maintaining this property?

MR. FLORES: Mr. Chair, Commissioner Sullivan, yes. It becomes part of our inventory and it will be maintained and any improvements will be conducted through the County.

CHAIRMAN CAMPOS: Okay, is there a motion?

COMMISSIONER DURAN: So moved.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Discussion?

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The motion to approve the agreement with TPL passed by unanimous [5-0] voice vote.

XI. B. 4. Request Authorization to Accept and Award a Professional Services Agreement to the Highest Rated Offeror in Response to RFP #24-32 for the Thornton Ranch Open Space Property Management Plan/\$60,603

MR. OLAFSON: Mr. Chair, Commissioners, this is a management contract, or a contract to develop a management plan for this property. It is a significant property, about 1500 acres including the recent acquisition. It contains very significant archeological sites as well as ecological sites and due to the complexity and kind of the importance of the property we are putting out this contract. We had 14 solicitations sent out. We received five responses and selected Design Workshop as the top-rated offeror. I stand for any questions.

CHAIRMAN CAMPOS: Questions or comments?

COMMISSIONER ANAYA: Move for approval.

COMMISSIONER MONTOYA: Second.

The motion to authorize a PSA with Design Workshop passed by unanimous [5-0] voice vote.

MR. OLAFSON: And Mr. Chair, if I might indulge one second, there were several folks that were here in support of the Mount Chalchihuitl property and they've also been very helpful in helping the program out in the Cerrillos Hills area and I want to recognize them and thank them for their support.

CHAIRMAN CAMPOS: Certainly.

MR. OLAFSON: Karen Stockdale is here from TPL and helped us put that together. Bill Baxter, Richard Crombie and Ricky Cohen, from the Cerrillos area.

CHAIRMAN CAMPOS: Thank you very much for your efforts.

COMMISSIONER ANAYA: Thank you for being here and working hard on getting that open space. Thank you.

XI. C. Sheriff's Office

1. Request Authorization and Approval to Enter into a Service Agreement #25-0090-SD with Western Transport Services, LLC for Inmate Transport Services for the Santa Fe County Sheriff's Office/\$46,500

MAJOR RON MADRID (Sheriff's Department): Mr. Chair, we're requesting

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your approval on a service agreement with Western Transport Services who we have been using for the past several months for our in-state transports. The undersheriff conducted a survey and at this point it looks we've been saving approximately \$3,000 a month using the service and that's not including the wear and tear on our vehicles. We request that you approve the agreement.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: Major Madrid, how much would this cost us if we were to have to do this ourselves?

MAJOR MADRID: This was costing us approximately \$13,700 a month using our own.

COMMISSIONER MONTOYA: Using our own staff.

MAJOR MADRID: Yes. And that's not including the wear and tear on the vehicles we were using. We were getting about 25,000 miles a month, especially when we were doing the Hobbs trips.

COMMISSIONER MONTOYA: Okay. Mr. Chair, move for approval.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER DURAN: Second.

CHAIRMAN CAMPOS: Just a quick question. Major, this is as the result of an emergency procurement. Is this an emergency procurement? That's what the report states.

MAJOR MADRID: I don't believe it is.

SUSAN LUCERO (Finance Director): Mr. Chair, members of the Board, the original agreement that we had with Western Transport was considered, that was done last March, that was considered a sole source procurement. And this agreement expired recently and we're trying to renew it up through the end of this coming June. So it's not an emergency procurement in that sense.

CHAIRMAN CAMPOS: Okay. It does state that in your report.

MS. LUCERO: I apologize for that.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Sullivan:

COMMISSIONER SULLIVAN: Major, I just had one question. Would this organization, Western Transport Services, LLC, have there been any problems? Any escapes? Any security issues?

MAJOR MADRID: Mr. Chair, Commissioner Sullivan, we have not had no problems at all, other than minor paperwork problems but we've worked those out. We have not had one escape. All the defendants have been on time to court and we have not seen any problems at all.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN CAMPOS: Okay, is there a motion? Okay, there's a motion and a second.

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The motion to approve the agreement with Western Transport Services passed by unanimous [5-0] voice vote.

XI. D. Matters from the County Manager

MR. GONZALEZ: Two items, Mr. Chair, members of the Commission. First of all, as you know, at the staff level we're moving forward with our transparent budget process and looking at doing multi-year budgeting for future years. As we go into our mid-year we're looking down the line to not only the next fiscal year but the following fiscal year in terms of budgeting. We've been meeting at the senior staff level and we will have after we've completed our mid-year budget reviews this month a senior staff meeting early in January to which we're inviting the Commissioners to appear. If you'd like to be briefed on where we are with respect to doing multi-year budgeting looking across the next two years and then some.

So I'll let you know what that date is as we get into January. It will probably be the second senior staff meeting in January, one of those two, and we'd love to have Commissioners attend and give us their input for multi-year budgeting and also an idea of what Commission priorities you want us to look at as we look down the next two years or so. That's item number one.

And item number two, first of all I want to wish all our Santa Fe County employees a safe and happy holiday season. I want to thank them for all their work this past year. I think they've done a marvelous job. I've never seen a staff pull together as much as I have here at Santa Fe County. Not only at the senior staff level but all the way down to our line staff and our line employees. You're the ones who have been making the difference and I really want to thank them. I also want to thank you as a Commission for a wonderful year and a successful year. I know we have an incoming Commission but this Commission has really worked with staff. You've done an excellent job. In particular, I want to thank and recognize Commissioner Duran. He's been an excellent bridge to staff from the Commission side and one that we'll miss deeply. I hope Commissioner Vigil will step into that same role and as we move into the new year I do want to invite the public to attend the swearing in ceremony for our incoming new officials. I know that we have our incoming County Clerk, Valeria Espinoza out in the audience. I don't see any of the other officials there, but our official swearing in ceremony will be January 1st here in the County Chambers and it will start at 12:00. So people should show up a little bit early if they want to get seats. It will be first come, first served in terms of the seating.

But again, thanks to all of you for making such a successful year. You've been a wonderful Commission. You've shown strong leadership. You've taken us through water issues. You've taken us through land issues and will continue to provide the guiding light for us I'm sure in this next year. Again, we'll miss you deeply, Commissioner Duran, but thanks to all of you for your service.

COMMISSIONER ANAYA: Thank you, Gerald.

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COMMISSIONER DURAN: Can I just say one thing?

CHAIRMAN CAMPOS: Sure. It's your day. Your special day.

COMMISSIONER DURAN: Well, Gerald, I must tell you – and please don't tell the other four or five County Managers before you but you've been the best. And it's been a pleasure working with you. You really have been able to I think juggle all of our concerns and make us all feel that we're number one in your thoughts, that our concerns, some of the issues that we want to bring forward, you've always been a supporter of those and I appreciate that. I think that your staff is very appreciative of your abilities and I'm sure you're going to stay here for quite some time. And I look forward to working with you in whatever capacity I'll be working in out there.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Commissioner Duran is not the only elected official that's leaving us. We've got our Treasurer, Phil Trujillo. Phillip Trujillo has served many years, eight years as treasurer and he is also going to be missed. And Mr. Trujillo, thank you for all of your hard work and service that you've given Santa Fe County. We appreciate it. I know everybody else does and good luck in whatever you decide to do next. I think you're going to stay with us. I hope you are. But we appreciate everything that you've done and we'll be talking and we'll be seeing you around hopefully. Thank you, Mr. Chair.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Just to add – this is not my special day, but since it's a special day for people leaving, I guess it would certainly be appropriate to thank our County Clerk for her eight years of service to the County. She is another member of the elected body that also speaks her mind and whether we agree or not with it, nonetheless, she has dedicated a great deal of her effort and time to the job and certainly deserves our appreciation for that effort.

XI. E. Matters from the County Attorney

- 1. Request Authorization to Publish Title and General Summary of an Ordinance Repealing Ordinance No. 2005-5, (An Ordinance Approving Vista Studios Inc. for a Work Force Economic Development Project with Santa Fe County) (Passed on October 26, 2004)**
- 2. Request the Board to Rescind Approval of the Sublease between Santa Fe County and Vista Studios Inc.**
- 3. Request the Board to Rescind Approval of the Economic Development Participation Agreement with Vista Studios Inc.**

STEVE ROSS (County Attorney): Thank you, Mr. Chair, members of the Commission. Actually, items 1, 2 and 3 are all related. They concern the project, the

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economic development project that the County has been working with Vista Studios on for the past eight or nine months. As you're aware, the principal in Vista Studios notified us on November 17th that because of the delays and the jurisdictional issue that arose between the Land Office, the Attorney General's Office and the Board of Finance, she wasn't interested in continuing with the project, and that leads directly into these items which are, one, the ordinance that you approved and passed in October that approved the transaction and the sublease in which the land was transferred, proposed for transfer to the Vista Studios, and the economic development participation agreement that was also approved in connection with that transaction. These three matters have to be cleaned up so that the County is not exposed to any liability in this interim period.

When the contractor has withdrawn, when there's nothing really going forward with the transaction and we need to make sure that on the books at least that we are the lessee of that property. Since that time I have been working with the Land Office to try and work through some of the issues that led to the demise of this transaction in the hopes that in the future, the property will be usable for the County. Because as you're aware, any kind of a sublease that this Commission decides to enter into will run afoul of the same sorts of issues that we had with Vista Studios.

Alternatively, I suppose it's possible that Vista Studios might decide they want to look again at a deal with the County in which case we're going to need to have this stuff taken care of. So far the Land Office hasn't been all that receptive to my overtures in this regard but we remain hopeful that we can do something with them.

So what we need to do today is we need to authorize us to publish title and general summary of an ordinance repealing the ordinance, and rescind approval of the sublease, and rescind approval of the economic development participation agreement.

COMMISSIONER MONTOYA: Mr. Chair, move for approval of each of the items recommended by our attorney.

CHAIRMAN CAMPOS: You want to do all three in one motion?

COMMISSIONER MONTOYA: Yes.

CHAIRMAN CAMPOS: Okay, there's a motion to approve E.1, authorization to publish, request approval to rescind the sublease, and 3, rescind approval of the economic development participation agreement with Vista Studios. Is there a second?

COMMISSIONER DURAN: Second for discussion.

CHAIRMAN CAMPOS: Discussion, Commissioner.

COMMISSIONER DURAN: I just wanted to say, I think that the Commission should in the months to come consider just letting this piece of property go back to the state. Ever since I've been on the Commission we've tried to do something out there and we've never been able to do anything. We've spent thousands of dollars in time and energy and effort and nothing ever happens. I think that - and we really don't even have the ability to manage that project and have the expertise within house to really put together an economic development program. So I would suggest that in the future, when

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you guys, and girl, think about this property that you let it go, take back the 25 acre-feet that you have allocated for it and use that for more affordable housing or other issues that we have some control over. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Okay, there's a motion, there's a second.

The motion to approve items XI. E. 1, 2, and 3 passed by unanimous [5-0] voice vote.

XI. E. 4. Consideration and Approval of a Settlement Agreement By and Between Santa Fe County, First State Bank, and Distribution Management Corporation, Inc., Concerning Bank Deposits Stolen from the County Treasurer in August and September 2003 (Amount to be Received by County is Approximately \$49,500)

MR. ROSS: Mr. Chair, members of the Commission, as you recall, last year five bank deposits were embezzled from the County Treasurer's office. The first four were embezzled by an employee of our courier service, and the fifth deposit was embezzled by a person apparently put up for the job by the courier who had then been fired. Since that time, as you're aware, we've been engaged in some pretty significant collection efforts, both attempting to have folks who wrote checks to the County replace those checks and interact with the bank, with the courier company and with our insurance company seeking collection of the amount, which initially was about a quarter million dollars but which now has been whittled down considerably to well below \$100,000.

Both Phillip Trujillo and Greg Shaffer and Victor Montoya have worked extremely hard over the last four or five months and as a result we have before you a settlement agreement with the bank and with the courier company concerning the County's reimbursement for the first four deposits. The fifth deposit, the total amount of that deposit will be reimbursed by our insurance carrier. So once you approve this agreement and we conclude the other agreement with the insurance carrier we will be out nothing from those five thefts.

Mr. Trujillo and Greg Shaffer are both here. They can answer any questions concerning the details of the transaction. But that's the purpose of this item. And the agreement should have been hand-delivered to you earlier. It's been in the process of amendment over the last couple days but you should have the most current copy with a memo from Mr. Shaffer.

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: Mr. Shaffer, are there any changes from what we were hand delivered this afternoon, in comparison to what I received over the weekend in the agreement? Or is it all pretty much the same?

GREG SHAFFER (Assistant County Attorney): Mr. Chair, Commissioner

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Montoya, the substance is pretty much the same. For the most part the changes that occurred which are reflected on a redline copy that you also received this afternoon were of a housekeeping nature, adding the address for the bank, for instance, delivery addresses and what have you. The two changes of note that I would draw your attention to is the actual settlement amount decreased by about \$690 I believe, and that's simply to reflect a replacement check that we received today from a citizen whose check was stolen. The only other change that I would even bring your attention to is that the County has agreed to discharge certain of its duties in good faith. That was language that was requested by the courier, Distribution Management Corporation, language we didn't object to because we would have discharged our duties in good faith, even if the language wasn't added.

COMMISSIONER MONTOYA: Thank you, Mr. Shaffer. Mr. Chair, move for approval.

COMMISSIONER ANAYA: Second.

CHAIRMAN CAMPOS: Discussion?

The motion to approve the settlement agreement passed by unanimous [4-0] voice vote. [Commissioner Duran was not present for this action.]

PHILLIP TRUJILLO (County Treasurer): Mr. Chair, Commissioners, I feel compelled here to make a statement and I'll certainly make it brief. There's a couple of things I'd like to say about this issue and one is that it does my heart good to see that this is finally being resolved after a year of long, hard work. Which brings me to my second point, that we certainly can't let this escape this afternoon without thanking our Finance Director, Susan Lucero, because her staff was involved considerably in the work and the reconstruction that had to be done in order to stay on top of this project. We are not going to be out any money. We're going to be made whole 100 percent.

If we are out anything it's going to be the time and the energy of the staff that it took, time and energy that could have certainly been used for more constructive purposes, but it's over and I'm so happy that that's happened. Thank you for allowing me to make this brief comment.

CHAIRMAN CAMPOS: Thank you, sir.

XI. E. 5. Discussion and Possible Action Concerning a Proposed Joint Powers Agreement between the City of Santa Fe and Santa Fe County Governing the Buckman Direct Diversion Project, and a Proposed Water Resources Agreement between the City of Santa Fe and Santa Fe County

MR. ROSS: Mr. Chair, members of the Commission, as you recall, several months ago, in early October, the City Council and the Board of County Commissioners adopted principles of agreement concerning the Buckman Direct Diversion and concerning

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the general topic that we always referred to under the heading of the wheeling agreement, which is a current agreement between the City and the County whereby we receive bulk water deliveries from the City. The documents in front of you are staff's attempt to capture the principles of agreement that were agreed to on that date and flesh them out into the first two of four agreements that we have planned to implement the principles.

What you have in your packet was delivered to the Councilors and the Mayor during their meeting earlier this month and it's now in front of them. They were going to run it through their committee process and it will emerge in their first meeting in January for possible action. My plan is to put this on the agenda for the first meeting in January for this body as well.

The two agreements you have in front of you are the water resources agreement, which is really most of what was contained in the old wheeling agreement. And this is the agreement whereby the County receives wholesale water deliveries from the City. And in this case, this agreement provides that the County will receive 875 acre-feet, or have the right to receive up to 875 acre-feet from the time the agreement is executed until the implementation of the Buckman Direct Diversion project. Thereafter, the wholesale deliveries drop to 500 acre-feet per year in perpetuity.

So it preserves the same 500 acre-feet per year delivery obligation that we're currently existing under but also provides an additional 375 acre-feet from now until the time the diversion becomes operational for County growth.

Another thing the water resources agreement does is allocate the 375 acre-feet of San Juan/Chama rights which had been the subject of some discussion to the County, and it clarifies that the remainder goes to the City and settles that controversy once and for all. It also incorporates the transfer agreement that you signed last June, and that agreement, as you recall permits parking of water rights in the City's Buckman wellfield. Until that agreement was signed, as you recall we had a little bit of difficulty acquiring water rights from the County because we had no point of diversion. This agreement incorporates that agreement for clarity so we can look at everything in one agreement. It provides the bottom half drought protection that was incorporated into the principles of agreement which was discussed extensively in October, provides for shortage sharing of both the wholesale water on a pro rata basis and eventual deliveries from the diversion project on a slightly different methodology. It provides that the City gains return flow credits for wastewater that arrives at its sewer plant, and provides for a wholesale water rate. I believe \$3.50 per 1,000 gallons and a meter. Meter charges we're paying now for wholesale water. It provides for adjustment of those rates from time to time based on a cost of service study.

And that's essentially the high points from that agreement. The joint powers agreement is a slightly more complicated agreement. It is the agreement that establishes the BDD Board, the Buckman Direct Diversion Board, which as you recall from the principles is two members from this body, two members from the City Council and those four people appoint a fifth person to serve as the board. The board is constituted when all five people,

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when the fifth member, essentially, has been appointed by the other four, and then does business.

That board is going to plan, procure, finance, permit, design, construct, operate, and manage the BDD project. It will be turned over to that board for construction, for operation, for anything conceivable that comes up that board will have to take care of it. Although you recall from the principles that for the first period, up to 2015, just a little over ten years from now, the board will mechanically operate and construct the Buckman Direct Diversion under contract with the Sangre de Cristo Water Company. So they will, through a contract with the BCC board, serve as fiscal agent, serve as construction procurer, do all the nuts and bolts of the work that a project like this entails.

We used as a model for the operations of the BDD board some agreements that are currently in place. One with the City of Albuquerque and Bernalillo County. Another one that establishes the water commission in the northwest part of the state and some other sample agreements. We think we've got a set of principles for operation of the board that makes sense, that resists problems that we saw happen with the Metropolitan Water Board. In other words, the agreement forces the board to function as an entity. We hope it prevents problems like we've experienced with the RPA recently and you can look at those provisions and see what you think of them.

The agreement specifically includes Las Campanas and it gives the County some flexibility to address the concerns that they've raised with some of you individually. We continue to talk to them about their involvement in the whole thing. They've been a key player since the very beginning and we hope to keep them engaged in the process, but the JPA and the water resources agreement are both agreements just between the County and the City. Staff has discussed with Las Campanas the problem with trying to incorporate their involvement in the project at this time because of the difficulty of getting an agreement between the City and the County. We thought that that might be going just a little bit too far. So we have planned to incorporate them in the fourth agreement, which is the operations agreement.

Those are the two agreements. In many cases they incorporate the language from the principles verbatim, particularly some of the language that talks about conjunctive use and sustainability. Those principles are all in this agreement verbatim from the principles. Most of the concepts, virtually all of the concepts that were present in the principles are here. The only substantive change that the staffs of the City and County made from the principles was we put together the proposed fiscal services agreement and the construction agreement, project management agreement. We put those together simply because we started thinking in terms of how do you separate fiscal management from project management. It seemed like a really difficult task and one that might not even be practical in the long run.

So we put those two agreements together. They still expire in 2015, thereafter, there won't be any construction necessary at that time. Thereafter we can separate them. We can do all kinds of different things with them at that time. But for the construction and

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initial operation phase, we thought it would be almost impossible to separate those two functions. So we're proposing a unified agreement to do those two functions. That's the only substantive change from the principles. Everything else is really just trying to flesh out what was agreed to on October 7th.

Mr. Utton's here. Mr. Harwood's here. We'd be happy to answer any questions. Like I said, the plan is to try to approve this thing by both bodies in January.

CHAIRMAN CAMPOS: Mr. Ross, the City Council had discussions on this issue recently, right?

MR. ROSS: That's correct.

CHAIRMAN CAMPOS: What kind of comment did you pick up from the Council?

MR. ROSS: Myself and Gerald attend that meeting. I thought it was a very positive meeting.

CHAIRMAN CAMPOS: Any issues that they were focussing on that raised any red flags for you?

MR. ROSS: There were really no issues that came up at that meeting. It was a very friendly, cordial meeting and I didn't hear any issues at all. Although they were just receiving it that day.

CHAIRMAN CAMPOS: That's right. They hadn't had a chance to read it, I don't think.

MR. ROSS: That's correct.

CHAIRMAN CAMPOS: And it's going to go through the committee process?

MR. ROSS: That's right.

CHAIRMAN CAMPOS: And when is it scheduled for the City Council? Do you know.

MR. ROSS: I had that date a few days ago but it's gone.

KYLE HARWOOD: It is scheduled for January 12th.

CHAIRMAN CAMPOS: That's to approve the agreements.

MR. HARWOOD: That's the intent, sir.

CHAIRMAN CAMPOS: And that will be for the entire body?

MR. HARWOOD: Yes, sir.

CHAIRMAN CAMPOS: Any questions or comments? Commissioner Duran.

COMMISSIONER DURAN: Mr. Ross, have you heard – the 375 acre-feet, which is the additional water rights in our wheeling agreement, are those restricted in any way or has there been any discussion that those water rights would have any restrictions relative to how the County uses it?

MR. ROSS: No. Commissioner Duran, no, not that I've heard.,

COMMISSIONER DURAN: Okay. Because I had heard there might be some discussion about requiring the County to use these water rights to provide water to

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developments that were approved at the EZA that are outside the city limits and this water that we received would be – the water that these projects would need would come out of the additional 375. Have you heard anything about that?

MR. ROSS: Mr. Chair, Commissioner Duran, I've heard the same rumors you have, but there's nothing like that in the agreement. The agreement is fairly clear that the 375 acre-feet of additional, well, the 875 that's termed a wholesale water delivery until the inception of the BDD is separate from –

COMMISSIONER DURAN: It's unrestricted.

MR. ROSS: It's separate from any other obligation. So I've heard that, it's true, but it's not reflected in the agreement that I can detect.

COMMISSIONER DURAN: Well, I think this agreement is representative of all the hard work that we've put into this thing over the last several years, both at the City and the County. I'd like to thank you and Mr. Harwood. I know Kyle you had a lot to do about bringing this thing together and I appreciate it. The community appreciates it. Thank you.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTROYA: Thank you, Mr. Chair. I just will echo what Commissioner Duran said. Thank Steve, Gerald for all the work you did in putting this agreement together, as well as Kyle Harwood and our attorney also, John Utton. Thank you for all the work that you did on this. I think the news that there wasn't a whole lot of discussion about anything that was controversial is good in terms of the work that was done and putting the principles together as well. And Mr. Chair, I think you need to be recognized as well for the work that you did championing this and I hope that you continue to do this for us in the future as well. And I'd move for approval, Mr. Chair.

CHAIRMAN CAMPOS: Let me get comments from everybody at this point. Let me go down the line. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair. Yes, I think you should work full time on this, Mr. Chair. That's a good plan.

COMMISSIONER DURAN: I think you guys did, didn't you?

COMMISSIONER SULLIVAN: It was a full time effort on a lot of people's parts and I echo the congratulations on that. Two questions. One regarding the design-build contract. The City I think is moving towards the construction of this by using a design-build contract. And the County hasn't taken a position one way or the other on that, other than to agree, I think, that that's okay with us. I see on page 3 of the agreement, and I think this is the second agreement, over the management of the BDD, the Buckman Direct Diversion board, that the board shall enter into a design-build contract to supervise the design-build contract work. I wonder if at some point the BDD should decide, and I don't have any preconceived notion one way or the other about this particular issue. But what if the board should decide that they don't want to use the design-build method to construct the facility, and that they want to use the conventional design contract bid method, which some City Councilors have mentioned. At least I've read it in the papers. Would they have

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that option, or are they limited by this agreement to only construct the facility using design-build?

MR. ROSS: Mr. Chair, Commissioner Sullivan, because that was a key element of the principles, we drafted the agreements to require that a design-build methodology be used. So I think that if that issue arises we'll have to think about making an amendment to the agreement unless people are comfortable with the flexibility within the agreement. But I don't think there's a whole lot of flexibility on that point because we perceived that as an essential element of the principles, so it's in here.

COMMISSIONER SULLIVAN: Okay. So even if the City wanted to change that, then what would be the mechanism? The mechanism would be that they would have to go back to both the City and the County and then change this agreement.

MR. ROSS: Amend the agreement. Yes.

COMMISSIONER SULLIVAN: As opposed to putting something in that they would utilize design-build unless otherwise determined by the board. The City wanted to have the final say on this and they want it to be design-build and they don't want any change to that decision. Is that your interpretation?

MR. ROSS: That's my interpretation. Now, if everybody agrees, it's a fairly simple thing to amend one of these agreements. And if it turns out to be logical that we should adopt some other methodology it's a fairly simple mechanical thing to do. A lot of these joint powers agreements, particularly those that set up joint entities do get amended in practice.

COMMISSIONER SULLIVAN: Okay. Let me ask Mr. Harwood. Kyle, is it your understanding that this is absolutely a critical issue of the City's and that is why it's structured this way?

MR. HARWOOD: Yes.

COMMISSIONER SULLIVAN: And is there any particular reason for that?

MR. HARWOOD: Only to say, Commissioner, that it was a material consideration in negotiating the principles and that was, as Mr. Ross has indicated, has now been drafted into the agreement.

COMMISSIONER SULLIVAN: Okay. The City has had the opportunity, I guess, of discussing the design-build philosophy with the counsel and I guess with some consultants who have come in and made pitches to the City. The County Commission has not. So we're not at all - at least I am not at all familiar with the pros and cons and the reason that they feel comfortable going that route. Could you somehow summarize why that decision was made?

MR. HARWOOD: I can certainly arrange for Rick Carpenter to come and give you the presentation that he gave Council. I would not be equipped to give you that presentation. I would say that the Santa Fe County Utility staff has been invited to every single one of those meetings.

COMMISSIONER SULLIVAN: I understand they've attended some of the presentations and so forth. Has a design-build contractor been selected?

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MR. HARWOOD: No, Commissioner.

COMMISSIONER SULLIVAN: Has an RFP gone out?

MR. HARWOOD: No, Commissioner.

COMMISSIONER SULLIVAN: Okay. But there's been an RFP gone out for the project manager.

MR. HARWOOD: The owner's consultant.

COMMISSIONER SULLIVAN: The owner's consultant as you call it. And has a selection been made for that?

MR. HARWOOD: Yes, Commissioner.

COMMISSIONER SULLIVAN: And who will that be?

MR. HARWOOD: CDM is the highest ranking entity that bid on that.

COMMISSIONER SULLIVAN: Okay. So the City selects that entity. Does the County have any say-so in that?

MR. HARWOOD: Not under the principles agreement, where the project management and fiscal services were delegated from the board to Sangre de Cristo Water Division.

COMMISSIONER SULLIVAN: Okay. Then, Mr. Ross, the other question I had was in the designation of that project manager, which Mr. Harwood just mentioned as being Sangre de Cristo, who I guess has the authority to do these selections, I'm a little bit unclear as to at what point, how much oversight the board has over the project manager. I understand the project manager, again on page 6, has a number of – has five different fiscal things that it has to do. The environmental approvals, the design and construction, operation and management and so forth.

Are all of the decisions that the project manager makes made solely by the project manager with no input from the board or the County?

MR. ROSS: Mr. Chair, Commissioner Sullivan, all the details of that relationship will have to be worked out in agreement between the board and Sangre de Cristo. That's why we don't have that agreement ready for you today because we really need the board to be up and running before we can write the agreement between the board and its project manager. So all that stuff, all those kinds of details will have to be worked out in that agreement between the board and Sangre de Cristo in the form of a contract. Certainly the degree of oversight that the board chooses to have over the project manager should be spelled out in that agreement.

COMMISSIONER SULLIVAN: Okay. That's what I was looking at. So that's to come. Because otherwise we're saying, Well, for eleven years the board is essentially a titular, ceremonial organization that rubber-stamps what the Sangre de Cristo project manager does and obviously we don't want that. We want equal participation. So that's to come.

MR. ROSS: That's to come.

COMMISSIONER SULLIVAN: Okay. And then if the board is unhappy, a majority of the board, which would be obviously more than the County or it could be the

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City and the County together, with the project manager, I see a provision that the project manager will be on board until 2015 unless terminated sooner by the board for cause. What would be a cause for termination?

MR. ROSS: Mr. Chair, Commissioner Sullivan, that, once again – I hate to keep putting this on the agreement, but this is something that would have to be in that agreement. A specific enumeration of various types of activities that would cause a terminable kind of event. Certainly not performing. There is some similarity in clauses like that in various different kinds of contracts. Certainly failure to perform is usually a key element of that.

COMMISSIONER SULLIVAN: And there's no other mechanism for termination before 2015.

MR. ROSS: Other than that set forth in the contract.

COMMISSIONER SULLIVAN: I'm just thinking, suppose the City were to say, We want to get out of the Buckman water business and we want to turn it over to a private contractor, of which there are several that do this kind of work. And again, I'm not advocating for that position. If the City wanted to do that, they wouldn't be able to under this agreement, would they?

MR. ROSS: The City can't pull out of the agreement unless they – this agreement isn't really one that's subject to termination unless –

COMMISSIONER SULLIVAN: Suppose the City said We don't want to be the project manager anymore. We want to farm it out to OMI or to any number of companies that do this work, such as for example they're doing in Eldorado. Such as Las Campanas uses a private firm to run their wastewater treatment plant. And the County agree with it. Said, Okay, that makes sense. That's fine. Under this agreement, that wouldn't be possible. They can only be terminated for cause.

MR. ROSS: The agreement between the board and Sangre de Cristo should have termination provisions in it. So one of those provisions could be for cause. If Sangre de Cristo doesn't perform the board could terminate that contract and choose another project manager. Another type of termination could be the situation just described where they don't want to do it anymore and everyone agrees that someone else should be hired for it. Another type of termination provision is that for upon mutual consent of all concerned you can terminate the contract. But all those things we'll have to flesh out in an agreement between the board and Sangre de Cristo. But the board itself is constituted in this agreement. It can only be dissolved if both the City and the County agree.

COMMISSIONER SULLIVAN: I'm not thinking of dissolving the board. I was thinking of dissolving the project manager. If everyone agreed that that was a good thing to do. So that this clause in line 25, Unless terminated sooner by the BDD for cause wouldn't trump some future operational agreement that we have yet to draft.

MR. ROSS: No, it wouldn't trump it. I assume that language will be repeated in that agreement. That the agreement can be terminated under a number of grounds that are agreed on between the board and Sangre de Cristo.

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COMMISSIONER SULLIVAN: Okay. So just because it's mentioned here for cause doesn't limit us to expound on other reasons in the future agreement.

MR. ROSS: What we're doing is tying the board's hands in one sense. We're saying to the board, to the BDD board, that you have to have a provision in your contract with the water company that says that it can be terminated for cause. It doesn't restrict it from having other grounds for termination like you describe. But at a minimum, they have to have that in their contract. That's what this kind of language -

COMMISSIONER SULLIVAN: Okay. I just wanted to be sure it didn't eliminate that flexibility in the future for that operational agreement, because in eleven years things change. And attitudes change and elected officials change. And they view this as we get further into our regional approach to water this may take on a different magnitude which none of us can envision right now. All right. Those were my question. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just wanted to thank everybody. Echo what the other Commissioners had said and all the hard work that the chairman, yourself and Commissioner Sullivan everybody put in to working together. Thank you.

CHAIRMAN CAMPOS: I have an issue that I'd like to discuss on page 4 of the joint powers agreement, governing the Buckman Diversion. Paragraph 5, Appointment of the BDD board members and the chair, line 23. It says one citizen member at large appointed by a majority of the four for a two-year term. There's a two-year term and then the removal is unanimous action by the other four members. My inclination would be a one-year term with a majority vote. What comment do you have or response to that?

MR. ROSS: Mr. Chair, we debated that a lot because as you recall, the principles provided for a one-year term as well and as staff we thought that might be just a little bit too much turn-over, potential turn-over and that maybe consistency might be a better thing. But this is a work in progress as far as we're concerned. If you think it makes more sense to have a shorter term and more flexibility, certainly we can do that.

CHAIRMAN CAMPOS: That would be my preference. A one-year term, removal by a majority. Not by unanimous. What comments do the Commissioners have on that? Anybody?

COMMISSIONER MONTROYA: Mr. Chair, my thoughts are that if it's a one-year term I would be concerned that that person would barely be getting up to speed at the end of that year and then their term would be up and they may be replaced. And there goes continuity, knowledge, maybe some wisdom, hopefully. But that would be my concern with the one-year term.

COMMISSIONER ANAYA: Likewise. I agree with Commissioner Montoya.

CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I remember it was one year and I saw that in here as two. And you had to be taken by unanimous consent during your term. But then

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once your term is up, then there are no restrictions. Each time the board appoints a new member, is my reading of this, with just a majority vote. Is that correct, Mr. Ross?

MR. ROSS: That's right.

COMMISSIONER SULLIVAN: That's your understanding.

COMMISSIONER SULLIVAN: So it's just to – and I think I favored that concept because I don't think we want to get the two County members and the two City members going through a tug of war and using the fifth member as a mechanism to develop coalitions and pass issues and try to get issues passed. So I think that kind of stability is good. Then the only issue is one or two years. I'm not quite sure. I'd kind of like to see what the City thinks about that. I know we talked about one year in the principles agreement. I guess I don't have heartburn if it's two years. We appoint CDRC members for how long? And EZC members? Two years? Five years? Don't say five years. I think it's either two or four.

CHAIRMAN CAMPOS: Two. I think it's either one or two.

COMMISSIONER SULLIVAN: And of course many of them get reappointed. I guess I'm neutral on it, Mr. Chair. I don't feel super strong that we have to back it down to one year.

CHAIRMAN CAMPOS: What about the unanimous action of the board to remove the fifth member?

COMMISSIONER SULLIVAN: I don't think that makes any sense, of course, because if you're going to remove somebody, that individual is probably not going to vote against his own removal or her own removal.

CHAIRMAN CAMPOS: They wouldn't be voting, I don't think. By the unanimous vote of the four other members.

COMMISSIONER SULLIVAN: Does it say the four others? Of the four other members. I think that still that's okay. I think that once you appoint someone you have to do it carefully and understand that person will be there for two years or whatever is finally decided and then unless they move out of town or anything like that. And there is no residency requirement here is there, by the way.

CHAIRMAN CAMPOS: It says the citizen member. Is the definition the County of Santa Fe, right?

MR. ROSS: I thought that was in here, Mr. Chair, but it might not be. I'll note that down.

COMMISSIONER SULLIVAN: So they could be a citizen of Rhode Island.

CHAIRMAN CAMPOS: A citizen of the county and that could include any folks within the city.

MR. ROSS: Correct.

COMMISSIONER SULLIVAN: It doesn't say. It just says one citizen member. It doesn't say citizen of Santa Fe.

CHAIRMAN CAMPOS: That can be clarified.

COMMISSIONER SULLIVAN: Okay. But I do think it's a good policy to

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be sure that the board is serious about the member that they appoint, and when that member is appointed they realize that they have stability in that position.

CHAIRMAN CAMPOS: Any further comments, Commissioner Duran?

COMMISSIONER DURAN: I think it's important that those that worked on this agreement, that we support those that work on it. I think if we're going to wordsmith and change this agreement that the City probably would take the same liberty. I think it's important that we adopt it as it is. There's always room for amendments later and clarification. And I think by doing that it shows the City that we've acted in good faith and hopefully they would follow suit. So I'd like to make a motion that we approve it.

CHAIRMAN CAMPOS: Commissioner Montoya has already made that motion.

COMMISSIONER MONTOYA: Mr. Chair, I'd just like to move for approval in concept of the agreements that we have before us here.

COMMISSIONER DURAN: Second.

COMMISSIONER MONTOYA: Subject to the final agreement in January.

CHAIRMAN CAMPOS: Okay, is that fine with the seconder?

COMMISSIONER DURAN: Yes.

CHAIRMAN CAMPOS: Discussion?

The motion to approve a joint powers agreement and a water resources agreement with the City passed by unanimous [5-0] voice vote.

XI. E. 6. Executive Session

- a. **Discussion of Pending or Threatened Litigation**
- b. **Limited Personnel Issues**
- c. **Discussion of the Purchase, Acquisition or Disposal of Real Property or Water Rights**

Commissioner Duran moved to go into executive session pursuant to NMSA Section 10-15-1-H (7, 2, and 8) to discuss the matters delineated above. Commissioner Montoya seconded the motion which passed upon unanimous roll call vote with Commissioners Anaya, Campos, Duran, Montoya and Sullivan all voting in the affirmative.

[The Commission met in executive session from 5:02 to 6:10.]

Commissioner Sullivan moved to come out of executive session having discussed only the matters outlined in the agenda, and Commissioner Anaya seconded. The motion passed by unanimous [3-0] voice vote. [Commissioners Duran and Montoya were not present for this action.]

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XII. PUBLIC HEARINGS

A. Land Use Department

4. EZC CASE #A 04-4201. PATRICK AND ELLEN COLLINS APPEAL. Patrick and Ellen Collins, Applicants, are Appealing the Extraterritorial Zoning Commission's Decision to Approve EZ Case #04-4200 a Land Division within the Urban Wildland Interface Ordinance's Very High - Hazard Zone. The Property is Located 400 Feet from Tano Road West on the Eastside of Tanoito Road, within Section 4, Township 17 North, Range 9 East (Commission District 2)

Exhibit 2: Response to appeal: Dale & Claudia Faust

Exhibit 3 Plat and subdivision information submitted by Faust

JAN DANIELS (Development Review Specialist): Good evening. On October 14, 2004 the EZC met and acted on this case the Dale and Claudia Faust land division. The EZC recommended approval of the land division and waived the condition that the site access road for both lots shall be provided with the minimum 38-foot easement and a 20-foot driving surface and amending the condition that the applicant pay 1/10 of her share rather than fair-share when the improvements take place for the off-site emergency turn-around within a very high hazard area of the Urban Wildland Interface Zone.

CHAIRMAN CAMPOS: That's your report? Okay, any questions or comments? I guess we have the applicants, agent. The appellants, please come forward.

[Duly sworn, Patrick Collins testified as follows]

PATRICK COLLINS: My name is Patrick Collins. I live at 30 Tanoito Road in Santa Fe County. Could I ask a procedural question first? There are other neighbors present, is there some way they could register their presence in support for this appeal?

CHAIRMAN CAMPOS: We are going to have a public hearing so they will have that opportunity to make a comment - a brief comment.

MR. COLLINS: They don't want to testify. They just want to -

CHAIRMAN CAMPOS: They want to stand up and state they support your appeal?

MR. COLLINS: Yes.

CHAIRMAN CAMPOS: We'll let you do that at some point.

MR. COLLINS: Can we do that now?

CHAIRMAN CAMPOS: Please, go ahead and make your statement.

MR. COLLINS: Well, all right. I am here to appeal decisions made by the Extraterritorial Zoning Commission on October 14th. You have a memo from the Land Use Department dated today, December 14th. The fifteen attached exhibits, those exhibits are identified as exhibits A through O.

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I would like to begin with exhibit B. This is a multi-colored map of the Tano Road area. At the left is shaded in – I'm sorry, I have the wrong note. Bear with me, please.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: B is not a map in my book.

MR. COLLINS: I'm sorry. I had the wrong note. I misdirected you. It's M. Exhibit M as in Mary. At the left of this map, shaded in orange, is the Costa Subdivision, a four-lot completed in 1992. Note that there is one six-acre lot that may be split sometime in the future. We bought our property in the Costa Subdivision in 1993, when there were three houses on the road.

On the right, shaded in green, is the Crowley Subdivision of four lots, completed during 1992 and 1995. The emergency turnaround shown at 23 Tanoito was completed during the Crowley subdivision. The driving surface width on this turnaround is less than the County standard of twenty feet, and the turning radius is less than the standard of fifty feet. The EZC's decision related to that turnaround is part of our appeal.

Below the Crowley subdivision, shaded in red, is the applicant's property. The driving surface within the applicant's property varies from thirteen and a half feet to sixteen feet, which is less than the County standard of twenty feet. The EZC's decision related to widening that road is part of our appeal.

Below the applicant's property, shaded in blue, is the Gallagher property, which was split by a prior owner in 1993. Below that is Tano West Road.

I refer next to Exhibit B as in boy, which is a letter to the Land Use Department dated May 7, 2004. This letter is signed by all four of the property owners who are residents on Tano Road, and express our concern about road safety. This letter does not mention the turnaround at 23 Tanoito because at that time we did not know that the turnaround was substandard.

Next, I refer to Exhibit D, D as in David. This memo, dated August 1st, is a summary of the then-current fire safety information, including the attached letter, dated July 9th, from the Fire Department.

Exhibit L is our letter, dated October 27th, which appeals the EZC's decisions on October 14th. The Land Use Department's October 14th memo recommended approval of the applicant's lot split, subject to certain conditions. The applicants opposed two of these conditions. First, the applicants objected to the condition that they widen the driving surface on their property to the County standard of twenty feet, and widen the access and utility easement to the standard 38 feet. The EZC approved the lot split, but did not require the applicants to widen the driving surface on the easement. This decision will be discussed in a few minutes.

Second, the applicants objected to the condition that they pay a fair share of the cost of improving the turnaround at 23 Tanoito Road. The EZC approved the lot split, but required the applicants to make only a nominal payment if the other property owners complied with an unrealistic condition imposed on them by the EZC. This decision also

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will be discussed in a few minutes, but it should be mentioned here that the other property owners have offered to pay a fair share of the turnaround improvement costs, and that offer is stated on page four of the letter.

The letter also relates that in the testimony at the October 14th hearing, the applicants asserted that their right to equal protection under the law would be violated if the EZC required them to pay any amount of money for the purpose of widening the road or improving the turnaround. The property owners on the road believe that equal protection requires the County to enforce public safety laws. The applicants' position is that equal protection requires the County not to enforce safety laws. The applicants' position requires the burden of proof, but the EZC required no proof at the October 14th meeting.

I would like to refer now to Exhibit E, which is a five-page letter from the applicants to the Land Use Department. This letter is not dated. I will refer to it as the October letter. The October letter was not distributed to the EZC Commissioners prior to the October 14th meeting. However, the substance of this letter was given as testimony by the applicants at that hearing. Therefore, the letter is relevant to our appeal of the EZC's decision on October 14th.

The October letter states on page one that the applicants bought the five-acre property on Tanoito road in 2003 with the intention of splitting that property into two lots. Some months later, they applied for a lot split and were "surprised to learn" of the road widening and turnaround requirements which would be conditions for approval of the lot split. The October letter states, pages one and two, that the applicants should not be required to widen the road on the property now, because that should have been done as an off-site improvement in connection with one or both of the two subdivisions in 1992 and 1995.

Beginning at the top of page two, the October letter states: "The EZ regulations in place at the time of the Costa division, Crowley Subdivision, required that as a condition of filing approval, the applicants improve and widen Tanoito Road from Tano West." So Costa in 1992, according to the applicants, should have widened the road from beginning to end. That's about a quarter of a mile through three other properties. Or, according to the applicants, Crowley in 1995 should have widened the road for almost the same distance through two other properties. The October letter does not identify by name the EZ regulations in place in 1992 and 1995. It does not cite the relevant sections of these regulations, and does not quote any operative language from these regulations.

Some months ago, the applicants were given access to the Land Use Department's file on the Crowley subdivision. The October letter, page three, refers to three memos in that file written in 1992 and 1995, and it quotes a short paragraph from each memo. However, none of the selected quotations supports the applicants' claim that Crowley was required to widen the road all the way to Tano West.

The October letter, near the top of page four, states that it is "absolutely clear" that the road should have been widened by Crowley. How can it be absolutely clear when the applicants have provided no evidence in the October letter or in a testimony that Crowley

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was responsible for widening the road on their property? And even if there was evidence of Crowley's responsibility, where is the evidence that Crowley's responsibility nine years ago somehow cancels the applicants' responsibility now? There was no evidence presented at the October 14th hearing to justify the EZC's decision to relieve the applicants of their responsibility to widen the road.

On the same subject, Exhibit O is the current plat maps for all properties on Tanoito road. These maps show that every property on the road except for the applicants' property has an access and utility easement 38 feet wide. The Land Use Department's October 14th memo recommended widening both the driving surface and the easement on the applicants' property. The EZC rejected the easement widening recommendation for no apparent reason.

The October letter also states, page two, that in June an employee of the County Fire Department told the applicants that the narrow driving surface on their property was "satisfactory for fire safety." I believe the term "fire safety" means emergency vehicle access. There is an important difference between emergency vehicle access and road safety. I do not doubt that a fire engine can travel the length of the road safely. That is emergency vehicle access. The daily traffic of cars and service vehicles is another matter. That is road safety.

The present and future residents who will drive on this road every day in the coming years have an interest in road safety. And road safety requires widening the road on the applicants' property. As an aside, there have been two near misses on this road in the past few months.

The Fire Department employee's statement about safety was discussed at the August 14th meeting. What was not discussed was that the Fire Department's report, attached to the Land Use Department's October 14th memo, recommended widening the road. The EZC made no attempt to reconcile the difference between the employee's statement and the department's report.

Second, on the subject of the emergency turnaround. The October letter states, pages one and two, that the Land Use Department recommended in April that the applicants build a turnaround on their property as a condition of the lot split. But after discussions with the Fire Department in June, it was concluded that a turnaround on the applicants' property would not be necessary if the existing turnaround at 23 Tanoito was improved to the County standards for road width and turning radius. Given that the applicants would be relieved of paying the total cost of a turnaround on their property, the Land Use Department recommended that the applicants pay a fair share for improvements on the turnaround at 23 Tanoito.

The October letter, page four, states the applicants should not be required to pay anything for improvements on the turnaround at 23 Tanoito, because the turnaround should have been built to current standards in 1995 by Crowley.

The property owners on the road were not notified formally that the turnaround was substandard until we received the Fire Department's letter on July 9th. Later in July, four

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property owners resident on the road met to discuss the turnaround. We agreed to ask contractors for bids on improvements, and to proceed on the assumption that the cost would be paid by some combination of contributions from the property owners and the applicants. We anticipated that the four resident property owners would pay most of the cost, because there is no way to compel payments from the non-resident property owners.

At the EZC hearing on August 12th, this matter was tabled for further review. Immediately following that, in the hallway in this building, three of the four resident property owners offered representatives of the applicants a fair share formula by which the applicants, as the owners of two lots, would pay the cost of improvements pro rata with the other resident and non-resident property owners who agreed to contribute. That offer was rejected the applicants.

The Land Use Department's October 14th memo to the EZC recommended a fair share payment by the applicants as a condition of the lot split. In my testimony at the October 14th hearing, given that the applicants already had rejected a pro rata formula, I suggested a simple split of the cost, fifty percent by the applicants, fifty percent by the other property owners. That is fair because the applicants will recover their cost immediately when they sell the two lots. But for the other property owners, there is no foreseeable recovery of their contributions.

The motion agreed by four of the seven Commissioners on October 14th required the applicants, who will own two lots, to pay ten percent of the total cost if each of the other property owners, who own one lot, pays the same amount. That means both resident and non-resident property owners. In effect, this condition on the property owners relieves the applicants of any payment. It is ironic that the resident property owners, who have offered to pay a fair share, were subjected to a condition by the EZC that made their offers meaningless.

I have used the expression "property owners who agree to contribute." That is an accurate description of the situation. None of the property owners on the road are required by road agreements to pay for improvements on the turnaround. All contributions will be voluntary. As of now -

CHAIRMAN CAMPOS: Mr. Collins, how much time do you think you need? You've gone over the testimony a couple of times.

MR. COLLINS: Another two or three minutes.

CHAIRMAN CAMPOS: You've repeated some of it already. So just keep it brief, please.

MR. COLLINS: As of now, given the EZC's decision on October 14th, I doubt that any of the property owners will agree to pay one hundred percent or ninety percent of the turnaround improvements. If that turnaround remains non-functional for Fire Department purposes, then the Land Use Department must reconsider whether the applicants should be required to build a turnaround on their property.

In conclusion, I refer the Board to the last page and last sentence of our letter of appeal: "The applicants are asking the Board of County Commissioners to initiate whatever

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ruling is appropriate for the purpose of facilitating compliance with the County's public safety laws." Thank you for hearing my appeal.

CHAIRMAN CAMPOS: Any questions for Mr. Collins?

COMMISSIONER DURAN: Mr. Chair?

CHAIRMAN CAMPOS: Commissioner.

COMMISSIONER DURAN: Mr. Collins, so I hear you saying that - I mean, I've been involved in a lot of road maintenance agreements. So correct me if I'm wrong, what you'd like the applicant to do is not share on the basis of how many lots are actually going to be used in this road, but rather have them pay fifty percent of it, and then everyone else that uses this road pays the other fifty percent? Because I've never seen that in any of the road agreements that I've ever worked on.

MR. COLLINS: There are two road agreements that apply, one to the first subdivision and one to the second subdivision.

COMMISSIONER DURAN: Well, I want to know specifically the road that is going to access this lot split, and how many people that are going to be on that road. Isn't there just one road that we're talking about here?

MR. COLLINS: There's one road. There will be nine - there are seven houses on the road now, and the potential is eleven. They are all on the same road. They're all on Tanoito Road.

COMMISSIONER DURAN: Right, I see that. That shows up on this plat here, right?

MR. COLLINS: Right. Now, there are two road agreements because of different subdivision. Both of the road agreements are substantially the same in language. Those road agreements are, your word, maintenance. They apply for the maintenance of the road, bar ditches, snow removal. There is nothing in the language that says that they would have to remove trees, extend culverts, and do all the things that would be necessary to bring this turnaround up to County standards. Therefore, everyone is being asked to make a voluntary contribution for whatever amount we can raise. And that would be - we would pay that cost fairly.

COMMISSIONER DURAN: But the cost of improving the road to make it safe -

MR. COLLINS: Excuse me, we're not contributing to the widening of the road.

COMMISSIONER DURAN: But there's a 38-foot easement, right?

MR. COLLINS: Yes, but we are not contributing to the cost of that. We're contributing to the cost of the turnaround only.

COMMISSIONER DURAN: At least that's what you would like to do.

MR. COLLINS: Yes. We are not offering to widen the road on the applicants' property.

COMMISSIONER DURAN: But the EZA approved this lot split with the applicant only contributing not the fifty percent that you would like or that the property

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owners would like, but rather their contribution is limited to a tenth?

MR. COLLINS: One tenth if each property owners pays the same amount. That is impossible. There is no way-

COMMISSIONER DURAN: Okay, so void of all the property owners participating one tenth, what happens then? The road doesn't get improved?

MR. COLLINS: That's right.

COMMISSIONER DURAN: And do they get the lot split? They get the lot split without the road getting improved?

MR. COLLINS: That's right. By the October 14th minutes, and I heard in this room, every property owner on the road must pay an equal amount, including the applicants, who have two lots.

COMMISSIONER DURAN: An equal amount of what? Of improving the road to meet County standards?

MR. COLLINS: Improving the turnaround.

COMMISSIONER DURAN: Just the turnaround.

MR. COLLINS: Applies only to the turnaround.

COMMISSIONER DURAN: And how much is that?

MR. COLLINS: We have an estimate of \$5,000, the total cost of improving the turnaround to meet County standards.

COMMISSIONER DURAN: So if the applicant agreed to pay \$2,500 of that \$5,000, you wouldn't be opposed to the lot split?

MR. COLLINS: We would get the other \$2,500 someplace. But we can't be required to get it from every property owner on the road.

COMMISSIONER DURAN: Okay, I understand. So then what happens with the rest of the improvements that the County is requiring take place on the access road?

MR. COLLINS: Our appeal is asking somehow that the applicants be required to pay the full cost of widening the road on their property.

COMMISSIONER DURAN: Widening the road on their property. What about widening the road on the other properties?

MR. COLLINS: No.

COMMISSIONER DURAN: No what?

MR. COLLINS: We're not dealing with that issue.

COMMISSIONER DURAN: And so those other properties don't require a widening?

MR. COLLINS: There is no requirement that they be widened. The October 14th recommendations from the Land Use Department dealt only with the two issues of the road on the applicants' property and the off-site improvement -

COMMISSIONER DURAN: On the turnaround.

MR. COLLINS: Which is the turnaround.

COMMISSIONER DURAN: And that's your turnaround, right?

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MR. COLLINS: Yes. This one. Yes.

COMMISSIONER DURAN: Okay. I understand. Thank you very much.

CHAIRMAN CAMPOS: Any other questions? Okay. Applicants. Please state your name.

PAULA COOK: My name is Paula Cook. I'm attorney for the Faust's.

CHAIRMAN CAMPOS: Address?

MS. COOK: 141 East Palace Avenue, Santa Fe, New Mexico.

CHAIRMAN CAMPOS: Okay. How much time do you think you're going to need?

MS. COOK: Twenty minutes.

CHAIRMAN CAMPOS: Try to keep it to fifteen if you can.

MS. COOK: We'll do our best.

CHAIRMAN CAMPOS: Okay.

MS. COOK: The Fausts and I are here to ask you to uphold the EZC decision to approve the Fausts' lot split without requiring the Fausts to improve Tanoito Road to a twenty-foot driving surface to their property, and also with the recommendation but not the requirement that the Fausts pay one-tenth of the costs of bringing the twelve-foot emergency turnaround to Code. We'd like to point out here that the Faust's agreed voluntarily to participate in the improvement of the road for their one-tenth share of improving the twelve-foot turnaround to the twenty-foot.

The EZ didn't come to that decision lightly. They considered their decision for over an hour. They come to a fair and reasonable decision after careful thought. They recognized that it was unfair to require the Fausts to improve a portion of the road which prior developers had failed to do. In addition, the EZ's decision required that there are ten lots on Tanoito Road which will benefit from improving the emergency turnaround in principle. The Fausts agreed to pay their one-tenth share of the improvement to that turnaround.

This is not a petty dispute among neighbors. This is a question of fairness, basic fairness. Who should pay for the improvement of the road, whether the road should be improved from the beginning of the road at Tano West all the way up to the ending turnaround. If you will take a quick look at the color exhibit that we gave you, you can see that the distance that the road travels, which is about 1600 feet, you can also see the measurements of the road throughout.

We recognize that voluntary participation by the Fausts in any eventual improvement to the turnaround means that there's no guarantee that the turnaround will actually be built. But in fact, implementation of this construction is possible under the Urban Wildland Interface Act. And I'll address that for you in just a moment.

We'd like to take you through these subdivisions. Unfortunately, this will take a few minutes. We did this with the EZ at the EZ meeting. Contrary to what Mr. Collins said, we did present to the EZ a full discussion of the prior subdivisions.

The first subdivision was the Costa division at the end of Tanoito Road. If you look

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in your exhibits, the Costa plat is included as exhibit three in the binder that we gave you. Involved in that was the creation of four lots. Each of those lots requires access all the way up Tanoito Road from Tano Road West. When this subdivision was approved, the EZ regulations required a twenty-foot driving surface with a 38-foot easement. It is apparent from the plat, if you look at that - again, it's exhibit three - that the Costa development was required to put in a turnaround at the end of the subdivision and to widen the road to twenty feet.

The second division of significance is the one at the very beginning of Tanoito Road. And if you look at that, it's exhibit five in your book. Pursuant to that lot split, they were required at that time to widen the road to twenty feet. We're not sure if they had any requirements with respect to turnaround because we've been unable to locate at that file. But at the time of the approval of this subdivision, it was essential that they widen the road to twenty feet.

So you can see, if you go back through and you look at the color diagram, that the beginning of the road was required to be twenty feet, and the end of the road, the Costa Subdivision, which is in blue, was required to be twenty feet.

Then if you go to the third subdivision, which is included in your book at exhibit four, that's the Crowley plat. That third division was approved in 1992. When the plat was repaired in 1992, it wasn't allowed to be recorded. If you look carefully at exhibit four, you will see that that plat was not recorded until 1995.

If you look at exhibit seven, exhibit seven in our book is a copy of the letter to Crowley, advising approval of the Crowley subdivision. If you look at that carefully, you will see the conditions of approval of the Crowley subdivision. It is that Mr. Crowley obtain a 38-foot easement through the property that is shown in pink and the property that's shown in yellow on your plat. In addition, it requires a fifty-foot emergency turnaround, which is shown in red and white checks on the Church tract in gray. In addition, it required that there be a twenty-foot wide driving surface through the pink tract, through the yellow tract, and through the gray tract.

At the time of the approval of the Crowley subdivision, Crowley would have been required to either post a bond for the improvements or make the improvements and get an inspection. It's apparent from the timing on the plat that in 1992 they made application. They didn't want to post bond. They went through the process supposedly of improving the road. And at that time, then the plat should have been recorded with the improvements actually in place. That in fact did not occur.

If you'll look at exhibit ten in the book, this is the road easement that Crowley obtained. I know you probably don't want to study the easement in detail, but it does not provide for a 38-foot easement. It is only for a twenty-foot driving surface. Crowley never obtained the easement that he was required to get.

A further review of this agreement shows that the Faustus' predecessor in interest, the Bears, were not responsible for participating in maintenance until structures were built on the Bear tract, which now belongs to the Faustus. There are no structures there. The

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Fausts therefore have no obligation to maintain or construct roads within the pink tract, the yellow tract, or the gray tract.

When you combine the obligations of the easement agreement with the County conditions on approval, it's apparent that Crowley had an obligation to improve the road and to maintain it, and to create the turnaround, which was never done. If you look at exhibit nine in your book, it's a letter in the Crowley file indicating that staff had determined that those improvements were on the ground. That is simply not the case. Those improvements are not in place on the ground, as exhibit nine in the Crowley file indicates they were. This is apparent that Land Use failed to enforce the EZ regs and its conditions of approval, by allowing recordation of the plat without determining that the improvements were actually in place.

Because the County failed three times to enforce these regulations and its own conditions of approval, the recordation of these divisions was unfair. It's now unfair to require the Fausts to improve the road, and it's also unfair to require them to participate in improving that turnaround. It's a violation of equal protection to make them do it, when all the other developers have slid by, so to speak, without having to do it.

With respect to the appeal itself, the Extraterritorial Subdivision regulations require that a petition to appeal the administrative decision shall be submitted by the agreed person in writing, and shall set forth specific statements of fact specifying the regulations on which the appeal is made. The Collins' appeal did not conform to these requirements. They cite no regulations whatsoever for the basis of their appeal. The Fausts were entitled to have the Collins specify exactly which portions of the regs and ordinances were violated. Therefore, this appeal should be rejected out of hand. Again, here the only law they cite is general public safety laws, which could be anything. They didn't identify what the source was.

We would like to point out two other issues regarding this appeal by the Collins. The first is that the Fausts made an effort to resolve this matter in exchange for dropping the appeal. The Fausts offered to pay one-fourth of the cost of the turnaround in exchange for the Collins dropping the appeal, but they refused.

Second, it's important to know that since 1993, the Collins have lived on this road. They've lived on this road without any effort to require improvements along the entire length of the road. If you go back to your color map, you can see the location of the Collins tract. You can see that they were aware of the safety issue all along. They didn't raise it until they had someone like the Fausts, who might be forced into a position of approving the road for everyone.

In the Land Use memo to the Commission, at page three, that's not in our materials. That's in the material that was presented by Land Use. Sorry about my voice. It gets sticky like this. The staff tried to suggest that the improvements to the road, the twenty-foot driving surface, is necessary to accommodate the Fausts' lot split. You can see from the information we've provided tonight that the improvement is simply not necessary to accommodate the Fausts' lot split, since the twenty-foot driving surface and the

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turnaround was required of all the prior developers. It's not an issue of additional impact. It's simply an issue of the developers failing to do what was required originally. The necessity for this easement simply doesn't come about because of the Fausts' lot split.

We need to move on quickly if we can to the sections of the Urban Wildlife Interface Code, which we assume was an additional basis of attempting to impose the requirement to widen the road and construct the turnaround. However, nowhere in the Urban Wildlife Interface Code is Land Use staff given the authority to enforce the Urban Wildlife Code. They don't have the authority to put it into effect, to implement it, or anything else. It's only up to the Fire Marshal to take such actions.

In addition, according to Chapter 1, section 1.4, Applicability, the Urban Wildland Code does not refer to vacant land. It only refers to construction or use or alteration of a structure, building, or premises, not vacant land. At the end of that section, it also states that buildings or conditions in existence are allowed, so long as the occupancy or condition was legal at the time of the adoption of the code. You can see that none of these conditions were legal at the time of the adoption of the Code. They were all out of compliance in 2001. They're not legal non-conforming uses. They are simply non-conforming uses, which the Urban Wildlife Interface Code allows the Fire Marshal to change, or require change.

Staff also raises Chapter four, section three, regarding access, as an additional method of applying the Urban Wildlife Code to the Fausts' lot split. However, a careful reading of this section shows that it doesn't apply either. It states fire apparatus roads for new subdivisions and individual structures hereafter constructed or relocated in the urban interface areas shall be in accordance with the fire code. This section implies both conditions must collectively apply. In other words, it must be a subdivision and construction of new developments. Perhaps it was intended to deal with subdivisions where immediate construction was anticipated.

It should be noted that the Urban Wildlife Interface Code did apply to a recent construction. It was on the Church property, which you can note in the lower corner of the gray shaded area. At the time of the approval of the Church permit for construction, Mr. Church should have been required to bring the road and the turnaround to Code as well. We have included the plats that Mr. Church provided to Land Use when he applied for his permit. It's exhibit fourteen. If you check exhibit fourteen, you will see that Mr. Church's application gives the impression that twenty-foot road easement is in place - road surface is in place, as is the turnaround. It's simply not the case. They weren't in place. You can see that he used a plat which describes improvements which are not there. In addition, staff did make site visits. That site visits did not include them addressing the fact that the turnaround was not to Code.

The Fausts are in a situation where the Urban Wildlife Interface Act should not apply. But Land Use is asking that they be required to pay a portion of bringing this road and the turnaround to Code, despite the fact that the Urban Wildlife Interface Act does not apply.

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Briefly, the current situation is this: the Fire Marshal advised the residents along the road of two things. First - and this letter is included in your exhibit as number seventeen. The Fire Marshal advised the residents first that the original approval for this subdivision required a twenty-foot wide road and emergency turnaround at the end of Tanoito, and another on the south side of Tanoito on the Church property. Second, and this is exhibit seventeen, the Fire Marshal said that he determined the cul-de-sac at the end of the road to be inadequate for emergency vehicles, but noted that the turnaround on the Church property would be adequate if the road is brought to the original requirement of twenty feet with an all-weather driving surface and a change in the location of the phone pedestal. We interpret this to mean that Captain Patty believed the existing subdivisions were not completed in accordance with the requirements of their approval, and this has resulted in a fire-safety issue on the road.

At this point, my clients, if they fail to complete this lot split, they still can't sell their land, because through this process, we have determined that the road and the turnaround are not adequate. As you probably know, in the disclosure process of a sale, the Fausts, and for that matter with any other person on this road, they would now be required to disclose that Tanoito Road is not to Code. It isn't safe for fire vehicles, and there is no turnaround. Essentially, this has rendered all of the lots on Tanoito Road as unsalable, unmarketable, and clouded. Since only the Fire Marshal can enforce the Urban Wildland Interface Code, we believe it is important for the Fire Marshal to provide clarity as to what exactly needs to be done to the entire road, from Tano West up to the end in the blue area, so that everyone has an idea of how to solve this problem, who is responsible, and who will improve the road and the turnaround.

I'd like to briefly address this fair share issue. The Collins' appeal relates in part to the staff concept that the Fausts should pay their fair share of the cost. This was raised in its October 15th report to the EZ. In their memorandum, the EZ quotes Section 10.2 of the off-site improvements and impact fee section of the EZO. We believe that reliance on this section is simply misplaced. The reason it's misplaced we discussed a few minutes ago, which is that there's no additional impact on this road as a result of the lot split. The road should have been twenty feet. It's still not. There should be an easement of 38 feet. It's not there.

We'd also like to briefly address the issue of the requirement for the 38-foot easement. If the Fausts are required to provide a 38-foot easement without any sort of compensation for that, they're essentially having to give away a section of their property with no compensation whatsoever. As part of the consideration for the original grants of easement to all of the individuals in the Crowley subdivision, Mr. Crowley agreed to build the road, and also agreed to maintain it. The consideration for having the right to travel through the Gallagher tract and the Faust tract was that he would build the road, and that he would maintain it until any structure was built in the Faust tract. Essentially, then, what Mr. Crowley got is he got the right to travel through the Gallagher and the Faust tract without doing what he agreed to do. This is simply unfair. Neither the Costa nor the

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Crowley subdivisions now have a thirty-foot easement through the Faust tract. Land Use's requirement that this 38-foot wide easement be given to these people is simply giving them a portion of the road without any compensation.

We ask you to affirm the decision of the EZ, which was to approve the lot split and waive the condition that onsite access roads for both of the lots be provided with the twenty-foot wide driving surface through that property. And also with the requirement – with the recommendation, not the requirement, that the Fausts voluntarily agreed to pay one-tenth of the cost of the turnaround, if and when the turnaround is built.

That's one other thing that Mr. Collins didn't address. We believe the EZ decision basically requires that the Fausts contribute voluntarily if and when the turnaround is built. The EZ made no requirement that the people on Tanoito road who are not a part of this action take any action whatsoever. It simply says that if and when the improvement is made, the Fausts should agree to participate. The Fausts have agreed to take on their one-tenth share. To require anything else beyond what the EZ required is to treat the Fausts differently than all of the developers who have come before them. Thank you.

CHAIRMAN CAMPOS: Any questions of Ms. Cook?

COMMISSIONER DURAN: I have a couple. I'll be quick. Ms. Cook, I'm looking at these two plats, which would be the Collins property and the Rothbauer property, and then this plat here. And it shows that a turnaround and an easement, which is 38-feet in width, and then through other lots, which is the Ashbey, the lot that's under bankruptcy, the Church property, and lot two, it says it's vacant, there's a 38-foot easement through that which ties into the Faust property.

MS. COOK: There is no 38-foot easement through the Faust property.

COMMISSIONER DURAN: That's not my question. I'm asking you, have you seen those plats that I just referenced, that indicate that there is a thirty-foot wide easement on those lots?

MS. COOK: I have seen those, but I'm not aware of any agreement among the neighbors as to the 38-foot wide easement.

COMMISSIONER DURAN: A recorded plat with a dedicated easement–

MS. COOK: Should take care of that.

COMMISSIONER DURAN: If it needs to, wouldn't you say?

MS. COOK: I think you're right on that.

COMMISSIONER DURAN: Okay. So correct me if I'm wrong, the Fausts are opposed to a thirty-foot road easement. They're opposed to improving the road that's on their property. And they're opposed to paying for the road by themselves on their property?

CHAIRMAN CAMPOS: If you'd like to speak, you'll have to state your name and address and we'll swear you in.

[Duly sworn, Claudia Faust testified as follows:]

CLAUDIA FAUST: My name is Claudia Faust, I live at 10 Avenida Aldea in Santa Fe.

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COMMISSIONER DURAN: Let me ask you a whole set of different questions. Please speak into the mike.

MS. FAUST: I will, thank you.

COMMISSIONER DURAN: The cost of the turnaround, which is one of the conditions of approval of the lot split, you understand that it's going to cost about \$5,000 to improve that?

MS. FAUST: We were told it was \$4,500. And our issue was not – we had no problem contributing as a friendly neighborhood thing. And we want that fire safety on that road.

COMMISSIONER DURAN: Okay. I just want to ask you a few questions, if you'd just answer question, please. So it's about \$4,500 is your understanding, to fix that?

MS. FAUST: That's what I was told.

COMMISSIONER DURAN: And what does it cost to improve the road to a twenty-foot wide driving surface on just your portion of the property?

MS. FAUST: I don't have any estimates, but given the fact – I think it's probably going to make it non-economic for us to even do a lot split, frankly.

COMMISSIONER DURAN: So you can say that without knowing how much it costs?

MS. FAUST: Well, we have some estimates on road work that we have on another property that we have, and based on that, given all the work that needs to be done, site preparation work, my sense is that it's probably very expensive.

COMMISSIONER DURAN: So you don't know how much it's going to cost.

MS. FAUST: No. But with \$25,000 on legal fees, by the time I sell this property, I am already in the hole, if I can sell it.

COMMISSIONER DURAN: Well, those lots are worth about \$300,000, so I'm trying – \$150,000 at least apiece. I'm trying to decide–

MS. FAUST: Yes. We spent \$300,000 on the property.

COMMISSIONER DURAN: Okay. I'm going to ask you a couple more questions. You have no idea what it costs?

MS. FAUST: No.

COMMISSIONER DURAN: Do you know what the width of the road is that they're asking for you to approve?

MS. FAUST: Absolutely. I mean, we had our surveyor out. He did a survey on the roads.

COMMISSIONER DURAN: So what's the difference from one side of the road to the other?

MS. FAUST: It is an average of sixteen feet. The minimum width through our property is a six-foot stretch. That's about fourteen feet. Elsewhere on the road –

COMMISSIONER DURAN: No, ma'am, what's the distance of the road on

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your property, just the distance of it?

MS. FAUST: I don't know, exactly. I will find it for you.

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

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER DURAN: No.

MS. FAUST: 209 feet.

CHAIRMAN CAMPOS: 209 feet. Okay. Thank you. Any other questions?

Okay.

This is a public hearing. Anybody –

COMMISSIONER SULLIVAN: Mr. Chair.

MS. FAUST: Can I make a quick statement?

CHAIRMAN CAMPOS: Hold on.

COMMISSIONER SULLIVAN: I just had one clarification to ask of the attorney. On the Church plat, which is identified as exhibit fourteen –

CHAIRMAN CAMPOS: This is for Ms. Cook?

COMMISSIONER SULLIVAN: Yes, for the attorney. Exhibit fourteen.

You indicated that that didn't show the twenty-foot roadway and didn't show a 38-foot easement.

MS. FAUST: It did show –

COMMISSIONER SULLIVAN: And didn't show the turnaround.

MS. FAUST: No, no, no. It did show –

COMMISSIONER SULLIVAN: I'm asking the attorney to explain her testimony.

MS. COOK: What I intended to indicate, if I wasn't clear, is that this plat was provided to staff as an accurate representation of the property at the time. That's a requirement of the development permit process. And what it indicates is that there is a twenty-foot wide access easement – twenty-foot turnaround there. And the twenty-foot turnaround is not there. There's an easement for it. But the twenty-foot access turnaround is not on the ground. There's an easement for it, but it's not there. That was our point.

COMMISSIONER SULLIVAN: I don't read it that way, but I'm having trouble reading it. I see in the turnaround the indication "existing road," which shows it to be less than a larger radius, whatever that is. And then I see a note pertaining to that more symmetrical loop. Can you read that note to me?

MS. COOK: Are you talking about the one that says "twenty-foot wide emergency turnaround"?

COMMISSIONER SULLIVAN: Yes. Is that what it says? And what's the word after it?

COMMISSIONER DURAN: It says "twenty-foot emergency turnaround."

COMMISSIONER SULLIVAN: I think it says "ESMT," which would be easement.

MS. COOK: Easement.

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COMMISSIONER SULLIVAN: Okay. So this plat didn't represent that there was a road there. In fact, it showed the existing road that was there, which was a little short of that. And then it shows an easement, or I guess this is dedicated as a part of this plat to that road. But the road hasn't been built yet. And that's what the argument's about, is that correct?

MS. COOK: Well, yes, that's true. But the point is that this survey was included in the Church application for development. When you put your permit application in, you're required to provide a survey that accurately depicts the condition of the property. And this doesn't do that. It doesn't show - to me it doesn't show, perhaps it does to you, but to me it doesn't indicate that that turnaround is not to Code.

COMMISSIONER SULLIVAN: I don't think - let me get some clarification here. I think the survey can only show two things. The survey is not a Code item. It can only show what's there on the ground and what is proposed to be or what is dedicated by the owner. And it shows an existing road there, which is identified, and then it shows an easement. It doesn't indicate that that's been cleared or developed. And then it shows a 38-foot easement for the width of the road. And then further on down it shows the width of the existing road, and I'm having trouble reading that. I can't tell if it's nineteen feet or eighteen or twenty. It's right down the bend, there's another word. So I can't see anything wrong with this plat depicting what is there and what easements have been -

MS. COOK: You could be right. My look at this, to me, indicated that it was showing that the twenty-foot improvement was there. I can see your look at it, that perhaps it shows that there is an existing road. My point was simply that this plat doesn't tell the County specifically that the twenty-foot turnaround with the fifty-foot radius that's required is not there. That was the point.

COMMISSIONER SULLIVAN: No. That would have to be an as-built drawing or some other drawing. But this just a plat of survey.

MS. COOK: But at that point, that turnaround should have been in place. because the Church subdivision was in 2003.

COMMISSIONER SULLIVAN: I don't know. But this is a boundary survey. So I'm not seeing that this document is in any way an error. I think it shows things that were there and things that were proposed as an easement. I understand your point that, "Gee, the County didn't require the developers to do this, they didn't enforce their own Code, therefore we should break the law too." And I'm having a little difficulty getting my arms around that particular argument.

MS. COOK: We're not asking the County to allow the breaking of the law. We're asking the County to particularly require the Fire Marshal to give some guidance as to how this road could be improved to provide the appropriate safety. And we believe, at this time, the EZ's decision should be upheld.

COMMISSIONER SULLIVAN: Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Any other questions? Okay. This is a public hearing. Mr. Collins indicated that there are people here who wanted to indicate their

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support for the appeal. If you could please stand up at this point. Anybody who supports the appeal? Okay, they're gone? Okay. Anybody for or against this particular appeal?

[Duly sworn, Carolyn Sigstedt testified as follows:]

CAROLYN SIGSTEDT: My name is Carolyn Sigstedt. I live in downtown Santa Fe. It seems to me that this was kind of a tedious example of making a problem worse. But it brings up a very important issue that probably happens a lot in counties all over the country, and particularly here in New Mexico. And that is that people promise one thing and then comply to various degrees to that promise. And we don't have the manpower to check up on them. And so when people buy land, it's less than to Code or whatever. And that, we know, happens in Santa Fe County all over the place. When that happens in Santa Fe County, in my experience, is that usually the buyer buys as, you know, "buyer beware."

So the buyer buys the property. They should research whether at that time that they buy that property it's up to scale or not. If it's not – and believe me, I bought into, at one point in my life, somewhat of an illegal subdivision. But I was aware of it. And so I bought into that, and bought into at a price that reflected that. It was a lower price. Usually, the price of a piece of property reflects in fact the condition of the road and whether they are up to County standard or not. If the roads are not up to County standard, hopefully you bought it at a reduced price.

Then what you have to do is literally work with your neighbors. It's a question of the neighbors getting together and recognizing a problem which they have, and a problem that's gone on for a long time. But there's no point in going back and trying to piece this problem together. Because that's past history. You have to start where you are and fix the problem. Which means that if one of the problems has an interest in subdividing and selling, then they meet with the neighbors that are there, and work out a way to bring this road and the turnaround up to minimal County standards. And then, in the sale of the properties that they sell, they have a very transparent price for the cost of those improvements on the road, or continued upkeep on that road, or whatever it takes. But there's a way that they can work with the County to clean this up. And in the end, it's in everybody's best interest. They end up with a healthy road, and they're selling a property that is responsible to the new owners. Thank you.

COMMISSIONER DURAN: Did you disclose that lot when you sold it? That was illegal?

CHAIRMAN CAMPOS: Commissioner Anaya?

COMMISSIONER ANAYA: Mr. Chair, this is question to staff. On the Church – the person, I guess it's Eric Church, did he divide this property up? Who divided this property?

JOE CATANACH (Review Director): Mr. Crowley was the subdivider that Mr. Church purchased from.

COMMISSIONER ANAYA: Okay. Now why didn't he improve that road the way he was supposed to? Is it something that slipped by the County and now we're in

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this mess? Or is there any way to get this road improved by Mr. Crowley?

MR. CATANACH: The Faust binder that they passed out to you with all the different exhibits indicates that there was a permit issued to Mr. Crowley to build a road. There's also a letter indicating that the County did a site inspection and that it was okay. So I can only assume that it was an oversight.

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

CHAIRMAN CAMPOS: Okay. Any other questions or comments? Okay.

Ms. Faust, you indicated you had a comment, a brief comment. Would you like to make it now?

MS. FAUST: Thank you very much. I appreciate that. I really feel like this appears to you as a very long, drawn-out thing and a bunch of neighbors' spats. But for us, it really isn't.

It really comes down to two basic issues. When we look at all the lot splits that were done and all the requirements that were made and all the laws and regulations that were in place that the County was supposed to enforce, it was obviously never done. And we show up, and now we've actually got a much smaller piece of the whole pie. We've just got a two lot split. And now we're asked to do something that's very, very different from everybody else on the road. And I realize the biggest issue to all of you is fire safety. But I'm going to tell you you should also be very concerned about fair treatment under the law. That's really important to me, more than anything. And it's very important for us to protect our rights. That's number one.

Number two, with respect to the fire safety issue. You have laws and ordinances that you can use today to solve this problem. It's the Urban Wildlands Code or act. What is it? This does apply to the Church subdivision, and it does apply to all the other subdivisions on the road that have occurred so far. Because those subdivisions are not to Code, and those are thus legal. The Fire Marshal has the right to go out and ask those people to bring this to Code.

We have been very kind. We've offered to chip in. But if we do nothing with this property as a result of our lot split being turned down or being required to do, even just to fix our part of the road, we've still have that exposure that the rest of the road's not fixed. And when I go out to a seller, and I have sold billions of dollars of real estate, I have to tell that seller that while my part of it is in compliance, the rest isn't. When you go past my property and get to Eric Church's property, it now goes down to sixteen feet. It doesn't solve the fire safety issue. So at the end result, even if I did everything I've been asked to do, I still have a fire safety issue, and I have an unmarketable piece of property. And so I'm asking you all, if it's necessary to table it, have the Fire Marshal come out, have him interpret the law properly, and then make a judgement on this. Thank you very much, and I'm sorry.

COMMISSIONER SULLIVAN: Ms. Faust? Just on the easement question, your attorney said that it would be unfair – or I think she implied it would be taking and so forth without compensation if you were made to provide a 38-foot easement. Do you

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agree that all of the rest of the properties have 38-foot easements except yours?

MS. FAUST: I really don't know.

COMMISSIONER SULLIVAN: I mean, I'm looking at the plat, and it looks at that way.

MS. FAUST: I think, from looking at the plat, that they do have a 38-foot wide easement. Our situation through our property, if you look at the road turn agreement and the plat that we were given, the boundary survey. For some reason, we only have a twenty-foot easement.

COMMISSIONER SULLIVAN: It says twenty-foot road easement. So it would require a nine-foot addition on each side of your current easement. Now, your total tract is 5.023 acres. And I'm wondering if you're worried that if you gave that easement or if you dedicated that easement, that it would then put you under five acres so you couldn't divide it into two tracts. My understanding is that that's not true, if you're worried about that.

MS. FAUST: That's a very good point.

COMMISSIONER SULLIVAN: Because the road can be included as a part of that.

MS. FAUST: Yes.

COMMISSIONER SULLIVAN: So are you in agreement that even if you widened to 38 feet, you still would be able to divide into two lots?

MS. FAUST: I'm assuming we can, but I didn't really check that.

COMMISSIONER SULLIVAN: Well, I'm not the expert either. Maybe Joe can - is that true, Mr. Catanach?

MR. CATANACH: Mr. Chair, Commissioner Sullivan, first of all, I would want to clarify the first point you started on, in that whether Ms. Faust is in agreement to a 38-foot easement, and the response I believe was "No" within her property. But in fact the plat that she submitted show they propose 38-foot easement. So I just wanted to clarify that point. I didn't think the width of the easement was an issue.

COMMISSIONER SULLIVAN: Her attorney just brought it up.

MR. CATANACH: Right. But the plat clearly shows the 38-foot easement. I thought it was the widening of the road within the easement that was the issue.

MS. FAUST: Can I -

COMMISSIONER SULLIVAN: The plat that I see that was pointed out -

MS. FAUST: Can I clarify what the issue is? I'm sorry. The issue is the economic - I think it goes to -***

COMMISSIONER SULLIVAN: We're just talking about the easement. I understand the economics.

MS. FAUST: The economics. That's it.

COMMISSIONER SULLIVAN: My question was, Mr. Catanach, that if she widens the easement - it's only twenty feet now, is my understanding. And if she widened it to 38 feet, it wouldn't affect their ability to divide it into two two and a half-

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acre lots, would it?

MR. CATANACH: To widen the easement from twenty to 38 feet?

COMMISSIONER SULLIVAN: Right. That wouldn't affect their ability to split the lot in half? Because it's 5.023 acres.

MR. CATANACH: Oh, yeah, no, the easement is part of the size of the property. That does not affect it.

COMMISSIONER SULLIVAN: Okay. So that answers that, according to our expert. So you can still divide the lot. So I'm seeing first of all that it appears from the plats that everyone else has a 38-foot easement, and so you should have a 38-foot easement. So that doesn't cost you anything, except the survey cost to file the plat. Then the question is widening it. And you indicated that you don't know how much that would cost, but you feel that that would be uneconomical to widen it to twenty feet. Existing driving surfaces seem to be eighteen - on other lots, other than yours - seem to be eighteen feet. Or some portion I guess one is fourteen feet. It seems to vary there.

MS. FAUST: No, if you look at the map, we actually had our surveyor out, and again, without curves and gutters, it's very hard to tell what the size of the road is. But the widest road is through our property and the Crowley subdivision. It goes up to sixteen feet. And if you head into our property through the first subdivision, which is the Blum-Pearl property, it's fourteen feet. If you go on beyond the Crowley Subdivision, it goes down to ten to twelve feet. And it goes through the Collins property, it's ten to twelve feet, all the way through the end of the roadway, that former turnaround was supposed to be. And there's still things that have encroached on the turnaround, and it's also ten to twelve feet in width.

COMMISSIONER SULLIVAN: Okay. So your biggest concern is going wider than sixteen feet or the existing fourteen feet. I mean, it seems like the \$4,500 for the turnaround, it really seems that that can be worked out somehow, whether it's a tenth or whether it's a half. I mean, for Pete sake's, you've spent that much on attorney's fees, on your attorney sitting here tonight. So it would seem like that's a minor issue. And it would seem like the easement is a minor issue. So we're really left with just what's a reasonable width that would be your responsibility to widen that road, let's say eighteen feet, which would only be one foot more on each side, if you say it's sixteen feet wide.

MS. FAUST: I'm sorry, what we're left with is two things. What's fair treatment under the law in terms of who's responsible for widening the road -

COMMISSIONER SULLIVAN: Okay, I -

MS. FAUST: And also, if we only widen it to one section on the road, does it solve the fire safety issue throughout the road?

COMMISSIONER SULLIVAN: It certainly doesn't solve all that. But as your attorney so eloquently indicated this evening, that's not your responsibility, right? Your responsibility is your parcel.

MS. FAUST: I just have to disclose it to a buyer.

COMMISSIONER SULLIVAN: Well, sure. And I would do that. And I

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think that any buyer would look at the site and have to do their own due diligence to understand that. But I think what we're getting at here is what's a reasonable set of conditions to enable you to split the lot. And here's the way I see it. I would say you need to provide a 38-foot easement, just similar to all the others. You need to contribute a reasonable share to the turnaround. And fifty percent doesn't sound too bad. That would be \$2,250. If the Commission saw some other number that was a third or something -

COMMISSIONER DURAN: I think you're doing fine.

COMMISSIONER SULLIVAN: That doesn't sound too bad. And then I think for the time-being, given the conditions that exist there, if twenty feet is out of line, then something perhaps around eighteen feet would be workable, and close to getting to what we need for -

COMMISSIONER DURAN: That's the driving surface.

COMMISSIONER SULLIVAN: That's the driving surface.

COMMISSIONER DURAN: The easement's still 38.

COMMISSIONER SULLIVAN: The easement's still 38.

COMMISSIONER DURAN: Yes, I like that. I'll second it.

COMMISSIONER SULLIVAN: I would move approval. Or would this be denial? We have an appeal?

MR. ROSS: We have an appeal.

CHAIRMAN CAMPOS: The question is do we sustain it or overrule it, Attorney Ross? Give us some advice, in light of Commissioner Sullivan's proposed motion.

MR. ROSS: You know, Mr. Chair, Commissioners, maybe the thing to do would be to just treat this as if it were before you de novo. Because there were grounds listed for the appeal. It's going to be very confusing if we try and address the appeal per se. Maybe just address it as if it were a new application before you. If you want to say, "Motion to approve the application," and then specify the conditions that would be applicable, that would be less confusing than trying -

COMMISSIONER SULLIVAN: So we don't need to take any action one way or another on the appeal?

MR. ROSS: Well, you're going to have to reverse the EZC if you don't accept their recommendation entirely.

COMMISSIONER SULLIVAN: Okay. And then before I make that motion, would the applicant agree with those conditions that I just outlined?

MS. FAUST: No.

COMMISSIONER SULLIVAN: Well, see, now we didn't even need to go through that. Thank you, Mr. Chair.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I make a motion to uphold the appeal.

COMMISSIONER SULLIVAN: Second.

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CHAIRMAN CAMPOS: To uphold the appeal.

COMMISSIONER DURAN: To deny the -

COMMISSIONER SULLIVAN: To overturn the EZC.

COMMISSIONER DURAN: Right.

CHAIRMAN CAMPOS: Say it again.

COMMISSIONER DURAN: The case before us is an appeal of the CDRC's approval.

CHAIRMAN CAMPOS: The EZC case.

COMMISSIONER DURAN: Right? I make the motion to - and the appeal is to overturn the CDRC's -

CHAIRMAN CAMPOS: EZC's.

COMMISSIONER DURAN: The EZC's approval of the lot split. As a condition. So my motion is to uphold the appeal, thus leaving the Faustus' property as a five-acre piece.

COMMISSIONER SULLIVAN: And I seconded the motion.

CHAIRMAN CAMPOS: Attorney Ross, does that make sense?

MR. ROSS: Mr. Chair, Commissioner Duran, it seems like you're saying that you're denying the Faustus the ability to subdivide the property at all.

COMMISSIONER SULLIVAN: No, they can go back to the EZC.

MR. ROSS: Is that what you're saying?

COMMISSIONER DURAN: Exactly. They can go back and -

COMMISSIONER SULLIVAN: They can re-apply to the EZC.

COMMISSIONER DURAN: And agree to other conditions. But under the conditions that are being appealed tonight, we can't seem to find a reasonable solution to the problem. So mine is to uphold the Collins' appeal.

CHAIRMAN CAMPOS: To grant the appeal? Would that be right? Grant the appeal?

MR. ROSS: I think the appeal was - and this where it gets very confusing. I think what we need to do is specify exactly what we're doing here. If you're saying that you're going to reverse the decision of the EZC, you're going to grant the appeal, I suppose in part, but you're not going to grant the release that they want. Which is different than what you're saying. You're saying, basically, No subdivision here. And that's probably -

COMMISSIONER DURAN: Well, under these conditions.

MR. ROSS: Under these conditions, under the posture of the case as you find it.

COMMISSIONER DURAN: Right. And then because the applicant, not the appellant but the applicant is refusing what we consider to be a reasonable solution to the issue.

MR. ROSS: Correct.

COMMISSIONER DURAN: So they can go back and apply under a

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different set of circumstances.

MR. ROSS: Right. You've got a lot of discretion here. It's before you. You can fashion whatever solution you think is reasonable.

COMMISSIONER SULLIVAN: Mr. Chair, I think we've been fashioning for an hour and half here, and we need to move along.

COMMISSIONER DURAN: So that's my motion.

CHAIRMAN CAMPOS: Does it make sense, though?

COMMISSIONER DURAN: Well, if it doesn't -

COMMISSIONER SULLIVAN: I seconded. It makes sense to me.

COMMISSIONER DURAN: Let the attorneys work it out. I think it makes sense.

CHAIRMAN CAMPOS: I don't.

COMMISSIONER DURAN: Well, how would you clarify that? I'm really open for suggestions.

CHAIRMAN CAMPOS: Well, we've asked for attorney input and we've made some suggestions.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: I think we were trying to be reasonable with the applicants, but they didn't want to cooperate. So I agree with Commissioner Duran and Commissioner Sullivan.

COMMISSIONER DURAN: [inaudible] on the motion.

CHAIRMAN CAMPOS: Could you suggest some language that would achieve the objective that Commissioner Duran wants, to reach a clear and precise -

MR. ROSS: You know, one, I'm not sure exactly where you think we should go from here. But one suggestion I would have is that you reverse the decision of the EZC in total and remand it to the EZC to fashion an appropriate solution. I mean, just let them hash it out again at that level.

COMMISSIONER DURAN: If they chose to pursue it.

MR. ROSS: Yes.

COMMISSIONER DURAN: I'd do it.

CHAIRMAN CAMPOS: Would you make that motion?

COMMISSIONER DURAN: I'll make that motion as a substitute.

CHAIRMAN CAMPOS: Sir.

MR. FAUST: May I say something?

CHAIRMAN CAMPOS: Just state your name.

MR. FAUST: Bill Faust. I'll tell the truth. Why don't you guys just make a decision, and the County go fix the problem that you created?

CHAIRMAN CAMPOS: Why don't you sit down.

MR. FAUST: Get the County road crew to go out there and -

CHAIRMAN CAMPOS: You're out of order, sit down right now. We had a

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motion.

The motion to uphold the appeal in EZ Case #A 04-4201 passed by unanimous [5-0] voice vote.

- XII.A. 5. **CDRC CASE #A/V 04-5400 - ROMERO VARIANCE.** Floyd Romero is appealing the CDRC's decision to deny the placement of a second dwelling on 0.35 acres, which would result in a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Cod. The property is located at 05 Don Francisco, Santa Cruz, NM, within Section 4, Township 20 North, Range 9 East (Commission District 1)

DOMINIC GONZALES: Thank you, Mr. Chair. My name is Dominic Gonzales, development review specialist for Santa Fe County. Floyd Romero, applicant, is appealing the CDRC's decision to deny the placement of a second dwelling on 0.35 acres, which would result in a variance of Article III, Section 10, lot size requirements, of the Land Development Code. The property is located at 05 Don Francisco, Santa Cruz, NM, which is section 5, Township 20 North, Range 9 East.

On August 19th, 2004, the CDRC met and acted on this case. The decision of the CDRC was to uphold the Land Use Administrator's decision to deny the placement of a second home on 0.35 acres. Staff recommends that this request for a variance be denied. The intent of the code is to set minimum lot size and density in this area at one residential unit per 0.75 acres.

CHAIRMAN CAMPOS: Okay. Any questions. Okay. Is the applicant here? Please state your name and address and we'll swear you in.

[Duly sworn, Floyd Romero testified as follows:]

FLOYD ROMERO: My name is Floyd Romero. I live at post office box 559, Santa Cruz.

CHAIRMAN CAMPOS: Okay. You're asking for a variance, right?

MR. ROMERO: Mr. Chair, yes.

CHAIRMAN CAMPOS: Just please address that criteria.

MR. ROMERO: With all due respect, I don't have a lot of paperwork like the previous. I do have a couple of issues that I'd like to address. Number one, this particular property was deeded to my wife and I and my brother-in-law back in 1972. I'm going to say prior to '81 - let me back up a little bit.

In 1972, a month after the property was deeded to my wife and I, we placed one mobile home on the top portion of the property. About eight years later, my mother-in-law set up a mobile home in the property. That was a 1972, a 12 by 52 mobile home. During her life span, which ended in November of '86, prior to her passing away, she started the

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ball rolling to include a second home on that one-third acre that she kept. After she passed away in 1986, I, not knowing the regulations as far as the County requiring permits – for my home, I didn't get a permit, and for my mother-in-law's home we didn't get a permit.

So in 1987, the only thing that I was told that I needed was a septic permit, which I got, a second septic permit to put that second mobile home on the property. That was approved, and you do have a copy of that approval. That was based on – application on the permit said it was for five bedrooms, two units.

CHAIRMAN CAMPOS: What does that have to do with your variance, sir?

MR. ROMERO: The units were in place, or had in been in place, since the second unit in 1987. I can understand that there was a change in the requirements, that I was supposed to get a permit back in '87. I didn't do the permit. Because I failed to do the permit, I am being asked to remove that unit in its entirety. Then I'm asking, Mr. Chair, that you allow the variance, from my ignorance, if you will. I did not get or know that there was a permit required in 1987. That's the totality. I do have –

CHAIRMAN CAMPOS: Okay, I think we understand your position. Are there any questions of Mr. Romero?

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Mr. Romero, who lives in the mobile homes?

MR. ROMERO: I found two single persons. It's a low-income housing, they're rental units. And one is through the Española low-income housing, and the other one is another single individual who rents the other unit.

COMMISSIONER ANAYA: So you have three homes on there now?

MR. ROMERO: Yes. My own home. My home is not in question. That is on the one-third acre that was deeded over to my wife and I in 1972.

COMMISSIONER ANAYA: On that 0.33, you have three mobile homes on there?

MR. ROMERO: There are three mobile homes, and there have been three mobile homes since '87. Since I was told that I was in non-compliance, one of the mobile homes I've agreed to remove, one of the mobile homes in its entirety. It's disconnected as far as utilities is concerned right now. The other two units, I'm basically asking for a variance to keep that one of them.

CHAIRMAN CAMPOS: Okay. Thank you. Okay, this is a public hearing. Is there anybody out there that wants to speak for or against this application? Okay, no one having come forward, the public hearing is closed. Is there a motion? We have a CDRC decision denying the applicant the request to place a second dwelling on 0.35 acres, and also the Land Use Administrator.

COMMISSIONER ANAYA: Mr. Romero, have those septic systems been permitted and approved by the Environment Department?

MR. ROMERO: Yes. In your packet, you should have a letter that I got from the Environmental Protection Agency. And it says– it's a short letter, it's addressed

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to myself: "Per your inquiry in regards to the allowable flow at the property, 327 SR 76 in Cuarteles, New Mexico; it has been determined that you are allowed up to 375 gallons per day on 0.35 acres because of the recorded date of the lot mentioned above. Two single bedroom dwelling units have a total of 300 gallons per day. This will meet the New Mexico Liquid Waste Disposal Regulations. If you have any questions, please call Ms. Melanie Delgado."

COMMISSIONER ANAYA: How many bedrooms are in each one of those?

MR. ROMERO: There's one bedroom for each one of those units.

COMMISSIONER ANAYA: So you have a two bedroom -

MR. ROMERO: Two single bedroom units, yes sir. And to add to the appeal, I have copies of some lease agreements. For example, the City of Española or the Española low-income housing, where it states that only one individual is allowed in that unit. I have some rental agreements dating back to 1994 when I started the rental agreements, which specifically states, to a Dr. Leslie Hayes, for example, that there was only one person allowed in that unit.

CHAIRMAN CAMPOS: Okay. Commissioner Anaya, do you have any more questions?

COMMISSIONER ANAYA: Yes. But you have - no, I don't.

CHAIRMAN CAMPOS: Okay. Is there a motion?

COMMISSIONER MONTOYA: Mr. Romero, regarding the map, that first residence, I guess of '76, is that your residence?

MR. ROMERO: Yes, sir.

COMMISSIONER MONTOYA: And then which of the -

MR. ROMERO: The first two mobile homes on that map are the ones that

COMMISSIONER MONTOYA: Are the one-bedroom?

MR. ROMERO: Right, the single bedroom.

COMMISSIONER MONTOYA: And the third one in the back is the one you've removed?

MR. ROMERO: Yes, that's the one that I would be removing. I have not removed it, but have placed a "For Sale" sign and disconnecting, that type of thing, sir.

COMMISSIONER MONTOYA: And then whose is that last residence?

MR. ROMERO: That belongs to my daughter. That was a permit that was later approved based on the lot split.

COMMISSIONER MONTOYA: So your daughter lives in that residence?

MR. ROMERO: Yes, sir. It's another one.

COMMISSIONER MONTOYA: Thank you.

CHAIRMAN CAMPOS: Okay, is there a motion? Okay.

COMMISSIONER DURAN: Move for approval.

CHAIRMAN CAMPOS: Move for approval means what?

COMMISSIONER DURAN: Move for approval with staff conditions?

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CDRC. CHAIRMAN CAMPOS: Staff recommended against and in favor of the

COMMISSIONER DURAN: It's been in existence forever.
CHAIRMAN CAMPOS: Okay, so you're saying you want to allow the
appeal?

COMMISSIONER DURAN: Yes.
CHAIRMAN CAMPOS: Is there a second?
COMMISSIONER MONTOYA: Second.
CHAIRMAN CAMPOS: Discussion?
COMMISSIONER MONTOYA: Mr. Chair, I believe that that one mobile
home that has been removed will alleviate part of the concern, and will actually meet the
requirements of the Environment Department.

CHAIRMAN CAMPOS: Is that the only issue?
COMMISSIONER MONTOYA: That seems to be the main one.
CHAIRMAN CAMPOS: What about the density issue?
COMMISSIONER DURAN: Life is different in Santa Cruz. I don't think
that this is so untypical.

CHAIRMAN CAMPOS: Staff, your position is that this is a density issue,
as I understand it?

MR. CATANACH: Mr. Chair, it is a density issue, but it's also an
environmental issue. It would be hard to enforce in the long run, that we're only going to
get two single-bedroom mobile homes on this property. There could be two double-wides
moved onto this property next month.

CHAIRMAN CAMPOS: Right. I think we should sustain the CDRC and the
Land Use Administrator. They're making the right decision based on the law. It's pretty
clear. So there's a motion and a second to overturn.

COMMISSIONER DURAN: For discussion, I just want - I might change
my mind. What is the - there's two mobile homes on there right now - oh, there's three.
They're going to take one off, right?

CHAIRMAN CAMPOS: There's three right now in the residence.

MR. ROMERO: There is a total of three quarters of an acre. My residence

-

CHAIRMAN CAMPOS: Sir, motion has the floor.

COMMISSIONER DURAN: Can I just yield the floor to hear what he has
to say?

CHAIRMAN CAMPOS: If you have a question. Do you have a question?

COMMISSIONER DURAN: Yes, I do have a question. What did you say?

MR. ROMERO: My residence is in a separate piece of property than the
one in question. So that is on a one-third acre that was deeded in 1972. And that apparently
meets all the requirements, even though I didn't get a permit.

COMMISSIONER DURAN: And how long has it been like that? Since

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1980.

MR. ROMERO: The first mobile home was in there prior to '81. The second mobile home was added in 1986, and it's been there since 1986. There is a third that has been disconnected since the first of the year. And that was placed in '96.

COMMISSIONER DURAN: Okay. Joe, when they replace one mobile home with a new one, don't they have to get a permit?

MR. CATANACH: Commissioner Duran, they do have to get a permit, but it's inconsistent. Sometimes the mobile home dealers will move a mobile home onto a property without permits. Once the electrical meter is there, pretty much –

COMMISSIONER DURAN: It's hard to control.

MR. CATANACH: Right. And like I say, it's inconsistent as far as the mobile home dealers requiring a permit to be issued before the mobile home is moved from the lot to the property.

COMMISSIONER DURAN: Well, nobody would make a motion. I made a motion, and I'm going to stick with it.

The motion to approve CDRC Case #A/V 5400 passed by majority voice vote with Commissioners Sullivan and Campos voting against. [Reconsidered - See below.]

MR. CATANACH: I'm sorry, Mr. Chair, I –

COMMISSIONER DURAN: It was approved with staff conditions.

CHAIRMAN CAMPOS: Is that right? Were there staff conditions?

MR. CATANACH: So it was granted permanence? Permanent placement or two year? The staff conditions –

COMMISSIONER DURAN: Two years.

CHAIRMAN CAMPOS: Okay. Let's clear up the record. Is that a motion?

COMMISSIONER DURAN: Staff recommendation was for two years?

MR. CATANACH: As a matter of procedure, if the BCC wants to grant two years, they would grant the appeal but deny the variance for permanent placement. If the BCC is – consideration is for a two-year permit. And that's what the listed staff conditions are.

CHAIRMAN CAMPOS: Was that your motion?

COMMISSIONER DURAN: Mine's with the variance.

CHAIRMAN CAMPOS: So you want to make it permanent. Is that your intent, Commissioner Montoya? Or is it the two-year?

COMMISSIONER MONTOYA: No, it's the two year following staff conditions.

CHAIRMAN CAMPOS: Okay, so he was going for staff conditions. We've got a problem here.

COMMISSIONER DURAN: We don't have a problem. I'll concede to a two-year. That would give you some control over ensuring that it remains – I'd like to say

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that the two-year requirement is only there to make sure that the conditions that exist today are in existence at the time that they have to apply for the extension.

CHAIRMAN CAMPOS: What do you mean?

COMMISSIONER DURAN: Well, if he comes in and he still has the same set of circumstances -

CHAIRMAN CAMPOS: In two years he's going to have remove this, right, if you give him a two-year permit?

MR. CATANACH: The condition is set up to allow for extensions.

COMMISSIONER DURAN: So every time he comes in -

CHAIRMAN CAMPOS: We have to rescind the prior action, is that right, Attorney Ross, and make a new motion to keep it clean?

MR. ROSS: Excuse me, Mr. Chair?

CHAIRMAN CAMPOS: A motion was made to permit permanent placement. But there's confusion here between the movant and the seconder. The seconder said it was staff conditions, which was a two-year deal. And we voted on it.

MR. ROSS: Okay. Then someone in the majority should probably move to reconsider and let's get it clarified.

COMMISSIONER DURAN: Move to reconsider.

CHAIRMAN CAMPOS: Is there a second?

COMMISSIONER MONTROYA: Second.

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

CHAIRMAN CAMPOS: Okay. Now we can reconsider, right? Do we have to make a new motion?

MR. ROSS: You have to have a new motion.

CHAIRMAN CAMPOS: Okay. Let's make a new motion.

COMMISSIONER DURAN: Okay. My new motion is to approve or -

MR. CATANACH: To grant the appeal -

COMMISSIONER DURAN: To grant the appeal.

MR. CATANACH: For a two-year permit.

COMMISSIONER DURAN: For a two-year permit.

MR. CATANACH: And deny the variance for permanent placement.

COMMISSIONER DURAN: Correct.

COMMISSIONER MONTROYA: Second.

COMMISSIONER SULLIVAN: Together with staff's recommendations.

CHAIRMAN CAMPOS: Okay. Is that clear? Movant accepts it, seconder accepts it. Okay.

The motion to approve CDRC Case #A/V 04-5400 for a two-year permit as indicated in staff conditions passed by unanimous [5-0] voice vote.

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CHAIRMAN CAMPOS: Now, did we table the Santa Fe County Fire Station development?

COMMISSIONER ANAYA: Yes.

CHAIRMAN CAMPOS: Okay.

- XII. A. 8. **EZ CASE #A 04-4581 – VISTA REDONDA APPEAL.** Sommer, Udall, Hardwick, Ahern and Hyatt, L.L.P., Attorneys-at-Law, Agent for Vista Redonda Homeowners Association, Appealing the Extraterritorial Zoning Commission's Decision to Grant Preliminary Plat/Development Plan Approval of the Tesuque Villas Subdivision, a Residential Subdivision of Ten (10) Lots on 30.134 Acres. The Property is Located 3.2 Miles North East of Tesuque Village on State Road 592, within Section 8, Township 18 North, Range 10 East (Commission District 1)
Exhibit 4: Two letters from the public opposing the development
Exhibit 5: Five petitions opposing development -25 signatures
Exhibit 6: Dr. Wust's memo dated 10/14/04
Exhibit 7: John Rubel's comments representing Vista Redonda Water & Property Owners' Association

VICENTE ARCHULETA (Development Review Specialist): Thank you, Mr. Chair. Sommer, Udall, Hardwick, Ahern and Hyatt, L.L.P., Attorneys-at-Law, agent for Vista Redonda Homeowners Association, appellant, are appealing the Extraterritorial Zoning Commission's decision to grant preliminary plat/development plan approval of the Tesuque Villas Subdivision, a residential subdivision of ten lots on 30.134 acres. On October 14th, 2004, the EZC met and acted on this case. The decision of the EZC was to grant preliminary plat development plan approval for a ten-lot subdivision, subject to staff's conditions.

On October 28th, 2004, the appellant filed an appeal of the Extraterritorial Zoning Commission's decision to grant preliminary approval for the Tesuque Villa Subdivision. The Vista Redonda subdivision is located adjacent to Tesuque Villa Subdivision. The applicant states the proposed development of the property will have considerable impact on the Vista Redonda Subdivision and its residents. We are therefore appealing the decision taken by the Commissioners at the October 14th, 2004 hearing based upon the following: jurisdiction, fire safety, water supply, traffic, platted easements, liquid and solid waste systems, drain management, storm water retention, landscaping, signage and lighting, cul-de-sac, road lane, subdivision disclosure statement, park dedication.

Recommendation: staff recommended preliminary plat and development plan approval to the EZC and considered the submittals to be adequate at a preliminary level,

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subject to the conditions imposed by the EZC. The preliminary reviews regarding water, liquid waste disposal, traffic, roads, access, fire protection do not identify any major development issues that would indicate that the property is not suitable for the proposed subdivision. The applicant must address and comply with the conditions when they submit final plat and development plan to the EZC and prior to consideration by the BCC. Staff is not in agreement with the appeal, and maintains that the preliminary approval granted by the EZC is in conformance with the applicable regulations.

CHAIRMAN CAMPOS: Okay. Any questions for Mr. Archuleta?

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Vicente, some time ago I received a letter from Mr. Sommer claiming certain things weren't followed properly. Did you ever get a copy of that?

MR. ARCHULETA: Mr. Chair, Commissioner Duran, I did. That's the letter of appeal.

COMMISSIONER DURAN: Okay. And so staff claims that those issues brought up in Mr. Sommer's letter have no basis?

MR. ARCHULETA: Mr. Chair, Commissioner Duran, those questions can be addressed at the final development stage.

COMMISSIONER DURAN: At final. And typically aren't addressed at master plan?

MR. ARCHULETA: This is for master plan. This went for preliminary. They were asking for preliminary and final, but we recommended just preliminary.

COMMISSIONER DURAN: Just preliminary. So there's plenty of time to deal with the concerns found in Mr. Sommer's letter?

MR. ARCHULETA: Mr. Chair, Commissioner Duran, that's correct.

COMMISSIONER DURAN: Okay. Because it sounded like you guys didn't do your job. Okay. Thank you.

CHAIRMAN CAMPOS: Okay, any other questions of Mr. Archuleta?

Okay, we have an appellant here. Who's going to represent? Please state your name.

KARL SOMMER: Mr. Chair, my name is Karl Sommer. My mailing address is Post Office Box 1984.

CHAIRMAN CAMPOS: How long do you think it's going to take?

MR. SOMMER: My presentation is going to be about five minutes.

CHAIRMAN CAMPOS: Okay. Could you address the question of why these issues cannot be resolved at a later point? You have about five minutes.

MR. SOMMER: Thank you, sir. What I'd like to do is tell you why this case is here, first of all, and how it got here. Because I think that Commissioner Duran's question is right to that point. Why is this case here? I'll explain exactly why. And it points out a problem in the process. And that's what my clients are concerned about. I represent the Vista Redonda Homeowner's Association. That's not the formal name, but I'll refer to

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them that way.

The other thing I'd like to point to you all is that this case is about a little bit too much too soon. Not that the development shouldn't be approved eventually. But it should be forced to comply with everything that all other property owners and developers comply with. That's what my clients are concerned about. Finally, the County has a policy, and enforces that policy regularly, about when there is a violation on a piece of property for unpermitted development, that applications aren't received on that property until that's cleared up. Time and time again I represent homeowners in front of the magistrate court who've been cited. And they're forced to come and clear up the unpermitted development before their application is [inaudible]. That's what I'd like to address, and I'll make it quick.

This case is here because the applicant filed an application for a preliminary and a final subdivision plat. And it went before the EZC. Now, that application asks for both. Whether or not they get it, the application asks for both. The case went before the EZC. Staff said, Well, we don't think this should get final. They should get preliminary. The EZC made a recommendation that they only grant preliminary. However, when we got into the case, the case was scheduled before for this meeting on that application. Now, staff wasn't saying it should get final development plan approval here. But it was coming before you on a final and a request for preliminary and final. Now, why is that a concern? Because my clients then would not have an opportunity that normally goes through the process, which is you get in front of the EZC for preliminary, you come back and do final at the EZC, and then you come to the Board with the whole package.

This case moved forward in an odd way. And it looked like this case was moving here - and I'm not blaming Vicente. I'm just saying it looked like it was scheduled, and it was scheduled before you, on that application. And there was the possibility that this board might consider both, despite the recommendation of the EZC. You all are not bound by that recommendation. That's why this case is here. It's now clear that this is being treated only as a preliminary application, even by the developer now.

So there is time to address some of the issues. But what are the issues? One of the things that is first and foremost in this case, there is a variance that is needed for this application that hasn't been applied for. Now, everybody in the County knows that in order to get a variance, you have to notice it up. You give notice to people, you explain why there's a variance needed. What is the variance that's required? It's for a cul-de-sac longer than 500 feet. And that has to do with access. It has to do with fire protection.

The other thing that is in this case that isn't before you and hasn't been done is there is no approved fire protection plan. Now, this subdivision is going to require a substantial sized tank. Probably 30,000 gallons or more. Where is that tank going to go? How is it going to be built? How is it going to be maintained? That proposal hasn't been submitted. That's why my clients are concerned. That's why this case is in front of you.

Now, I'm sure that the developer and property owner can address these issues. But every property owner who lives out there has the right to see what's going on before it

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happens. One last thing that I'd point out to you that is no longer an issue: there was no geo-hydro before the Extraterritorial Zoning Commission that showed adequate water. The night of the hearing, a geo-hydro study was given to the Commission. My clients didn't see it. We saw it afterwards and we've reviewed it, and things look fairly in order. We're still reviewing it. But that is a clear requirement at preliminary. That's why this case is in front of you. It's too much too fast.

The people that you'll hear from tonight are what you hear from typically, concerned citizens who have a development coming into their neighborhood. They're the ones that are going to have to live with it. They want to see how many houses. They want to make sure there's water. They want to make sure there's access. They want to make sure there's fire. They want to make sure all these are taken care of as the case moves forward. And you'll hear those specific concerns. Some of them are of a legal nature and some of them are just an aesthetic nature. But they deserve a place to be heard, not rushed through the process. And that's the big problem with this case.

I came before you a year ago on a preliminary final subdivision plat, and every one of the same issues was in front of you: a water tank, a variance, and all of those. We didn't have one word of opposition, because every one of those issues was addressed in writing in an agreement with the entire neighborhood. The problem with this case is they haven't been addressed. The neighbors are concerned. And they have valid concerns. The Association will address those specifically.

But one last thing I'd like to address is this County has a policy that if you do development without a permit, you can't submit an application on your property until that unpermitted development is cleared up, what's been going on on the property. I've been the recipient - my clients have had to deal with that policy. They won't accept an application. In this case, I understand that roads have been bladed, rough-graded, and utilities have been installed for a subdivision whose application wasn't even filed yet. Now, I haven't been out there. I can't tell you it's there. But you'll hear from people under oath that it is there. I submit to you that you ought to ask the developer. Have him tell you whether or not these things have occurred. And if they did occur, make him go through the process that all my clients go through to clear that up. That's plain and simply what we're asking here tonight. Treat this development and treat these neighbors' concerns in the same fashion that every other development gets treated.

You'll hear tonight from many people who live in the area, as I said. At the end, Mr. Chris Graeser, who is an attorney that works with me, will address any specific, technical, legal issues that are raised by the developer, if you have any questions, or if they deserve some remark on our part. Thank you.

CHAIRMAN CAMPOS: Mr. Sommer, how much time do you think your presentation's going to take?

MR. SOMMER: I don't have any idea. But I think they have tried not to be repetitive, and they have tried to cut their presentations down. As they're hearing me now, I'm sure that they will keep that in mind as they come in front of you all.

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CHAIRMAN CAMPOS: Okay. All those who want to speak, please come forward now.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Just a question for Mr. Sommer before the public testimony. Mr. Sommer, one of the issues brought up in the CDRC hearing had to do with an access to the Sanchez property. Commissioner Gonzales said he did not feel comfortable moving the project forward before the Sanchez access is settled. He would like a condition requiring an access or an agreement, which I don't see was done. Are your clients concerned about the Sanchez access, or is that not a concern of yours?

MR. SOMMER: I think the entire issue of access to the property, because it requires a variance, is of concern to us. I'll pull the minutes and see exactly what the reference is right there. It isn't a specific concern, but it is the access to the property as an overall concern.

COMMISSIONER SULLIVAN: The approval from the CDRC?

MR. SOMMER: I think this is from the EZC.

COMMISSIONER SULLIVAN: Excuse me. The EZC said that they would work with the property owners. And so obviously there wasn't any condition for an access, there was just some direction to work with them. And I guess my question, and we can ask the applicant about that when they come up, but is that part of your concern as an appellant here? Or is that not an issue that's on the table?

MR. SOMMER: I think it is a concern to the neighborhood. It's not the first and foremost concern we have. And I believe you're referring to the emergency access?

COMMISSIONER SULLIVAN: I don't know. Apparently, there's a Mr. Sanchez who had his attorney here who said his land would be landlocked if he didn't have an access. And there's no agreement for an access.

MR. SOMMER: Oh, I see what you're talking about.

COMMISSIONER SULLIVAN: I didn't know if that was a point of your –

MR. SOMMER: I don't represent Mr. Sanchez. And that is not a concern specifically.

COMMISSIONER SULLIVAN: So that's not part of your issues, that's a separate issue?

MR. SOMMER: No.

COMMISSIONER SULLIVAN: Okay, so we'll drop that at this point, discuss that later. Thank you.

MR. SOMMER: Thank you.

[Duly sworn, John Rubel testified as follows:]

JOHN RUBEL: My name is John Rubel. Mr. Chair, may I hand out these documents to you?

Mr. Chair and Commissioners, my name is John Rubel. I'm representing not only myself, but also the Vista Redonda Homeowner's Association. The correct name is at the

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top of the sheet that you're looking at here. And not only am I here, but is the president of our association, Chris Van Schayk and several other board members and several other neighbors and friends from this area. We're deeply concerned about this proposed development of the Tesuque Villa Subdivision.

If you will turn to the very end of this pile of paper that I just gave you, there are two maps there. And I'm just showing you this one here, the second from the end, shows where Vista Redonda is located. It's labeled on the map. It shows this little cross-hatched area. That's the subdivision area, more or less, under consideration. This is not an exact map, obviously. And Los Caminitos, another development which is a couple of miles away, is shown there also. You'll see the village of Rio en Medio and the village of Chupadero, both traditional historic villages which are just down the road from all of these developments.

The point I want to make here is that for 25 years, there has not been an application for a subdivision in this area. 25 years ago, Los Caminitos was approved as a subdivision. 35 years ago, Vista Redonda was established as a subdivision. Vista Redonda, by its indentures, is limited to five acres per residence. The total density of the area is more like six acres per residence. And in Los Caminitos it's much more than that, probably in the order of fourteen. So for a generation, 35 years, during which half the population of the United States has been born, there has been no change in the rural character of subdivisions in this area. It's this subdivision which directly adjoins Vista Redonda, and is separated only by an invisible line in the ground. If it is allowed to develop at double the density or approximately double the density of Vista Redonda, it will establish a dangerous and probably fatal example that will catch on throughout this entire area.

I call your attention to the fact that Highway 285 is now a freeway. It's almost completed. It's reducing the time it takes to get to Santa Fe or to get to Tesuque from Santa Fe. It's completely eliminated the danger that existed before. Developers will flock to this area if it turns out that they can make non-rural type, high-density developments in this area.

I call your attention on page two to the extraterritorial subdivision regulations that bear on these considerations. One is that there should be harmonious development. Another is it shall be orderly. Another is that it shall benefit the community's residents, and finally, ensure the efficient use of regional water resources. Now, as presently configured, the Tesuque Villa subdivision does not meet any of these requirements. It is not harmonious with the other subdivisions and villages in the area. It is not an orderly development in the sense mean by the regulations. And it certainly does not benefit the residents of adjacent Vista Redonda. If you stand anywhere in Vista Redonda where you can see this proposed development, you can't tell whether it's the development or part of Vista Redonda. If it has double the density, it obviously impairs the property value of Vista Redonda very considerably.

In short, it turns out, given these regulations, that the Board of County Commissioners is not only authorized to imposed appropriate limits on subdivisions, it's

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required to reflect factors such as the ones that I've just mentioned. And we call on the Commission to do so.

For a very brief history, turn to page three. We've known Mr. McCrea for many years. He owned property in Vista Redonda for a number of years as well. He contacted us a long time ago, well over a year ago, telling us of his intention to acquire this thirty acres of land, and wondering if it might be possible at some point to join our water association and have water supplied to it. We talked about that and pointed out that if he could subdivide it with only six acres, namely an average of six lots, five acres per property, and if he could supply us with the water rights equal to those we would dispose in his subdivision, yes, we'd be very interested in that. Nothing came of that, after a lot of discussion with attorneys and so forth, and we were finally confronted a few months ago with the application for a subdivision that had ten lots in it, for an average of three acres per resident and considerably less than three acres per lot.

So the upshot of all this at the moment is that we're worried that final approval at some point, just as was pointed out by Mr. Sommer, might be given for that kind of a development. I'm going to skip over to the end, and say what we are asking the Commission to consider. This evening is the time, we say, to do the right thing. We do not oppose approving this subdivision when all necessary approvals have been given, and when the required conditions have been met by the applicant, of which there are many that have not been met. But with a maximum of six building sites, and not more than six building sites.

Secondly, we have proposed – and in your file somewhere, we've furnished the staff, and I intended to bring copies tonight and forgot to bring them – but we have in writing told Mr. McCrea if he were to have six building sites, we would be willing to make this subdivision a part of Vista Redonda, subjected to the deed restrictions that apply to all the rest of Vista Redonda suitably modified to apply to his. To furnish water from our water system to his development. This would make it unnecessary to build a 30,000 gallon tank on this property, and would have many other advantages. So we've done everything we can to cooperate with and work with Mr. McCrea. His attorneys have responded adversely to that proposal. But it's still on the table as far as we're concerned.

Finally, we urge the Commission to remain faithful to a generation of precedents that need to be respected and continued into the indefinite future, by which I mean we do not want to see next door to us or anywhere else in this region a high-density development contrary to the rural character of this entire region, from Rio en Medio all the way down to the village of Tesuque. Thank you very much.

CHAIRMAN CAMPOS: Thank you, sir. Who's next?

[Duly sworn, Jim Campbell testified as follows:]

JIM CAMPBELL: I'm Jim Campbell, 5 Paseo Encantado Northeast, and I swear to tell the truth. Good evening, Commissioners. As I just said, I'm Jim Campbell of Vista Redonda, and I abut several of the McCrea Tesuque Villa lots. Before I go into my presentation, with the permission of the chair, I would like to present a petition that's been

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signed by the majority of the residents of Vista Redonda. And I say the majority. Many are out of town. Many were not available when we had a meeting to prepare this petition on Saturday. And I'll quickly read what the petition says.

"We the undersigned residents of Vista Redonda in Tesuque, New Mexico, do hereby petition our elected County government officials to approve our appeal and reverse all and any approvals given to Tesuque Villas on lot 592 for a development which we consider to be over development of the land which abuts our community. We respectfully urge our elected officials and the County Land Use Administrator and staff to reconsider what we believe to have been a decision which has a harmful impact, both on our community and two nearby communities, Chupadero and Rio en Medio. Our law firm and board of directors will present the community concerns next Tuesday, 12/14/04, at the Commissioners' meeting. Our community stands willing to cooperate with the developer on a sensible plan compatible with Vista Redonda and the Chupadero area." And I'd like to approach and present this petition for the chair, if I could.

CHAIRMAN CAMPOS: Is that the original?

MR. CAMPBELL: Yes. I have copies.

CHAIRMAN CAMPOS: Okay. How many people have signed it?

MR. CAMPBELL: Approximately forty.

CHAIRMAN CAMPOS: Okay. I need for a copy for Ms. Farrell. She'll make it part of the record. Does anybody want to see the petition?

COMMISSIONER MONTROYA: I do.

CHAIRMAN CAMPOS: Okay.

MR. CAMPBELL: My neighbors and I have two major concerns. First, the size and density of the project next door to me, and secondly, some of the process and procedures which our attorney already commented on earlier connected with this proposed over-development. The hour is late, and I know you've had a long evening. So I'm going to spare the Commissioners a long sermon about how this project is too dense, too big, and inappropriate for our neighborhood. I'm sure they will hear enough about that from other speakers tonight, and we're trying not to be repetitive. Rather, I'm going to focus on the McCrea filing and the so-called preliminary and final consultant's report by Southwest Design.

I believe that the County officials were misled by these filings. This is no criticism of the people I've dealt with in the Land Use Department. They've been cooperative, professional, competent, and we've had a good experience with them. So let's stare with the consultant's report. It says "Preliminary and Final Report," which was sort of a curious title. Curious to me, not that it had prelim, but that it had final. There was a ream of missing documents, which our attorney has already noted. I can't believe how Southwest Design could have made the glowing positive recommendations they did when so much of the material was missing. I would rather label the Southwest Design report and the regional McCrea filing "Preliminary and Possibly Somewhat Fictional." I will describe tonight where County regs and procedures were skirted or avoided, and County officials I believe

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might have been misled.

Let's go to the beginning. Last summer, before any paper was filed for this subdivision, I looked out my window and I saw a large New Mexico Utility power truck laying cable through the entire development. Mr. McCrea already had a house's foundations under construction, so I assumed that the power was just being run to that house. Much to my surprise, the truck went through the entire community, or the entire thirty acres, laying in power. I saw the same thing happen with water lines. Soon, I saw workmen putting in I believe transformers, power distribution boxes, hydrants throughout the whole property. Then I saw some earth-scraping taking place and a road being put in. It looked like the beginning of a design for a semi-circle in that property.

After that happened, I went to a Vista Redonda board member who's also an attorney who lives next to my house, and we went out to inspect the site. We suspected that beyond the new house under construction, a subdevelopment was being laid out, and we were amazed. We had never been notified of any such activities. It appears the land was being developed for construction without approval for the Tesuque Villas. And we searched high and low, and we could not find the building permit.

And again, I want to complement the Land Use Department on their courtesy and professionalism and the assistance they gave us. They performed a computer search, and they confirmed there was no new subdivision approved, or even a petition filed. They did tell us that McCrea had a permit to build one house on the property. They told us we could file a complaint with the department and they would send out inspectors.

Here's where we probably made a mistake. Because sensitive negotiations are underway between our board of directors and Jim McCrea, as was described earlier by Mr. John Rubel, we decided not to throw any gasoline on any fires or cause any problems. So we deferred asking for the land examiners to send out inspectors. And we assumed that McCrea was negotiating in good faith. As you started to hear earlier, he was talking to us about six homes, and meanwhile secretly was laying out ten homes and preparing filings to get permits to do a ten-lot, ten-home subdivision.

The second thing I'd like to talk about in the consultant's report, it says that within one mile, there are subdivisions which range from a half-acre to twenty acres. When I read that, I scratched my head. I said, "Gee, I wonder where they are?" So I drove up and down 592, down towards Tesuque Village. I couldn't find it. I drove up where 592 turns to Chupadero, but I went straight on County 76. Couldn't find them there either, half-acre developments. I then came back and went down towards Chupadero. The McCrea development is roughly at mile 3.4. I went probably a half a mile past that, and I came to the first two properties before you enter Chupadero, one on the right, one on the left. Now, these are ranchette style homes, and they could be as small as half-acre. I couldn't tell. But they're totally surrounded by open land. The very first house you come to along there I believe has the name Ortega on the mailbox. And it has an address like 568. But where the McCrea development is, there's nothing like they described in the consultant's report.

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I also want to comment on the posting for this meeting that we're having tonight. I did not see the sign at first. We have at least seventy residents or more in Vista Redonda. When they go out Vista Redonda Road, they make a right and head towards 285 and Tesuque Village. You have to make a left, which rarely happens, to go up and see the posting. And I went and looked at it. It's approximately sixty feet off the right-of-way of the highway. It's very small. You cannot see what the title is, although if you're a smart guy, you know that when you see a yellow sign like that, it probably means there's an important hearing or meeting about a property issue. If you live in Chupadero or Rio en Medio and you're driving to work in the morning - and there's tremendous traffic down that road at seven o'clock in the morning - you can't see the sign, because there are three or four piñons that block you if you're coming down, until you're almost parallel to the sign. Then you're looking out the passenger window and you're not watching the intersection for Vista Redonda Road. If you're coming home at night from work, it's too dark to see it. So the posting - I don't know who's responsible for that, whether it's one of the County departments or the developer, but it was a little flaky. But we did get the word out to Chupadero, and there are other people here from Chupadero tonight who will also speak.

I could go on and on, but I think the Commissioners are starting to get the flavor of the flawed project and the behavior of the developer before and during the project filings, and possible sections in the consulting report. I respectfully request my objections, filed in a letter to the Land Use Administrator last week, and distributed by me personally to the offices of the Commissioners seated here tonight, be made part of the record of this meeting. Thank you.

CHAIRMAN CAMPOS: Thank you, sir. Okay, who's next?

[Duly sworn, Keitha Leonard testified as follows:]

KEITHA LEONARD: My name is Keitha Leonard. Hello, everyone. I'm an attorney, and I work for Interstate Stream Commission. I am also a resident of Vista Redonda, and I'm the attorney that Mr. Campbell just referred to that walked Mr. McCrea's property with him. I don't want to be repetitive tonight. There are quite a few people here that want to speak. Some may, some may not, and of course we don't want to take up too much of your time.

However, I do want to make two very important points. First of all, as Mr. Campbell mentioned, I did walk Mr. McCrea's property with him, and we saw evidence of multiple situations where utilities were already in place. Utilities and roads. There were water hydrants, transformers, etc. Basically, I'm not well versed in what utilities take, but basically obvious evidence that have already been laid there.

Additionally, I just want to make this point. There are several communities out there, Rio en Medio, Chupadero, and Vista Redonda. Of course I am a resident of Vista Redonda, but I'm here also to speak for the residents of Chupadero and Rio En Medio. And there are so many people out there who are either here tonight or who could not be here tonight physically but are here in spirit. And they are extremely concerned about this

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development. We are worried about so many things. First of all, of course, the rural character of our area. And of course we're very concerned about the density. Not that the property would be developed ultimately, but obviously at a less dense rate.

But additionally, we're also worried about fire. We're worried about water. We're worried about traffic. And so all of us, for everyone in Chupadero, Rio En Medio, and Vista Redonda, I would ask you please to consider this development very carefully, and please consider our concerns. Thank you.

CHAIRMAN CAMPOS: Thank you. Next.

[Duly sworn, David Stupen testified as follows:]

DAVID STUPEN: My name is David Stupen. I live at 51 Vista Redonda. I own property in both Vista Redonda and Chupadero. And another person from Chupadero was here tonight, but he had to leave because of the late hour.

This plot has driveways for three residences which empty out straight onto Route 592. And that location and that particular position on the road strikes me as very dangerous. People who park there or turn left in those driveways will be blocking a lot of high-speed traffic. That's my concern, additional to the other concerns that were mentioned.

Also, could I please ask if anyone in the audience who's objecting to the density of this division today raise their hand, stand up?

CHAIRMAN CAMPOS: That would be fine.

MR. STUPEN: [To the audience] Anyone in the audience who's objecting to the density of this subdivision, would you please raise your hand?

CHAIRMAN CAMPOS: About fifteen, twenty people? At least? Okay.

Next.

[Duly sworn, Mary Costello testified as follows:]

MARY COSTELLO: I'm Mary Costello, a ten-year resident of Vista Redonda. And unfortunately, I abut four of the proposed undersized lots in Tesuque Villa. This makes me the most seriously affected person in the community. It is like learning a Wal-Mart is going to open next door to your house.

Two of the proposed lots overlooking my bedroom are half the size of my lot and my neighbors lots in Vista Redonda, and the other lots are about sixty percent of our lots. These lots are not separate from me by a street, a hill, a dry stream or any other barrier to suggest they are part of a different community, or candidate for different zoning. These proposed lots are drawn with houses on the ridge that I can almost reach out and touch from my bedroom. This is totally different from the entire Vista Redonda community. I can't imagine that the five-acre requirement suddenly stops at my front door and my neighbors' doors, and this seriously allowed ten homes to be crammed in on top of me and my neighbors.

Also, it seems that I've been under water restrictions due to the drought the last five-plus years in Vista Redonda. And now ten houses are seriously going to find water next door to me without affecting my community's wells and our fire protection. When the

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fires came close last year, the biggest worry report in the newspapers was whether there would be enough water due to the drought to fight the fires along 592 before they came to Vista Redonda, Rio En Medio, and Chupadero. I salute the Tesuque volunteers and other firefighters who fought the blazes. They are our fabulous neighbors. But to now spread the water usage over ten more houses where zoning allows five, and have enough water and personnel to protect them and Chupadero, Rio En Medio, and Vista Redonda seems impossible. Do the Commissioners remember the partial evacuations along 592 and Chupadero and Rio en Medio last year during the fires? What happens in the next drought, when the McCreas have packed up and moved on, leaving us high and dry to fight the fires along 592?

Maybe Jim will flee the fires back to Philadelphia, where he was a builder. Back there, there are no droughts or water shortages, I believe. He does not appreciate our water problems in New Mexico, but I know the County Commissioners do, and ask their help and protection for our community. I don't like to bring problems to your door, Commissioners. Rather, I suggest a possible solution to limit Tesuque Villas to just the six houses on five acres each that the resources can support. I do not oppose McCrea developing the property, just over-developing it. He's not trying to get an extra lot. He wants five extra lots.

Finally, I ask my letter of objection, sent by certified mail last week to the County Land Use Administrator and distributed by me to the Commissioners on Monday, be made part of the official proceedings and their record tonight. Thank you.

CHAIRMAN CAMPOS: Thank you.

MS. LEONARD: I would ask your indulgence to make one more statement. Mr. Stupen asked for a show of hands for the people here who oppose the density. You saw perhaps twenty people. I would like to tell you that I have spoken to very many people in Chupadero, Rio En Medio, and Vista Redonda. And perhaps fifty, 75 people, they are all horrified at the density of this development. So I just wanted to make that point. Obviously, as many people as could come tonight. But certainly many more people could not. So I just wanted to make sure that that was known. Thank you.

CHAIRMAN CAMPOS: Anybody else? Okay.

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: A question for staff before we move on. We're going to go next to the applicant?

CHAIRMAN CAMPOS: Yes.

COMMISSIONER SULLIVAN: Mr. Catanach, or Mr. Dalton, one issue that has been repeated a number of times is that work has already been done in the area. The utility work, clearing roadwork, grading, and so forth. Has the staff verified that?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, the applicant did get a permit for a single residential dwelling unit. And as far as we're concerned, he got the permit for the driveway and utilities to the unit itself. As far as them laying future lines, I

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have no idea.

COMMISSIONER SULLIVAN: Has anyone been out to inspect the work from the County?

MR. ARCHULETA: Mr. Chair, Commissioner Sullivan, I don't know. Court enforcement would have done a preliminary site inspection. But as far as going out there now, they haven't, that I'm aware of.

COMMISSIONER SULLIVAN: There was testimony about putting additional electric pedestals in, or meters, and a loop road and so forth. Have we verified that that's what's going on? Or is it just a driveway?

MR. ARCHULETA: Mr. Chair, I went out and I just assumed that it was a driveway. I just went down to the house area and turned around and came back out. I didn't go any further than that. There is access to the Chavez property through that road. And I assumed that that was just what that was. I didn't go any further.

COMMISSIONER SULLIVAN: Okay. Thank you.

CHAIRMAN CAMPOS: Okay. Let's move on. Applicant?

ROSANNA VAZQUEZ: Good evening. My name is Rosanna Vazquez, and I represent James and Heather McCrea. And they are here behind me if you have any specific questions for them. If you have any technical questions with regard to the subdivision, Jon Paul Romero is here. He did the initial application for preliminary and final.

The people that have spoken before you, Mr. Chair and Commissioners, are correct. This submission came in as a preliminary and final request. EZC and the recommendation of County staff was to only allow preliminary approval. And that is what EZC granted last month.

That EZC approval was conditioned, and your packet has all of the conditions of approval. Those conditions deal with the variance that's going to be needed for the cul-de-sac that was addressed by the neighbors. Those conditions deal with the fire protection issue. We will have to sprinkler the building, and we will have to put in a 30,000-gallon tank, which is the recommendation of the Fire Marshal. The conditions took a look at the geo-hydro, which incidentally was submitted two weeks prior to the EZC meeting and was made a part of the public record at that time.

There is a permit, Mr. Chair, Commissioner Sullivan, for the home. And if you take a look at the property at the map here, the home is - and Jon Paul will point to the home, where it is. The entrance to the property is at the very bottom, right there where the road is. And the home is actually about two-thirds of the way in to the property. In order to get the permit for the home and construct the electrical line, put in the cable line, put in the well, there had to be extensive infrastructure put in to reach the home. There's only one electrical line there, and it is to that area. There is a transformer. That transformer was used for the drilling of the well and the geo-hydro that was done on that well.

There's been much discussion with regards to density. This Commission and the County code allows for density in that area of 2.5 acres per dwelling unit. This subdivision

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could have come in with twelve units for this subdivision, and we have come in at ten, which meets the allowable density under the Code. The difference between Tesuque Villa, which is this proposal, and Vista Redonda, where most of the people live that are protesting this, is not necessary the size of the lots. It is the size of the buildable area. Most of the lots through Vista Redonda – and I drove it the other day – the buildable area is very small. The five acres are made up of river area and canyon area, which is basically un-usable.

Again, I want stress one point, and that is we are here at preliminary development plan approval. We cannot get final, we cannot begin building this subdivision unless we meet all of the conditions that have been already placed on this development by staff. Every single issue that was addressed by Mr. Sommer and in his letter has been addressed by staff, or will have to be met prior to final development plan approval. I submitted a letter in response to Mr. Sommer's concerns. It has been made a part of the record. And I stand for questions, if you have any.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER MONTOYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER MONTOYA: Ms. Vazquez, regarding the requests from the Vista Redonda residents of going to no more than six building sites, would the applicant be agreeable to that?

MS. VAZQUEZ: Mr. Chair, Commissioners, at this time we would not be. We've reduced the density already by two lots that's allowed under the Code. We're down to ten. And so at this point he would not be amendable to reducing that number.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN CAMPOS: Any other questions?

COMMISSIONER MONTOYA: Regarding the suggestions by, again, Vista Redonda regarding the hooking up to their mutual domestic water consumer's association, would the applicant be willing to consider that?

MS. VAZQUEZ: Mr. Chair, Commissioners, we would.

COMMISSIONER MONTOYA: In lieu of placing that 30,000 gallon tank?

MS. VAZQUEZ: Mr. Chair, Commissioners, we would – that's sort of two issues, Commissioner Montoya. One is the issue of fire protection, which I don't know whether hooking into the system would negate the need for that tank. But we would definitely work with the Fire Marshal and Vista Redonda on that issue.

The other is the issue of the whether we could get water from the Vista Redonda water association. That is something that we would consider. We would still like to talk to their lawyers and the homeowners about it. And I did receive a letter from the Sommer law firm last week at the end of the week with a proposal with regard to that. We haven't denied that proposal. We haven't negated it. We just have not responded because we have not had a chance to sit down and do a counter-proposal with regard to it.

COMMISSIONER MONTOYA: Thank you. That's all for now, Mr. Chair.

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CHAIRMAN CAMPOS: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had one question. Mr. Wust, could you come up here for a second? Ms. Vazquez indicated that a geo-hydrologic report had been submitted. In your letter of September 14th, you say that although the code specifies that a subdivision of this size must submit a geo-hydrologic report, the application only included a reconnaissance report. Is that where we stand now? Is this a reconnaissance report?

STEVEN WUST (County Hydrologist): Mr. Chair, Commissioner Sullivan, actually, I have another memo dated October 14th, I'm sorry if you don't have that, where they had submitted a geo-hydrology report based on that earlier evaluation that you read. And that second memo is an evaluation of the geo-hydrology report.

COMMISSIONER SULLIVAN: Okay. So your observation is that there is sufficient – the test well demonstrated sufficient water availability, but there still remain some deficiencies which you feel can be rectified by permit conditions?

MR. WUST: Yes, Commissioner Sullivan, because they were in the areas of – there was a water quality issue, and there was – well, they're listed there. I can't remember them all.

COMMISSIONER SULLIVAN: Yeah, there are four here.

MR. WUST: But I would like to note, Commissioner Sullivan, if I may, if they do agree to hook up to Vista Redonda, under the code, when you hook up to an existing community system, there needs to be an evaluation from the office of the State Engineer as to the ability of that community water system to supply the proposed subdivision. And we've never gotten – I don't know of any reading from the State Engineer, because that wasn't part of this package. So that would be something in addition that I would have to do, follow through on the State Engineer's Office.

COMMISSIONER SULLIVAN: Certainly that would seem to be desirable. I mean, they have I think the paper said a 93,000-gallon storage tank as opposed to a – it should save the developer the cost of a 30,000-gallon storage tank. And also you wouldn't have six or seven wells poking into the aquifer. And you would have the ability of more individuals on an association, which makes the association more viable and more cost-effective and better able to maintain a system. Is there any feeling that the State Engineer might disapprove a connection like that?

DR. WUST: Mr. Chair, Commissioner Sullivan, I don't know of any. But they would base on that on whether if they for example thought that the system was at its capacity right now. Then they might be less inclined to – either as to the water rights or just to their ability to deliver water. And I don't know that situation.

COMMISSIONER SULLIVAN: Okay. Thank you. And then a last question for Ms. Vazquez. The presentation by the first presenter was that they had asked the applicant to connect into the system and to provide the necessary water rights that were needed. Is there any problem with your doing that?

MS. VAZQUEZ: Mr. Chair, Commissioner, what they didn't tell you is the only wanted six lots connected to the water system.

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COMMISSIONER SULLIVAN: Yeah, they mentioned that, right.

MS. VAZQUEZ: And so that was one of the reasons why we didn't move forward on that proposal. If we were to connect to it, and it was amendable with respect to the ten lots, we would provide the water rights that would be needed for that.

One other thing I wanted to address, Commissioner Montoya. You raised the issue of the density. At the EZC meeting, the issue of density was raised to EZC. And to alleviate a little bit of that concern, and obviously it didn't alleviate it completely, is we agreed to a 25-foot buffer on the side of that property that would be a no-build area to allow for some greater division between the subdivisions. Keep in mind that what separates this subdivision from I believe it was the last woman who spoke's home is a ravine. A huge ravine. It's a canyon there. And that's part of the land that's used as Vista Redonda to meet that five-acre parcel requirement. But that's one of the reasons why there's a concern. And that was why we went ahead and added that 25-foot buffer.

COMMISSIONER MONTOYA: Mr. Chair, Ms. Vazquez, are you talking about the Campbell property or Costello?

MS. VASQUEZ: I'm talking about the Costello property.

COMMISSIONER MONTOYA: Costello? Oh, okay.

MS. VASQUEZ: I believe that Costello and Campbell are one and the same.

CHAIRMAN CAMPOS: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair. Mr. Campbell raised the issue that there were water lines, electric lines, phones, roads being built prior to approval. Is that true? Is that going on, or was that just for your residence?

JAMES McCREA: Mr. Chair, Commissioner, I appreciate the opportunity to clarify what is actually going on out there. I did not hear the beginning of your question.

CHAIRMAN CAMPOS: You need to state your name and address, and we've got to swear you in.

[Duly sworn, James McCrea testified as follows:]

MR. McCREA: James Mian McCrea, 260 Hyde Park Road.

COMMISSIONER ANAYA: Mr. McCrea, my question was Mr. Jim Campbell raised a question that he thought that there was water lines, water hydrants, electric lines, phone lines and roads being built for this subdivision that has not been approved yet. Is that true or not?

MR. McCREA: That's incorrect. What happened, Mr. Chair and Mr. Commissioner, when we initially went in there, we followed over the existing trail that was there. And that trail is what the Sanchez family would like to have the right-of-way to get back to their property. They have forty-some acres, they've lived there for fifty-some years, but there's about 3.9 acres that they can't get to of forty-some acres. And there were requesting permission to get back there. If that permission is granted by us, it would be down the same wash road trail that's been in existence as far back as any of the topos have shown.

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When we went in there, we followed over this road. We never put in any – other than smoothing it out, we haven't done anything else, other than going down we cleared out some dead – I've taken down over 1,000 dead trees. When we went in, we were told by PNM what we should do, as far as the electric goes. We had to bring the telephone pole from across the street, which is the southern portion of this development. We had to then trench it from the southeasterly point all the way to the northwesterly point of the property, where in that vicinity is the current home, which does have a permit and conforms to all regulations by the County. And when we brought that in there, the transformer had to be placed within a certain amount of feet to the home in order to supply the power.

The problem was that we have a well which is located in the southeasterly corner of the property. It was there when we came there. It was put in the Christian Brothers. And the home is in the northwest corner. Due to that fact, we had to then place another transformer so that the well could have power. And that was an additional cost. So there's a transformer for the main house that's there, and there's a transformer which actually is up by the well.

To address the issue as far as utilities, when we went in, we put in – because we had to dig the trench, we put in telephone lines for six homes, in case we ever decide to develop it at that time. The lines are in the ground. We had to run the piping from the well to the house, and in the midst of that, what we put in was a garden hydrant every hundred and fifty feet down the driveway, which is over a quarter mile long, to feed the trees so that they would have proper watering. We also put in a line in there to open the gate from each and every house of six homes, if it could be developed to that point at that time. But we have done nothing, and I stress this, nothing illegal. And everything that we have done has far and exceeded the Code.

To address the issue as far as the water for fire, as Mr. Rubel had stated earlier, I had purchased property in Vista Redonda. And the last house that I built, the walls are three feet thick, out of pumice. And every home in this development is going to be required to be at least two feet thick. There will be no wood homes allowed. It's all going to be pumice or adobe or some alternate material. And every home has a sprinkler system required by the Fire Department.

COMMISSIONER ANAYA: Okay. That's fine. One more question. Did you have any community meetings before you started your development?

MR. McCREA: I went to speak with Mr. Rubel and Sam Berger in the feeling-out process to have a discussion with them if it was possible to get onto their water system. And I have mentioned to them on numerous occasions if our development is approved that I would definitely still like to maintain some form of conversation, in order to come to an agreement. And if we could, I have been and am in the process of trying to purchase additional water rights so that I would have something that would be advantageous to give to Vista Redonda in order for them to see clear to allow us to attach to their water system.

COMMISSIONER ANAYA: So you didn't have any meeting?

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MR. McCREA: I really did not have any meeting.

COMMISSIONER ANAYA: Thank you.

MR. McCREA: If I may, Mr. Chair, I'd like to address the issue about the sign. And that is that as far as I know, there's no posting of a sign required for this meeting this evening. The other signs, which were on our property, are on the very edge of our property. There happens to be a sixty-foot state highway setback. We can't post our sign out on their property. And there was one posted on Highway 592 on the easterly side of the property as well, but it came down since the EZC. May I address a couple more issues?

COMMISSIONER MONTROYA: Mr. Chair, thank you. Mr. McCrea, I had a question regarding the issue that you said you had some discussions with Mr. Rubel and Sam Berger regarding hooking into the system. It clearly states that they would more than willingly have you hook into the system, should you have no more than six building sites. Why are you opposed to the six building sites? And you've added, since the original discussions where you started with six, and now you're at ten. Why are you opposed to going back down to six?

MR. McCREA: Well, it's a financial situation, Commissioner.

COMMISSIONER MONTROYA: Okay.

MR. McCREA: Mr. Chair, may I address a couple other issues that were brought up?

CHAIRMAN CAMPOS: Commissioner Montoya?

COMMISSIONER MONTROYA: That's all.

CHAIRMAN CAMPOS: Okay. Briefly.

MR. McCREA: Thank you, Mr. Chair. One was the geo-hydro test. And what happened was Mr. Wust was going on vacation. He had mailed that into someone at staff, and inadvertently, overwhelmed as staff is, that letter was not opened until one week prior to our meeting. I believe it was a week or ten days prior to our meeting. At an additional cost, we had to hire someone to do that geo-hydro test immediately. And they came out within two, three days and then went through the whole process. So I wanted to address that.

Number two is that we have followed the procedure that has been set forth staff. And it's unfortunate that some things haven't worked in a timely fashion. But we have done everything that was required by us as soon as we were asked to do it. We never tried to skirt any of these issues.

I mentioned that each house is going to be required to be built out of pumice or a substance like that. Each house is going to have the sprinkler system in it. We are bordered by Highway 592 to the east. And that's 600 and some acres owned by the Christian Brothers. There is no family that will be impacted by us on the east.

As far as the people that currently live in Vista Redonda, Mr. Sherwood lives in the first home as you enter there. Mr. Sherwood can see three of the homes on the eastern portion of this development - excuse me, on the western portion of this development. And

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he cannot see the current home that's existing there, nor will he see any of the homes that are beyond that. The lay of this land is extremely – there's extreme inclines in it. And those people that can see one thing cannot see the other thing. It's rare. If there's anybody in there, they'd have to be off at a great distance in order to encompass the whole property.

There is no loop in the road, Mr. Chair and Commissioners. There is a storage area down there, which I have material placed down there. And I welcome anyone that wants to come out to inspect the property. Contact us, and we'll gladly walk the property with you. I appreciate your time. Thank you very much.

CHAIRMAN CAMPOS: Thank you. Commissioner Duran had a last question.

COMMISSIONER DURAN: Mr. McCrea, I have one question, since my whole life is about negotiating. If your neighbors would agree to eight, would you agree to eight?

MR. McCREA: Mr. Chair, Mr. Commissioner, not at this time.

COMMISSIONER DURAN: Okay. Thank you.

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

CHRIS GRAESER: Very briefly, Mr. Chair. To get to your initial question and Commissioner Duran's initial question of why do we have to address this now. Two reasons.

CHAIRMAN CAMPOS: Please state your name and address for the record.

MR. GRAESER: I apologize. Christopher Graeser, 200 West Marcy. I'm here as an attorney. The first is a procedural issue, which is the submittal is incomplete. We can't have a meaningful review of an incomplete submittal. There's substantive issues that we just can't address, because they're not in there.

The second reason that we have to address it now as opposed to later is this is the time to address it. This is what the code says. All the points raised in our letter are in the Extraterritorial Subdivision regs to be addressed at preliminary plat approval. Section 3.3.4b tells you what is addressed at preliminary plat. And they're all the things we raised in our letter, which is the location with purpose of the easements, the location and dedication of parks, water supply plan, fire protection plan, liquid waste disposal plan. And incidentally, a paragraph in the development permit stating what they intend to is not a plan. Proposed improvements including engineering, public streets and facilities, traffic generation report, which as we indicated in our appeal is incorrect. There's a disagreement in that report. A terrain management plan – and as part of the terrain management plan, you need to seek the opinion of the Soil and Water Conservation District. That was not done. We don't know what they have to say about this. The proposed disclosure statement with all the requirements, and any other documents, including water rights, subdivision improvements agreements, owners' association documents. We don't have any of that to review.

So to get to the question of why we have to do this now as opposed to later, final

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approval on preliminary plan was granted by EZC. We appealed that because it was not appropriate at that time.

COMMISSIONER DURAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: I have a quick question. Would you agree to eight lots versus six?

MR. GRAESER: Mr. Chair, Commissioner Duran, I don't have authority on behalf of Vista Redonda to agree to anything. We are certainly very interested in engaging in discussions. We are certainly very interested in reviewing any proposal that comes back based on our last requests.

COMMISSIONER DURAN: So it's either ten lots, no lots, or six lots?

MR. GRAESER: Mr. Chair, Commissioner Duran, if you care to give us a break, we can confer on that right now. We do have the board here.

CHAIRMAN CAMPOS: You have a question?

COMMISSIONER MONTOYA: Mr. Chair, it's for Mr. Ross regarding the geo-hydro report. Are we bound to that at this point?

MR. ROSS: All of the information you receive, including that from state agencies, is advisory.

COMMISSIONER MONTOYA: Is advisory?

MR. ROSS: Yes.

COMMISSIONER MONTOYA: So not final, nothing's final at this point.

MR. ROSS: You get to take it into consideration. But you're not bound by any of those opinions or any of that data. You can interpret it and make what judgements you think are appropriate.

COMMISSIONER MONTOYA: Okay.

CHAIRMAN CAMPOS: Let me ask a follow-up. Mr. Ross, you're saying that if the geo-hydro says there's enough water for ten, we're not bound to approve the ten? We have some discretion?

MR. ROSS: Yes.

CHAIRMAN CAMPOS: And what is our discretion? Where does it come from, what part of the Code?

MR. ROSS: Well, the code speaks in terms of minimum lot sizes.

CHAIRMAN CAMPOS: Okay.

MR. ROSS: So that alone gives you discretion. You have to exercise it with some basis. But you have pretty wide-open discretion here.

CHAIRMAN CAMPOS: So you're saying the Commission could say that six is appropriate, or seven, or eight?

MR. ROSS: I think so.

CHAIRMAN CAMPOS: Okay. Commissioner?

COMMISSIONER DURAN: Just one word of caution. The Code is specific

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in that two and a half acre lots are allowed out there. It's also specific in that –

CHAIRMAN CAMPOS: This isn't in the Basin Fringe hydro zone.

COMMISSIONER DURAN: Am I wrong?

CHAIRMAN CAMPOS: It says 12.5 per –

COMMISSIONER DURAN: Two and a half acres or less. Two and a half acres, Mr. Chair, are allowed if you can prove water.

CHAIRMAN CAMPOS: If there's a geo-hydro to sustain that.

COMMISSIONER DURAN: If I can finish my thought, it'll make more sense to you.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER DURAN: So the Code allows for two and a half acre lots with proven water, which the applicant did do. He was able to support adequate water, water to support ten lots. I'm in agreement with the neighbors that two and a half acre lots may not be appropriate for that area. But I disagree that six is the right number. Maybe ten isn't the right number. And so I just think that it might be an appropriate – because it seems to me that everyone's leaning towards six here, because of the neighborhood concern. So I would just like to throw that out for some consideration. It meets the Code as it's written, and we do have some flexibility in that.

CHAIRMAN CAMPOS: I think that's what I had said. Okay. Sir, Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think, Mr. Chair and Commissioner Duran, it appears to me that there are some omissions here in the preliminary submittal. And what we might want to consider, which I think is what the appellant is asking for, is that we remand this to the EZC for reconsideration at the preliminary stage, with the recommendation that they consider a reduction in the density, without being specific as to what that reduction might be, and see what could be worked out to satisfy both parties. I think that's where we're heading. Let me ask Commissioner Montoya. Do you agree with that, or do you have some other thoughts that would add to that?

COMMISSIONER MONTOYA: I could agree to that.

COMMISSIONER SULLIVAN: Commissioner Anaya, am I on the right track, or is it too late for me to be on the right track here?

COMMISSIONER ANAYA: Maybe. I think that that would be fair.

COMMISSIONER SULLIVAN: Mr. Chair, then I'd make a motion that the appeal be upheld and that we remand the project to the EZC for reconsideration, with a recommendation that the EZC consider a reduction in the density of the project?

CHAIRMAN CAMPOS: Are you saying reconsideration–

COMMISSIONER SULLIVAN: Well, reconsideration to the extent that there are omissions in the current submittal?

CHAIRMAN CAMPOS: To address issues raised by –

COMMISSIONER SULLIVAN: Raised by the appellant, correct.

CHAIRMAN CAMPOS: Okay. And with the authority to consider a

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reduction in the number of lots?

COMMISSIONER SULLIVAN: With a suggestion to consider a reduction in the density.

CHAIRMAN CAMPOS: Okay, there's a motion.

COMMISSIONER MONTROYA: Second.

CHAIRMAN CAMPOS: Attorney Ross, any comments?

MR. ROSS: Mr. Chair, I think it's intelligible.

COMMISSIONER SULLIVAN: Well, thanks a lot.

MR. ROSS: Maybe that wasn't the best choice of words.

CHAIRMAN CAMPOS: Okay. Motion, second, discussion.

The motion to remand EZ Case #A 04-4581 to the EZC for further consideration passed by unanimous [5-0] voice vote.

CHAIRMAN CAMPOS: This matter is remanded for further consideration.

[The Commission recessed for ten minutes.]

XII. A. 7. CDRC CASE #DP 04-5780. SUERTE DEL SUR PLAN. Suerte del Sur LLC, Applicant, Scott Hoeft, Agent, Request Master Plan Approval for a 264 Lot Residential Subdivision on 660 Acres. The Property is Located South of Las Campanas and North of Pinon Hills Subdivision, within Section 19, Township 17 North, Range 9 East (Commission District 2)

Exhibit 7: OSE memo dated 12/7/04

Exhibit 8: Applicant's memo re: Subdivision regulations and Master Plan Requirement Requirements

Exhibit 9: Master Plna Plat by Santa Fe Planning Group

Exhibit 10: Memo- Santa Fe Domestic Well Owners Assoc. - presented by David Gold

DOMINIC GONZALES (Development Review Specialist): Thank you, Mr. Chair. On October 24th, 2004, the CDRC met and acted on this case. The decision of the CDRC was to grant approval for master plan for a 264-lot residential subdivision on 660 acres. The applicant is requesting master plan approval for a 264 residential lot subdivision. Development would consist of 24 five-acre ranch lots, 240 lots ranging in size from one acre to three acres. Development also consists of two community tracts. An eight-acre tract will accommodate a proposed clubhouse, swimming pool, tennis courts, and other outdoor recreational amenities. The five acre community tract will be designated to accommodate a proposed community barn facility, horse stables, and exercise pens.

This subdivision is reviewed for the following: existing development, phasing plan,

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access, water, liquid waste, solid waste, fire protection, trade management, archeology, open space, and school impact. On October 24th, the CDRC met and acted on this case. [sic] The decision of the CDRC was to recommend approval for master plan for a 264 residential lot subdivision on 660 acres, subject to the following conditions. Mr. Chair, condition number 2A will be deleted, as well as condition number ten [renumbered as 10]. These were in regards to the County Utility Department, if Suerte did hook up to that. But it's not part of this case now. So subject to the following conditions, and may I enter these conditions into the record?

CHAIRMAN CAMPOS: They're so entered.

[The conditions are as follows:]

1. Compliance with applicable review comments from the following:
 - a) State Engineer
 - b) State Environment Department
 - c) Soil & Water District
 - d) State Department of Transportation
 - e) County Hydrologist
 - f) Development Review Director
 - g) County Fire Marshal
 - h) County Public Works
 - i) County Archaeologist
 - j) State Historic Preservation Office
 - k) County Technical Review Division
 - l) County Utilities Department
2. Preliminary Development Plan and Plat submittals shall include, but not be limited to the following:
 - ~~a) The applicant shall provide all pertinent information on the water rights Suerte del Sur proposes to transfer to the County for its use to provide the requested water service prior to the recordation of the Final Plat.~~
 - b) The applicant shall provide a letter from the Las Campanas Sewer Association stating that connection to the Cooperative sewage treatment system is feasible.
 - c) Finished road grades shall not exceed 3% for 100 feet from intersections.
3. The development plan and plat with the appropriate signatures shall be recorded with the Clerk's office.
4. All Staff redlines must be addressed, original redlines will be returned with final plans.
5. This application is subject to final review by the County Fire Marshal. The applicant shall comply with all Fire Marshal requirements.
6. The applicant shall pay a fire review fee in the amount determined by the Fire Marshal in accordance with Santa Fe County Resolution N. 2001-114, prior to recordation of the final development plan.
7. The applicant shall submit a cost estimate and financial guarantee for completion of the required improvements as approved by staff.

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8. The applicant shall comply with the water harvesting requirements of Ordinance 2003-6. A water-harvesting plan shall be submitted with the Preliminary Development Plan application.
9. ~~A County Utilities Department notice of intent to serve the entire development and a County Utilities Service Agreement for phase I must be approved by the BCC prior to the Master Plan being heard by the BCC~~
10. The applicant shall identify Archaeological sites of significance placed in easements on the preliminary subdivision plat.
11. The entire subdivision shall connect to the Las Campanas sewer system, on-site septic systems are prohibited.
12. Address shared driveway access, separation between road intersections, and off-set intersections for future east-west arterial relevant to current standards for an arterial road.
13. Prohibit direct driveway access off Los Suenos Trail.
14. The applicant shall extend Los Suenos Trail south to County Road 70 and NM 599, (Hager Road Connection), or extend La Vida Trail easterly through to Aldea with the first phase of development.
15. Upon approval of the master plan, water rights need to be transferred prior to preliminary development plan application for the first sustainable phase.

MR. GONZALES: Thank you.

CHAIRMAN CAMPOS: Okay. Any questions? Any questions for staff?

MR. GONZALES: Also, Mr. Chair, a letter was passed out. That was the letter we received from the State Engineer's Office. I believe it was Thursday of last week.

COMMISSIONER DURAN: Can you summarize that letter for us? Did you get a chance to read it?

MR. GONZALES: Basically what it was was a letter from Patrick Romero, and also I believe - I don't have a copy with me, it's in my file.

COMMISSIONER DURAN: That's okay. That's fine. I can read it real quick. Thank you.

CHAIRMAN CAMPOS: Okay. No questions. Applicant.

MS. VAZQUEZ: Good evening Commissioners, my name is Rosanna Vazquez, and I represent the Suerte del Sur development. We've got here some technical people to answer questions with regard to water. We've got Mr. Bob Marley here. Mr. Mike Gomez is here, he's our traffic engineer, should you have any questions for him. Mr. Scott Hoeft is our planner, and he will be addressing the issues of the layout of the subdivision, and issues specifically related to the subdivision which you see before me. There's a copy of the plat that's right in front of this presentation. And Mr. Gomez will hand out to you individual plats so that you can take a look at it a little more closely. In addition to that, I've prepared some handout materials, which I'm given to Ms. Karen Farrell to make as part of the record. And they will all be handed out to you.

CHAIRMAN CAMPOS: What have you handed out to her?

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MS. VASQUEZ: I just handed it to her, so I'm going to hand it to you right now.

CHAIRMAN CAMPOS: What is it?

MS. VASQUEZ: It is Article V, subdivision regulations. It's a copy of this as to the definition of what a master plan is.

CHAIRMAN CAMPOS: You're giving us copies of the ordinance?

MS. VASQUEZ: Yes, I am, sir. In addition, there are copies of minutes that go back to the beginning of the master plan ordinance amendment, and the initial intent with respect on the publication to title and general summary on the master plan ordinance, and what really was intended with respect to water rights and water rights transfers at master plan.

CHAIRMAN CAMPOS: Is that your main issue? To show that there's some discussion in the record that the intent was different from the language?

MS. VASQUEZ: Mr. Chair and Commissioners, there has been a question throughout the entire process of this development as to how this development is going to be served. Will it be served by the County, which was the initial proposal with this development? Will it be served by water rights? We submitted water rights, we submitted an abstract, and we went forward with the drilling of a well and the testing of such well through a geo-hydro. The concern was raised that water rights needed to be transferred at master plan. It is our position that this development and this application meet the language of the Code as it is written. It meets the intent of the master plan ordinance as was stated by this Commission when that ordinance was initially proposed, when it was discussed, when it was approved.

Commissioner Varela-Lopez, who was one of the initial writers of that master plan ordinance, summarized the CDRC minutes. And you have them in the packet. If we could pass the packets out, please? He summarized the intent of that ordinance. He summarized it as saying that he introduced the ordinance when he was a County Commissioner, along with Commissioner Sullivan. He said that master plan is a concept, and it doesn't confer a vested right to the applicant. Therefore, water rights are not expected to be transferred until preliminary plan.

CHAIRMAN CAMPOS: That was his intent. Okay.

MS. VASQUEZ: That was his intent, and the intent of Commissioner Sullivan for his ordinance is also submitted as part of the record. And the questions that were asked with respect to intent during the hearings are also submitted.

CHAIRMAN CAMPOS: You're saying the intent contradicts the language, or the intent and the language are consistent?

MS. VASQUEZ: Mr. Chair, Commissioners, I actually haven't spoken to that point. I know that during the clarification hearing that you had, you took a look at the exact language of it. You yourself and this Commission were concerned that there was some confusion with respect to the language. And so there was direction given. And if you take a look at your packet and you go to the light blue post-it, this is the direction that was

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given to staff, very specific direction as to how to clarify the ordinance. And it says: So my suggestion would be delete to the words "and water permits" and to add language that Dr. Wust feels is appropriate for draw-down."

The direction from this Commission to staff was not to change the ordinance to require that water rights be transferred prior to master plan. So those are the minutes from the November 9th, 2004 meeting. Mr. Chair, Commissioners –

CHAIRMAN CAMPOS: But if you go back to that meeting, I think the discussion was that the language that acts, and we had to apply the language as stated. And we needed to change the law, or at least to consider a change in the law. That's all that was done at that time.

COMMISSIONER DURAN: Mr. Chair, point of order. I don't think that it's appropriate for you to cross-examine the applicant who's making the presentation.

CHAIRMAN CAMPOS: Okay. Do you have a motion?

COMMISSIONER DURAN: I don't have a motion. I'm just trying to make a point of order.

CHAIRMAN CAMPOS: You have to make a motion. I'm going to rule against you.

COMMISSIONER DURAN: Rule against what? I'm bringing a point of order up.

CHAIRMAN CAMPOS: Which I can rule for or against. I'm ruling against it.

COMMISSIONER DURAN: I think it's inappropriate for you to –

CHAIRMAN CAMPOS: Make your point.

COMMISSIONER DURAN: You allow everyone else to make a presentation. This applicant should have the same respect –

CHAIRMAN CAMPOS: Make a motion or stop.

COMMISSIONER DURAN: That you give other people.

CHAIRMAN CAMPOS: Okay.

COMMISSIONER DURAN: I protest your – I protest. And I'm going to continue it if you keep on –

CHAIRMAN CAMPOS: You have to make a motion.

COMMISSIONER DURAN: I'm not making a motion.

CHAIRMAN CAMPOS: You have to overrule the chair.

COMMISSIONER DURAN: Please continue your presentation.

MS. VAZQUEZ: Mr. Chair, Commissioners, the ordinance, as written, requires water rights permits. That's what the language says in the master plan ordinance. From a legal standpoint, when you look at an ordinance, you take a look at the entire ordinance, not just one section of it. That language said master plan ordinance. It's confusing. Each of the Commissioners on this Board admitted that it was confusing.

All right. Keep in mind that that's not the only section in the ordinance that refers to what the requirements are at master plan and what to do with water rights permits. I

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point you to, and I believe it's the second page in your tab, and it is from – right here. Santa Fe County Ordinance 1996-13 requires water right permits for this type of subdivision. This was an amendment to the original ordinance done in 1996, obviously. The requirement is this. The Board shall not approve the final plat unless the State Engineer has issued a water permit for subdivision use. That means that this plat can come forward to you, Commissioners, and until final plat you cannot deny if there hasn't been a water permit at that point. That's contrary to your master plan ordinance, Commissioner.

CHAIRMAN CAMPOS: Which came later?

MS. VAZQUEZ: The master plan ordinance came subsequent to this but this was not amended in the master plan ordinance.

CHAIRMAN CAMPOS: It would be deemed overruled by inference because there was a subsequent ordinance.

MS. VAZQUEZ: Mr. Chair, Commissioners, I disagree because it's a different section of the ordinance, so from a legal standpoint it wouldn't be brought that way.

CHAIRMAN CAMPOS: It doesn't matter.

MS. VAZQUEZ: Well, let's get back to the basics. Let's get back to what we're here for, and that is a master plan approval. That's it. We have been attempting to get a master plan approval on this project since the beginning of 2003 when we began meeting with the neighbors. Go back to the Code and ask yourselves what is a master plan approval? That master plan approval and the language as to what it is is set out in Section 5.2. You have a copy of this in your packet as well. It is a conceptual approval. It is an approval that can be obtained without expending large sums of money. This section of the ordinance is also still in effect even after the master plan ordinance was brought forward.

What is submitted in the master plan? This development submitted every single requirement that was required of it by County staff, including a geo-hydro report, including water rights, including an abstract that was done on the analysis of such water rights. In addition to that there were water permits submitted of water requests to the State Engineer of change of location. I would request that the record be clear that all of this was submitted to the CDRC and I ask that all of it be submitted as part of the official record on this case. I ask you to look at the standards of review on a master plan, and I ask you to take a look at whether we've met that standard. I again point you to the minutes. The minutes that you have before you. And what you have and what those minutes demonstrate is this. When the request to publish title and general summary was done for the water ordinance, it was clear that the intent was bring us your water rights; show us your water rights. That language is evidenced in the minutes.

It was also evidenced during the hearing when a specific question was asked of staff. Bring us your water rights. That was the intent. It was also evidenced in the clarification ordinance. When you, Commissioner, and this Board gave direction. Without that language, in order to avoid the confusion as to whether water rights needed to be transferred. Enough of that though. I want to go forward with the rest of this approval.

Mr. Scott Hoeft is going to now talk to you a little bit about the actual plan itself. I will

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come back to address any issues related to water, any issues related to water rights, water transfers. If you have specific issues with regard to the water budget we will go ahead and have Mr. Bob Marley address those questions and I would like to save time for rebuttal and cross examination if I need to of any testimony that's been brought forward.

CHAIRMAN CAMPOS: How much time do you think you need, Ms. Vazquez, for your presentation?

MS. VAZQUEZ: Commissioner, I believe that Mr. Hoeft will probably take about ten minutes. If you have any questions of our hydrologist, they should probably take about ten minutes. My presentation after that will probably take about ten minutes and I don't know how much time I'm going to need for rebuttal because I'm not sure what issues will be raised.

CHAIRMAN CAMPOS: Okay, you're taking us to about 10:00. Okay. Let's move it.

[Duly sworn, Scott Hoeft testified as follows:]

SCOTT HOEFT: Scott Hoeft, Santa Fe Planning Group, P.O. Box 2482, Santa Fe, New Mexico, 87504. Commissioners, I'll take about ten minutes of your time. I wanted to get you all back on track here with the master plan. I think with all of the discussion that we've had about water over the last year and a half to two, I think we've lost sight of what we accomplished initially with the neighbors and with the TAP community planning group. But first let me locate the site for you. I just want to make sure that everyone knows where the site is at. We've got the Baca property to the west, Las Campanas to the north. We've got several smaller subdivisions to the east and of course we've got Pinon Hills to the south. And I think the key thing, just to highlight here with this plan and as you're looking at your handout you can notice that those surrounding subdivisions are very consistent with what we're bringing forward tonight with our master plan. We've got a 2.5-acre density. We've got surrounding properties that have that density as well, plus a little more and plus a little less.

So again, the key is that we've got a master plan that is very complimentary to the surrounding properties in the area. We initially met with the neighbors, going back to the spring of 2003 and we had numerous neighborhood meetings with them. And what came out of those meetings was the plan that you have before you tonight. We've proposed higher density plans. We've proposed mixed us. We've proposed multi-family housing projects. Even some commercial. And after much deliberation and several meetings and several example plans, the neighbors liked the plan that we were proposing. They liked it for one major reason, which was traffic. The higher density plans and the commercial plans that we were proposing were going to generate a great deal more traffic than what the plan that's consistent with the ordinance, 2.5-acre density shows tonight.

What we did when we came to that kind of agreement with the neighbors is that we tweaked it a little bit. There were concerns that the lots were standard. They were concerned that the perimeter lots were smaller compared with some of the surrounding properties. For example, if you note on your plan, the lots towards Pinon Hills towards the south are much larger. And that was again at a request of the neighbors that would have a bit of what we call

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transition lots towards the perimeter of the property.

The other concern that came out of the meetings was to make sure that we had an extensive trails network that was consistent with the TAP plan as well as consistent with the Arterial Roads Task Force Plan. What you'll see - and I'll get into the open space in a minute, is a public trail that's roughly 40 acres in size.

But getting back to the time line that I just wanted to highlight again, we started in 2003 and our original submittal of this project was September of 2003. We had, after several hearings on the water issue, and after resubmitting on this project in 2004, and of course we had our last neighborhood meeting in October of 2004, and what I'm trying to highlight here is the fact that this project has been master planned, has been underway now for almost two years. This has been on the County books in some shape or form for almost a year and a half just for master plan. So it's been quite an expensive process. And in that time frame we've had up to six neighborhood meetings to again, gather consensus from the neighbors as best we could, as well as try to inform regarding the water issues regarding this site.

Again, just to highlight the plan, 264 residential units. We've got 24 higher density acre lots, and we've got the remainder on one to three acres in size. Guesthouses are permitted. Let me just clarify, because this was an issue that came up at the CDRC. These are attached guesthouses. No kitchens will be permitted. And I guess another way to clarify it is one meter per lot. One meter to lot. Hopefully, that will help clarify things a little bit.

The site will feature community facilities. If you notice on your plan that you have in front of you you'll see two large green tracts and those will be earmarked for the project itself which will consist of a clubhouse and tennis courts and facilities for the residents, including equestrian uses.

Now, getting to the open space, as you can see listed on the side of that plan in front of you, you see about 200 acres of open space. I'm here to say that's just the minimum that's required by the County. There's far more open space on this plan than what's shown. The master plan is required to demonstrate that we have at least the 30 percent requirement. We'd estimate that we have about 400 acres of this project of the 660 are going to be left as open space in some shape or form, which includes common open space, or public open space for the residents of Santa Fe to use the trails, private open space on the individual lots, and of course the community facilities.

No, access. Two more points here to make. Access will be from the north to the south. It will be from Los Suenos Trail heading into the development and a secondary access will be La Vida Trail which heads out through Aldea. Ultimately we'll be building the Hager Road extension, which heads down to the frontage road on 599. We have an option to go to La Vida Trail as a short-term secondary access, depending upon if Aldea has completed the arroyo crossing through the development and whether we can use that or not. But again, Hager Road will be built at some stage in this project and it's going to be hard surface, cement, all-weather arroyo crossings.

Another point to highlight on this plan that may go unnoticed is at the very bottom you'll see an emergency access to Pinon Hills. It's a relatively minor issue. What I'm trying to

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highlight there is the fact that that was the result of a collaborative effort with the neighbors. It was a concern that came out of our initial neighborhood meetings going back two years and say that during severe storms there's an issue with being able to get out of Pinon Hills, because those aren't all-weather crossings. So we agreed to help solve the issue by putting in an emergency access through the subdivision itself which again is noted at the bottom of the plan.

Phasing. Five phases of development, north to south is what is planned for. Looking at roughly 50 lots to be developed per year and the infrastructure of course to go with that. That of course we're anticipating to be complete in the year 2012. The residential units, roughly 20 units per year and the completion of the residential units is anticipated to be completed in 2022, roughly.

I'd just like to conclude here, my final point, though again water has taken precedence over this case, I don't want us to lose sight of the fact that this plan has been the direct result of a collaborative effort with the neighbors, with the TAP community planning group and also that the density that we're showing here is very consistent with the surrounding properties and again, that was at the request of the neighbors and the abutters. With that, I conclude my presentation.

I'm sorry, I have one more point. I needed to amend conditions. In our previous CDRC hearing, as part of the record, if you notice in the minutes, we amended three conditions, so that is part of the record. I'm not sure if Dominic spoke to that or not, but the latest set of conditions --

CHAIRMAN CAMPOS: Dominic should address those issues because he is the public official here.

MS. VAZQUEZ: This subdivision had various options for obtaining water to it. The one that we initially began with was to extend the boundaries and allow the County to serve this development. The County at that time didn't have an adequate source of supply for this development so we entered into a water service agreement to create a source of supply for the County and to be served by it. That water service agreement was rejected so we went back to the Code. The Code allows us to do a shared well system or a community water system. We could have gone forward with this development with a community water system, but we would basically tie four lots to a well and we'd sink 66 wells there. That's an option that's allowed under the Code for this development.

We chose not to go that route. We chose not to go that route because with the understanding it would be better to draw into deeper aquifer. It would be better to do one well, as we had initially planned, drawn to a deeper aquifer, and put less straws into an area that is already immersed with wells. I've brought a demonstrative exhibit for you. What we did is we took a look at the area itself. We took a look at how many wells had been put into the aquifer in the surrounding areas and this was one of the bases for drilling one deep well. There's 57 wells, and this was as of six months ago in the Pinon Hills area. There's 55 wells adjacent to that in the Puesta del Sol. There's 30 wells adjacent to that.

So we chose to go with one well. We dug a 2100-foot well. We did geo-hydro on it. The geo-hydro demonstrates that we've got water at about 500 gallons per minute. The State

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Engineer reviewed that geo-hydro and the hydrologist at the County reviewed the same and concluded there was sufficient water underneath that land to support the subdivision at the size that it is.

There was one option that we have and we would be willing to work with the County on it and that is to hook up into the County system. Now, is presented a different set of facts as was last year. You have the additional water from the 375 acre-feet that you've acquired from the City. That option is available and we would be interested in speaking with you to see how it is that we could work on using some of that water instead of drilling this well.

There's been some criticism with respect to the water budget that we have. We submitted a water budget along with the geo-hydro and that water budget set out a per-lot water of .49. I want you to understand that that .49 isn't residential use only. That .49 consisted of the following: it consisted of all of the water to be used for the stables, all of the water to be used for the community's facilities, all of the water to be used for the landscaping. It allowed for a certain amount of water for any attached guest units, and it allowed for the water for the residential area. We would like the opportunity, given that this is master plan; it is conceptual, to work with your hydrologist, to work with the Office of the State Engineer and our own engineers to see if we can devise a system and put together innovative techniques for use of graywater.

We'd like the opportunity to go beyond the water harvesting ordinance, which we've already agreed to as a condition of approval, and we'd like to figure out if there's any way we can put together a system on site where we could use the graywater. We'd also like to see if we can work with low-flow fixtures and lower the water budget. We'd like to see if we can get to a point where no potable water will be used for landscaping at all and we can use the graywater that we've captured, the harvest water and the graywater from any system that we go forward with.

So I would ask you to allow us the ability to do that. We have submitted an application on the transfer of the water rights to the Office of the State Engineer. You might ask why we did that because it's not a condition of approval nor is it a Code requirement. But we did, and we did it because we were serious about this subdivision. And we were serious about trying to meet some of the concerns that have been addressed by the County through your neighbors and through yourself. We resubmitted an application November 8, 2004 that was submitted after we received the letter, of which there was much discussion on, that the OSE had rejected our initial application.

In the file and as part of this record I have submitted through the CDRC all of the correspondence that has been drafted by our water rights lawyers and the applications which I would like to make a part of the record and which is a part of the record that Mr. Gonzales has in his file. We were told very clearly that the Santa Fe Domestic Well Users would protest an application so we wanted to begin the process because the protest process is so lengthy. The application that was submitted on November 8th is the application for the transfer of the full amount of water rights that we have. These water rights are from Socorro. There has been some concern that these water rights cannot be transferred. Mr. Chair, Commissioners, rest

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assured that if these water right cannot be transferred, we will not get an approval from the Office of the State Engineer.

In your packet, and on this blow-up that I've done is a water right application flow chart. The concerns raised by the neighbors with regards to the water rights – where those water rights come from, whether or not those water rights transfers will impair their wells, whether or not there's a sufficient conservation, whether or not it is in the best interest of the public welfare – will all be addressed by the Office of the State Engineer. This water right flow chart is on the back of your packet that you've got. I believe it's the hot pink tab that you have. It is within the jurisdiction of the Office of the State Engineer to take a look at water availability, which was done through the geo-hydro, to take a look at whether or not this transfer impairs existing rights, which is a concern of the neighbors, a valid concern, whether this transfer meets the public welfare and whether water conservation measures have been met.

If you follow the chart, you'll see that if we don't meet those, that criteria, the application gets denied. If this application gets denied, Mr. Chair, Commissioners, this case does not come before you for preliminary development plan approval. This plat does not get recorded. That well will not be used and this subdivision ceases to exist. We have to address at the Office of the State Engineer, all of the concerns that the neighbors have raised to you and will raise to you today.

In this process we also have to take a look at and address the issue of depletions to the Pojoaque tributaries and to La Cienega. We are prepared to address both of those issues at the Office of the State Engineer and again, Mr. Chair, Commissioners, rest assured, if those issues are not dealt with in the manner that the OSE deems appropriate, we do not come before you for preliminary development and this subdivision does not go forward.

I was asked by a reporter last week why was this subdivision good for Santa Fe County. And it made me stop to think about it because I wanted to address her concern. The Commission and this County have put together subdivision regulations and you've done it for a reason. You've done it to allow for planning of an area. This subdivision is the entire section of Section 24, right here. This subdivision as submitted to you in this master plan allows you to cohesively plan a very large piece of land. It allows you to look at planning for growth. It allows you to plan for sewer and water systems. It allows you to put together cohesive open space systems, trails systems and a subdivision that makes sense. That is the in the public interest of this county and that is the good of bringing forth a subdivision.

There are several options that we have in the County Code as it exists. The last chart that you have in your packet demonstrates the different types of options. We could do a subdivision and you could take a look at this issue and deal with the hard issues up front. And you can tell us we need more trails. Tell us we need more open space. But this subdivision gives you an opportunity to plan. We could also divide up this land. We could do family transfers. We could split it. That would not give you that ability to plan. You would not have that ability to look at water issues cohesively.

That, Mr. Chair, Commissioners, is a public benefit. I'd like to save some time for rebuttal, Mr. Chair, Commissioners. If you have any questions I would again like to be able to

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reserve some time for cross examination and I stand for questions if you have any.

CHAIRMAN CAMPOS: Questions?

COMMISSIONER SULLIVAN: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER SULLIVAN: Ms. Vazquez, you've categorized some of our intent in the current ordinance that exists with regard to master planning and final and preliminary plat. I wanted to just make a point with regard to the first green tab, and then the second green tab of your handout. In the first green tab, I just wanted to point out, you have a quote here from me, which I don't know if it's correct, but I will assume it is, stating in part regarding having some proof of water availability at the master plan stage. "But I think we'd want them to have what we now require at that the preliminary stage insofar as water is concerned, available to us at the master plan stage. I think that answering the question at the master plan stage tells the public and tells the private property owners and developers that that's an issue that's first and foremost in the plan."

And in the second green tab, at the bottom under the comments attributed to me, in part, I go on to say, "It would simply move forward what we now require at the preliminary development plan stage to the master plan stage." Okay. I don't see anything there about transferring water rights. To get that information at the master plan stage, which was the primary intent of that ordinance, which I did help to bring forward, I then look at this letter, you've seen the letter of December 7th from the State Engineer?

MS. VAZQUEZ: Mr. Chair, Commissioners, I have.

COMMISSIONER SULLIVAN: Okay. In the first paragraph of that letter, the State Engineer says, "The State Subdivision Act mandates the County request an opinion from the Office of the State Engineer for preliminary plat approval." Okay. So what we're saying in this ordinance, in this intent, is we're now moving to the master plan stage with respect to water, what previously we required at a later stage as shown in Article VI. And the State Engineer is saying that not the County but the State Subdivision Act mandates that we request this opinion at the preliminary plat approval that we've now moved forward to the master plan approval.

So, as a courtesy to us, in the second page of that letter, the State Engineer has said at the bottom paragraph, "The developer has applied to the Office of State Engineer to transfer water rights to the well to be issued." And the State Engineer underlines this. "The Office of State Engineer, Water Rights Division has rejected this application to transfer water rights to RG -82308. The application was rejected - and we're not talking about transferring water rights here. We're just talking about applying and getting an opinion from the State Engineer about the viability of your application and the viability of the proposed water rights - The application - not the water rights, and I'm parenthetically adding that - was rejected due to the fact that pumping from RG-82308 will deplete the Rio Grande, the Rio Pojoaque and the Rio Tesuque; the water rights the developer applied to transfer were only Rio Grande rights. The developer will need to provide Rio Tesuque and Rio Pojoaque rights also to offset depletions caused by the proposed pumping. Please see attached letter." And the attached letter is an

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earlier letter of October 26th, provided by Mary Young of the Water Rights Division which indicates how many water rights would need to be transferred, 26 acre-feet, to handle the depletion of La Cienega springs and 3.52 acre-feet in the Rio Tesuque and 1.15 acre-feet at the Rio Pojoaque.

So having set those standards, have you acquired or optioned or in any way secured the necessary water rights to address the Rio Grande, Rio Pojoaque and Rio Tesuque basins and submitted those to the State Engineer?

MS. VAZQUEZ: Mr. Chair, Commissioners, we resubmitted the application on November 8, 2004. The application was the initial application that was originally submitted and it was submitted with an addendum and that addendum, which was made part of this record prior to the CDRC hearing stated this: It stated that Thank you for giving us a preliminary modeling on our potential depletions. We will go ahead and we will submit the water that is required for the Pojoaque area. We are in the process of doing that now. We have contacted a ditch association. As you know, state law requires the mayordomo to sign off on that transfer. We are working with them at this point.

COMMISSIONER SULLIVAN: That wasn't of course my question. My question was having the intent of the Commission move this water issue from the preliminary level into the master plan level, have you submitted at this point in time, to the State Engineer, because this letter is dated December 7, after the date of your indicated submittal was made. Have you submitted to them the amount of water rights or submitted proof of ownership or of option or in some way control or acquisition of the amount that they have indicated to you is necessary to offset the depletions in those three basins?

MS. VAZQUEZ: Mr. Chair, Commissioners, that was their preliminary modeling. We disagree with those numbers.

COMMISSIONER SULLIVAN: So the answer to my question is no?

MS. VAZQUEZ: It is also not required under the state statute.

COMMISSIONER SULLIVAN: I didn't ask for an opinion of the state statute. I think the State Engineer has given us that. I've asked for an answer to my question. Is it yes or no?

MS. VAZQUEZ: We have not submitted the water rights right now for the Rio Pojoaque. We are in the process of obtaining them. They have accepted out application and they are waiting for publication for the letter from the mayordomo.

COMMISSIONER SULLIVAN: Okay, now this letter, is there a subsequent letter to December 7th? Because this letter says they have not accepted your application and there is no change to the negative opinion issued by the Office. And it says, In accordance, a negative opinion, underlined and in bold, issued by this office will not be changed at this time. Is there a subsequent letter that you're referring to that I don't have here?

MS. VAZQUEZ: Mr. Chair, Commissioners, the letters with the submittal that we did were submitted as part of a file. There is no other letter from OSE. But understand that Mr. Patrick Romero works in the Subdivision Section of the Office of the State Engineer and the applications that were submitted for this development were sent under the Water Rights

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Permit Section. It's a different department.

COMMISSIONER SULLIVAN: Well, regardless of the department, the point, I just want to be clear here is that we don't know have from the State Engineer a positive opinion or even an acceptance of your application that would be required at the preliminary plan. We're not talking about transferring water rights. Do you agree with that?

MS. VAZQUEZ: I do not, Mr. Chair.

COMMISSIONER SULLIVAN: You don't agree.

MS. VAZQUEZ: And if I may explain why.

COMMISSIONER SULLIVAN: Sure.

MS. VAZQUEZ: The first reason is that when we met with the OSE on how they review applications they told us this: One, we have no criteria for evaluating master plans. We review this subdivision as if we're never going to see it again. Therefore they issued a negative opinion based on the fact that the water rights had not been transferred, and as the December 7th letter said, water restrictive covenant had not been created. That's the reason for the negative opinion. That's the first issue. You may ask your own staff with regards to that, because I believe OSE had discussions with your staff regarding reviewability.

I will allow Mr. Chuck Dumars who is our water law lawyer to discuss with you the issues that you've raised as to whether or not it is required to resubmit the water rights for the Rio Pojoaque area.

COMMISSIONER SULLIVAN: Okay, we'll get into that if the chairman wants to.

MS. VAZQUEZ: Does that answer your question, Commissioner?

COMMISSIONER SULLIVAN: I don't think that you have, but I'm going to have to move along here. The point I think that I'm trying to clarify here is that the State Engineer has issued two negative opinions on the water issue. And your reason for saying that that is not pertinent to this is that you will take care of this in the future. Is that the idea?

MS. VAZQUEZ: Mr. Chair, Commissioners, actually I didn't say that. What I said was that they issued a negative opinion for two reasons. The reasons that they gave the negative opinion was that we have to create water restrictive covenants and we have to transfer sufficient water rights. The reason that they gave that negative opinion, and Mr. Chair, Commissioner, please ask your staff who also had these discussions with the OSE is that they have no criteria available to them to review master plan approvals. The state statute sets out the criteria for them and that statute requires them to review as if for preliminary development plan approval. We are not there yet.

COMMISSIONER SULLIVAN: Well, we are.

MS. VAZQUEZ: That was why the negative opinion was issued.

COMMISSIONER SULLIVAN: With regard to water, that's what I'm trying to get across to you, with regard to water we are there. You see, that is what the change in the County ordinance was. We understand what the difference between master plan. We understand that the intent is to make master plan as least expensive as possible. However, with a 264-lot subdivision with an entire section in question here, obviously there's going to be some

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expenditure of money on your part. I'm sure your client realizes that. But I think what I'm trying to get understood here is that with regard to water we now view that in our ordinance as the preliminary plan level. We want that level of detail.

The Office of State Engineer says, Okay, we've reviewed the application. In fact we haven't even accepted the application and the State Subdivision Act requires us to review it at the preliminary plat level, and the purpose of this letter is to provide this opinion and our opinion is negative because you haven't offset, you haven't indicated any water rights availability to offset those three basins. That's what I'm trying to get across and I think your testimony was that you dispute that the State Subdivision Act requires them to do this at the preliminary plat level. Is that right?

MS. VAZQUEZ: No, that wasn't, Mr. Chair, Commissioners. Let me just explain. If you look at the intent ordinance language -

COMMISSIONER SULLIVAN: I just read it.

MS. VAZQUEZ: You did not read it all. If you look at the intent ordinance language, the intent was to provide water rights at master plan. Not to provide a transfer, to provide water rights. That requirement in this ordinance is distinct from the statute requirement at preliminary and final. What you have here in Ordinance 1996-13 is consistent with the state law statute and Subdivision Act, which requires that that transfer be completed before this Board acts on approval of a final plat. So we're talking two different things, Commissioner Sullivan. You're talking Subdivision Act, which is different than the master plan ordinance. There is a distinction between the two. Mr. Dumars is here to discuss the issue on the water rights from the La Cienega/Pojoaque area.

CHAIRMAN CAMPOS: Well, right now I think -

COMMISSIONER SULLIVAN: It's up to you, Mr. Chair. I think she's testified that they haven't acquired the water rights requested by the State Engineer for those three basins and it's up to the Board to decide whether that's an applicable -

CHUCK DUMARS: Let me just say, Mr. Chair, we have acquired them and my testimony would be that we've both acquired them, submitted them, and the State Engineer has accepted all of the applications and is prepared to publish them. I just wanted to make that clear on the record, if I might.

CHAIRMAN CAMPOS: Thank you. Okay, Commissioner Montoya.

COMMISSIONER MONTOYA: Regarding one of the conditions on the Las Campanas Sewer Association. Can you tell me a little about what that agreement is or what it would be?

MS. VAZQUEZ: Of course. Mr. Chair, Commissioners, we entered into negotiations with Las Campanas to be able to hook into their sewer system to provide a system for this development. That is the condition of approval. We did request an amendment of that, Commissioner Montoya, to allow us the flexibility to take a look at possibly putting on an onsite septic system so that we could use some graywater, use the graywater for landscaping and for other areas in the subdivision.

COMMISSIONER MONTOYA: Okay.

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MS. VAZQUEZ: So it's at preliminary stages, but we have met with Las Campanas and have discussed that option with them.

COMMISSIONER MONTOYA: So it could be both. You could have your own system and you might hook into theirs as well?

MS. VAZQUEZ: It would be either.

COMMISSIONER MONTOYA: Oh. Either one, not both.

MS. VAZQUEZ: It would probably not be both.

COMMISSIONER MONTOYA: Part of the concerns I've heard, Ms. Vazquez, has been the water budget, being close to about half an acre-foot, as opposed to what we've kind of been looking at countywide, whether it's within ordinance or not, and that's of a quarter acre-foot. Is there any possibility of reducing from almost half to about a quarter acre-foot per unit?

MS. VAZQUEZ: Mr. Chair, Commissioners, most certainly. And that is what I believe I talked a little bit about before. The .49 that is set out in the water budget includes a lot of things that go on outside of each lot. It includes the community facilities, the stables, the swimming pool area. It includes the landscaped area and it also includes a number for our fire flow and line-loss reduction and it includes some water for an additional guesthouse, which would be attached as required by the Code.

If you subtract out all those things, Commissioner, we're not that far. We're at a .36. We would like to go down on that. We would like to work with Dr. Wust with regard to lowering that water budget any way we can. What I would ask you is to give us the opportunity to do that. To let us engineer some graywater uses, to take a look at low-flow fixtures, to get a water budget that's much more detailed. And I believe the comments that Dr. Wust gave in his recommendation was they need to work on giving me a more definite water budget so we can work on reducing that. We would like to move forward to try to get that done and when we come in with preliminary we will have a more detailed water budget at a much lower rate.

And just for the record I'd like to point out that the .25, and you need to ask your hydrologist, really is a basis for determining lot size and the practice has been at the County up until recently that if you could prove water from your well as was stated in the last case that came before you, if you could prove water from your well and you have sufficient water for it then you could work within those boundaries. But Commissioner, we would like to work towards lowering that water budget as much as we can.

COMMISSIONER MONTOYA: Okay. Regarding the guest quarters and guesthouses, are they separate, in terms of there's going to be a large residence and then a guesthouse?

MS. VAZQUEZ: Mr. Chair, Commissioner, the County Code as it currently is written does not allow for separated guesthouses. It would have to be attached. And it does not allow for a separate kitchen. You could have - it's very, very specific on what it means. It's really much more like a mother-in-law flat, a parent's quarters, is really what is sort of looked at when you're looking at it as an accessory structure of a guesthouse.

COMMISSIONER MONTOYA: So it's not a separate structure?

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MS. VAZQUEZ: No, it is not.

COMMISSIONER MONTOYA: Okay. That's all I have for right now, Mr.

Chair.

CHAIRMAN CAMPOS: Okay. I think we're here ready for public hearing.

Anybody for or against? Who would like to speak – sir.

COMMISSIONER MONTOYA: Sorry, I have one other question. Kind of in line with what is happening in the Community College District, we're requesting that developers look at 15 percent of their build-out to be affordable housing. There's really nothing that I see in this proposed development that addresses anything about affordable housing. So how is someone in Santa Fe who would qualify for affordable housing going to be able to afford something like this?

MS. VAZQUEZ: Mr. Chair, Commissioners, you're right. The application does not speak to affordable housing. The reason it doesn't is a couple and one is that there is currently no Code requirement for affordable housing in this area. There is a Code requirement in the College District that requires 15 percent. When we looked at initially doing this development we made a proposal with regard to affordable housing on the project. And the densities were high, Commissioner, and there was a concern about traffic because of that. We would, and have been trying to come up with a proposal with respect to affordable housing and we would like to work with County staff on devising a program that we could either contribute to or we could supply lots to. It is something that I have attempted to meet with housing specialists to figure out what sort of program we could and we would love to work with County staff on that issue.

COMMISSIONER MONTOYA: So you are open to looking at some sort of affordable housing option?

MS. VAZQUEZ: Mr. Chair, Commissioners, we are.

COMMISSIONER MONTOYA: And then if you could maybe – a lot of the area I represent, we have a lot of acequia associations up there and it kind of concerns me that we're looking in that area in terms of transferring some of those water rights from the Rio Pojoaque area into this particular subdivision. Can you tell me a little bit about what's happening there because this is the first I've heard about it this evening.

MS. VAZQUEZ: Mr. Chair, Commissioners, gladly. It really isn't a transfer of those water rights from those tributaries in the Pojoaque area where you reside, it's really more – we have those water rights. The acequia association needs to sign off on them by state law and they would just be retired. They wouldn't be transferred; they just would not be used at this point. There are different options on how to do that. You can retire them completely. You can lease them back to the acequias and then retire them when you get to the point where the depletion would occur. The manner in which that retirement takes place can take various forms and that's what we are in discussions with the acequia association now.

COMMISSIONER MONTOYA: Now, can't the acequia association also lease those water right to you?

MS. VAZQUEZ: Mr. Chair, Commissioners, the only way that a lease would

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work is if they were to be leased to us for a 100-year period. What can be done is a sale with a lease back to the acequia association, for their use until such time that we needed to retire them.

COMMISSIONER MONTOYA: Are you going to talk about that? Okay.

Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Public hearing. All those in favor. I'm going to ask you to come forward. Who would speak in favor of this application out in the public? Okay. Who wants to speak against this? Would you raise your hand? I'm going to ask you not to repeat. Stay focused on the issues that are relevant to the approval of this process, and come on up, whoever wants to be first.

COMMISSIONER ANAYA: Mr. Chair.

CHAIRMAN CAMPOS: Sir.

COMMISSIONER ANAYA: Are you going to put a time limit?

CHAIRMAN CAMPOS: I'm just going to ask the speakers to recognize the fact that it's late and to be focused and try to limit your statements to two or three minutes.

[Duly sworn, Tom Blog testified as follows:]

TOM BLOG: My name is Tom Blog, 43 Vuelta Maria, out in the Las Dos area. I wish you a lot of wisdom this evening. I have no clue why anybody would want your job. I would like to state for the record that I live on 12 acres in a 27 square foot house with a family of four. I have a metered well. I've been logging it for ten years and I use approximately .14 acre-feet per year. I think that's a goal that we all should strive towards.

I'm here to speak on a very narrow issue. I'm on the board and I do represent the Santa Fe Domestic Well Owners Association and I will speak specifically to the politics and policy of this well. I'm not here to argue hydrology. I'm here to discuss politics and policy. We feel as an organization that it is bad policy for anybody to transfer out-of-basin surface water from hundreds of miles away to in-basin wells miles from the river. We think regardless of the hydrology, that sets bad planning, bad policy.

For example, once this door is open, and I understand the municipalities and the counties have made these transfers for long-range planning purposes. But once this Pandora's box is open to private developers this is merely the tip of the iceberg. There is a pent-up demand that you are beginning to address, which is wonderful. However, if this is permitted, and you do have the capability to delay it, and I will deal with that in a moment. If this is permitted, it will result in some very long-term detrimental public policy. If and when you finally do get an integrated water system, you could be dealing with multiple private production wells. You could be dealing with complex invested water rights, and you could be dealing with conflictive policy uses of that water.

Specifically the applicant's hydrology report indicates that there are hundreds of private shallow domestic wells within a mile of the property boundary. In addition, their own report indicates that there's approximately 100 wells that will have some impact as a result of this pumping and that in fact it shows a 100-year 36-foot drop at the property boundaries. The State Engineer has indicated a need for offsetting rights from the Rio Pojoaque, the Rio Tesuque and the La Cienega area. Those are miles and miles from the subject property.

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I'm not a hydrologist but even a non-linear system would argue that there's incredible effects much closer to the place where the state indicates there's potential problems. We have also seen and you will hear more that in setting this precedent of buying these rights from acequia associations you are dabbling in a very complex northern New Mexico tradition that the complexity and the complications may outweigh the social benefit to one particular developer or area.

A quick review here to make sure that I've touched on the issues that I wanted to. The County is making and has made phenomenal strides in the last year. You've got money. You're working on water rights. There's a pipe near this development. The applicants themselves have bemoaned the years they've spent on it. It is not an unreasonable request to take another year, develop your own water plans and integrate this into the County water system. And that's as short as I can make it. Any questions? Thank you very much.

[Duly sworn, Charles Padilla testified as follows:]

CHARLES PADILLA: My name is Charles Padilla. I live at 51 Calle Sinsonte, Santa Fe, 87507. I addressed you the last time that this issue came up before you all when the water well in question, or your participation in the water well was cancelled. In the meantime I want to congratulate you all and first of all I want to wish you all a very happy Christmas, or a Merry Christmas and a Happy New Year, I think. I'm very sorry that the hour is late and I'll try to move through this pretty quickly.

I've followed this development quite closely because I'm in the neighborhood, and I think the issue that we come up with that I can explain probably most carefully is that this subdivision involves speculation in property. And this involves voters who aren't registered yet here, buyers of land, and every time I turn around I see that the ante is raised. Tonight, for instance, I heard that there are going to be guesthouses allowed and whether or not they're attached or not, what happens is that that makes this speculation a little bit more clear. And it just says that there's two different kinds of people that are out in this neighborhood. There are the people that are here that are still in this room who do not have the \$20,000 or the \$25,000 to replace a 350 to a 600-foot well, when right in the midst of their neighborhood now, they have a 2,000-foot well with a lot of houses that that's going to serve. And what happens is that you've got a constituency within the Agua Fria Village, within Puesta del Sol, within Pinon Hills, that is looking to you for equity, because frankly they're here because they're interested in this issue because they don't have the money to replace their wells.

Even Commissioner Montoya in Pojoaque, what happens is that the City of Santa Fe has gone to great lengths to protect the acequia systems but at the same time, now all of a sudden you're going to be met with a requirement that you go into your own neighborhoods, and this affects the people that you live around. And it sounds to me like this is very benign that you would give up a farming right, that you would give up an irrigation right or you would give up the right to water a field. But what happens is that you also have to recognize that you're giving up your own history.

A lot of these people are here basically because they don't have the \$20,000 to replace their water wells and I think that's why I address you here tonight. The other thing that I'd like

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to talk about is that there's a big difference between the guys who come into these new subdivisions and who can afford to speculate on property and take out the kinds of loans that it takes to buy houses here. There's a big difference I see between the people in, say, Las Campanas. Four hundred houses there now already consume ten percent of the City water, and in the last five years we've been in the big drought, and there has been no sensitivity at all to that drought. And there's sort of a class issue here. And I really, I guess the word that I would use most is this issue of speculation.

I went to these neighborhood meetings and I'm not so sure that I went to the same meetings that I've heard tonight. The neighborhood meetings that I went to were concerning whose well would be impaired and how that was going to happen. Those meetings did not have anything, any explanation of the kind of conflicts that even your own County employees had in representing this particular developer. And it was very difficult for me to sit there and try to understand what we were giving away as neighborhoods or what we were bargaining for. Because the issue of adjoining walls in guesthouses was not something that was brought up in those meetings. And those meetings were primarily concerned with trying to identify who was going to get it in the neck.

And I can rest assured, you can rest assured, that that wasn't going to be anybody that bought in these houses. I've spent eight years as your representative on the Metropolitan Water Board. This transfer of water from Socorro into this well stretched just about everything that I know about water planning. And what happens is that you will have an effect in the neighborhood. And there will be an effect in Pojoaque and there will be effects all over this place, because there's too many water wells. I really do commend you because you have gone to the City and you've negotiated successfully with the City. But I have a little bit of a concern today because the attorney for the developer just a few minutes ago said that they would be willing to abandon all of their plans with the State Engineer's Office if you were willing to trade your 375 acre-feet of water that you've gone to the bother of acquiring. And I don't think that that's fair to you.

And certainly I don't think that that's fair to all your constituency that has paid property taxes in all of these communities over this long period of time. And now they're faced with the issue that they cannot replace their wells if they lose them. Because most of the people that I know do not have the \$20,000 to \$25,000 to redrill the well, and they have a great deal of respect for the water that they take from those. And I think that what happens is that this development now looks to me like it's completely out of order with the water plan that you're starting to develop with the City and what your cooperative agreements are with the City. This does not make sense because this thing is just more land speculation in the county.

And this is speculation in people who are not in these neighborhoods. And they are not people who have even voted here. So I would really request that this issue be tabled and that you allow the process of the State Engineer to come through, and that this be planned on something of a different kind of a basis, because I think that there's a lot of people in these neighborhoods that are going to be hurt by this and I'd hate to see that happen. I want to thank you all. I apologize for the late hour and I know when I was on these, it was the first time my

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chest ever started hurting and it hasn't quit since. Thank you.

CHAIRMAN CAMPOS: Thank you, sir.

[Duly sworn, David Gold testified as follows:]

DAVID GOLD: My name is David Gold. My address is 70 Sloman Lane, Santa Fe. What I'd like to do, we handed out a sheet earlier during the break to you.

We would be delighted if the Commission decided to say that having a well like this is bad news and they don't want any part of it. But, if you don't decide that, we have some requests of you. First of all, I want to thank you all for staying this late. I'd like to thank all the people that came to show up for this and handed out fliers and made this kind of a public showing possible. I'm just hoping that everyone here that has concerns about this well could raise their hands right now. Seems to be a pretty large portion of the audience.

Also, I'd like to thank both Al Lilly and Scott Hoeft. They did meet with our association. I can't say that I love the plan that they came up with but they made a good effort and some of the issues I still have are the lack of open space, affordable housing, the affordable housing options we were presented with basically were like tripling the density. And the affordable housing was offered to be right on our border so that was generally rejected. But it was suggested that affordable housing could be integrated into it and I'm glad to hear that they're considering those kinds of options right now. I also am glad for the trail system and finally I have to thank Rosanna Vazquez who, although I seldom agree with her, did at least try to reach out to us on several occasions.

Anyway, the requests. First one, we ask that you limit their consumption to a quarter acre-foot per lot on an average. Now, I want to be clear the difference between what we're asking here and what Ms. Vazquez brought up before. We would ask that you limit the entire consumption on the average, for any given lot to a quarter acre. That includes their commercial uses, their stables, their pool, everything. If they choose to take their quarter of an acre-foot and use it for a pool, that's fine. Or a stable or whatever. But we ask that, basically, by having something greater than a quarter of an acre-foot, in a sense other area well owners are being penalized and the draw-down is just greater. This is a huge development. It certainly sets a precedent to give them more than a quarter of an acre-foot at this point we feel is just a bad precedent. The Commission is negotiating with the City right now and to go ahead and say, Well, these people should have swimming pools and horse stables and the rest of you that live in the City should deal with Stage 3 water emergencies, I think doesn't send the message that this Commission should be sending and in fact has sent in the past. You've sent this message of conservation and it goes against it.

It sounds like the guesthouse thing has pretty well been dealt with. We have it on the sheet. We would like to make sure that these guesthouses are not used as rentals. The separate space is mostly once again for the water and traffic that's brought up. We would like a condition that says specifically that this well will be limited to the use of the subdivision only. The reason we're asking this is because we're concerned that once water rights get transferred that other water rights could be transferred there and a commercial utility could be put in place. Now, when we had a meeting with the developer's representatives they did say that that was not

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their intent and so I would hope they would have no problem with putting a limit of this sort on the well.

We would like to tie the water use to build-out. By that we mean that as the houses are actually built, that would be when they get to use the water. The reason that we're concerned about this is that at a certain point they have 264 houses in their master plan and they have all the water uses for those 264 houses and they could be using a significant amount of water per lot. Once again, we'd like to see that lot restriction, overall, a quarter of an acre-foot.

We'd like to see all available possible conservation measures. We're glad to hear that they're in fact looking for that. And we'd like to see graywater recycling. We did some estimates and they could save like up to .2 acre-feet. So that would certainly make up for the restriction that we're asking.

And then our final request is that you require that when County water is available that they hook up to it and cap their well. And that they transfer the water rights to the County. Once again, we're concerned that using a well at all in such a large subdivision is not a direction the county should be going in. At least these conditions will ultimately protect the neighboring well owners. We do plan to fight, to protest the transfer at the State Engineer. We have a lot of concerns as Tom mentioned about the concept of transferring water rights out of basin to a well in the county. If it goes through we would ask that these requests be considered. Thank you very much. If you have any questions.

CHAIRMAN CAMPOS: Thank you, David. Sir.

[Duly sworn, Meade Martin testified as follows:]

MEADE MARTIN: My name is Meade Martin. I reside at P.O. Box 1116, Santa Fe, New Mexico. I get mail there. I'm a commissioner of the Acequia del Cañon in Nambe. Our acequia dates to the 18th century and serves 65 parciantes with about 187 acres in the Nambe Valley. Recently, the acequia commission received a request to transfer and a request for an approval for an application of transfer of 2.1 acre-feet water rights from property owned by Soren and Erica Peters in Nambe. The transfer-to location is the well at the proposed Suerte del Sur Subdivision in La Cienega.

We respectfully request that you do not support this project until water can be found for it elsewhere so that it does not have a negative impact on our traditional communities. We cannot support transferring Acequia del Cañon water rights to an exploratory well out of our community. Transferring acequia water rights, no matter how few, sets a precedent that will accelerate the slow death of our irrigated valleys. We have been suffering from an extended drought and we are having a hard time meeting all of our members' water needs without even considering removing water from our system. We are also struggling with the Aamodt water rights law suit.

Our acequia met on March 15th of this year to discuss adoption of new by-laws requiring acequia commission approval of water rights transfers off our acequia. That action was pending when this request was made. I think it's important to note that acequia water rights, unlike well rights or paper water rights are water rights that were developed over the last couple of centuries by people with just ingenuity and the sweat and hard work of their labor to

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deliver water to the acreage in question and I think they represent a kind of a sacred sort of water development in this part of the word and to trade them openly and make them pawns is kind of sacrilegious. But that's just a personal opinion. So as your taxpayers, we're counting on you to protect our interests before the new projects are approved. And we thank you for your help.

CHAIRMAN CAMPOS: Thank you, sir.

[Duly sworn, Carolyn Sigstedt testified as follows:]

CAROLYN SIGSTEDT: My name is Carolyn Sigstedt. I reside in downtown Santa Fe. I just want to say a couple of quick things. One, that what they're offering and providing tonight is solely water rights. They're not providing transferred water rights and there's a huge difference between the two. Huge. And so for you to approve a master plan on solely water rights, not transferred water rights, it's absolutely irresponsible. And I beg you to wait for the process to take place.

And secondly, in the time that it takes for that process to take place, I would encourage you to develop your own water system. I actually am in favor of community wells, appropriately placed for our region's common good and sustainability. I also believe that water whenever possible should stay in the public domain and if one needed to offset water depleted on certain rivers a government entity could do it more creatively with the acequia associations than a private interest. So those are simply my comments and I would just ask you to slow this process down until you really see transferred water rights.

[Duly sworn, Jay Dillon testified as follows:]

JAY DILLON: I'm Jay Dillon. I live at 21 Big Tesuque Canyon. I'm here because I've lived 49 years of my life on an acequia in Tesuque, the Big Tesuque Canyon, the source of. I've irrigated since I was seven or eight years old and I am somewhat familiar with that whole system. I would just vote right now, or that I would propose that you table the motion and look at the opportunity. This is an exemplary time to develop a whole system instead of a piecemeal system as has been between the City and the County. I too support the County developing a regional water system. And the idea of transferring the water rights from out of this county from other counties, to me does not make any sense. Transferring water rights from Rio Nambe and the Pojoaque area to this area does not make any sense. Retiring water rights, that sets up a whole chain of events that will open up other Pandora's boxes, I think that has been expressed before. I do not want to see the death of our rural communities. Our rural communities are vital and what keeps them vital is the acequia system. Thank you.

[Duly sworn, Lynn Velasco testified as follows:]

LYNN VELASCO: My name is Lynn Velasco, 32 Loma Blanca in Santa Fe. I'm also with the Pojoaque Basin Water Alliance. The policy that has been proposed I feel is irresponsible, short-sighted and not looking at the whole picture. You're looking at one section with one development in mind. I live out in Nambe and we have a tradition of acequias out there, and that tradition is being threatened, not only by this but by the Aamodt case and a lot of transferences of water, by the State Engineer's new rules and regulations. And all of these things could be causing a real detriment and an end to a tradition that is what's at New

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Mexico's soul.

Also, the transferences of these water rights from the ditches will affect Nambe and Pojoaque. The return flow will affect our wells. If we don't get that return flow from our acequias it will also affect – the importation of water into another area will affect the wells in the neighborhoods of this proposed plan. Mr. Commissioner, Harry Montoya, I particularly ask you to listen to my request as your constituent. I urge you to table this. Thank you.

[Duly sworn, Roy McKeag testified as follows:]

ROY MCKEAG: My name is Roy McKeag. I live at 21 Calle Enrique. I'm just here to ask that you consider this, you Land Development lot Code, the basin zone. For individuals anyway, you would limit it to a tenth of an acre-foot per acre and I understand that if you can prove that you've got lots of water you can maybe raise that or you have in the past. I don't understand how drawing the water from further down in the basin is adding more water. I think it's still the same amount of water that's leaving the basin, drawn from a deeper depth. And I would request that you limit the subdivision to 66 acre-feet of water per year, which would be the same requirement as the Land Use Code on lot size requirements. That's my request.

CHAIRMAN CAMPOS: Thank you. Anybody else?

[Duly sworn, Eliot Streeper testified as follows:]

ELIOT STREEPER: My name is Eliot Streeper. I'm the president of the Santa Fe Basin Water Association, P.O. Box 6132, Santa Fe. The speakers that have been before you tonight have done a really great job about telling you some of the water concerns that are brought up by this application. I just want to reiterate that the thought of transferring Middle Rio Grande water rights for diversion out of a basin with which they are not hydrologically connected, is, I hope, in the State Engineer's Office, an idea that will never float and would set the worst precedent possible in water law and I think would violate everything that water law says about where water can and cannot be transferred from.

I also think that the idea of limiting the residences in that subdivision to a quarter of an acre-foot is a very good idea. I think the County remains the best hope for this area in terms of developing a water system that – and preventing the proliferation of domestic wells and any other kinds of uses for the Santa Fe Basin that are going to lead to its early extinction. And the diversion project from the Rio Grande and transfer of imported water rights into a County system is the best hope for saving the Santa Fe Basin to the extent that some part of it will be viable and available for the next generation.

CHAIRMAN CAMPOS: Okay, anybody else? The public hearing is closed.
Ms. Vazquez.

MS. VAZQUEZ: I believe we started this hearing today talking about the concerns of water as is evidenced by the comments that were made and the concerns about policy, water is the issue. But let's go through them. The first concern was can these water rights from Socorro be transferred? Should the County allow the transfer of these water rights from Socorro was a big concern of many of the people here. Whether or not those water rights get transferred and in what quantity they are transferred is within the jurisdiction of the Office

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of the State Engineer. As Mr. Blog stated, this County has transferred water rights from Socorro and other areas and it is up to the Office of the State Engineer to make the determination as to whether that is a valid transfer based on the criteria that's set forth in the chart that you've got before you.

There's been a concern as to the acequias, again, a valid concern, a concern that we raised as well. The legislature has attempted to protect the acequia systems by requiring to get an approval from the acequias for the transfer of those rights. That has to be done. If it is not done, OSE will not approve this well. It will not approve this transfer and it will not approve the use of this well. There is protection there.

Let's talk a little bit about some of the issues that have been raised by the public. Let's table this case, allow the transfer to go through. I asked the very same question to the Office of the State Engineer, and the question I posed was this: What if I had the best water rights in the world and I transferred them to the Suerte development right now, full amount. I have no master plan approval. I have no approval whatsoever. What would happen? And I was told that I could get the transfer done. I said, What happens if I wouldn't get approval on the development? Could I transfer them out? And they said to me, You could try. The problem that you're going to run into is that if you transfer them to the well, and you do not put them to beneficial use, they cannot be transferred out. We would not be able to put them to beneficial use because we had no approval. That's the first problem, and I think a very important problem.

The second issue is this. When you submit for an application to transfer water rights, the first question they ask you is how much are you going to use? How much do you need? How is an applicant to answer a question like that if we have no master plan approval whatsoever, or no approval from the County to give the OSE that determination. Without that, OSE can't make a decision with regards to this application.

I cannot stress to you but what this approval is is simply a master plan approval. It is a conceptual approval. Every single issue raised by the public is a valid concern and if those concerns are not dealt with prior to preliminary plat approval as is conditioned on this development we cannot come before you. If we don't deal with the acequias, we can't come before you. If we don't get this well approved, we can't come before you. If we can't transfer those water rights, we don't come before you. This development stops if we don't deal with every single issue that the public has raised and the jurisdiction for those issues is with the Office of the State Engineer.

Specifically with respect to the comments made by Mr. David Gold, there are no swimming pools, plural. It is a community pool for the development. The guesthouse issue has been dealt with as he said. When we were discussing use of this well with the neighbors, we asked, we spoke to them with regards to how it is that we could use this well for fire protection for the surrounding areas. There was a concern raised in the neighborhood meetings that there was not sufficient fire protection, especially for the Pinon Hills Subdivision. One of the reasons why we added the emergency access was to allow fire vehicles to get in there to provide fire protection. We do not want to limit the use of this well just for the use of the subdivision. We'd

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like to be able to look at providing, allowing use of that water for some fire protection issues in Pinon Hills.

Keep in mind that the Office of the State Engineer is going to approve that well, approve its uses. The state will take a look at where the jurisdiction is and how that water is to be used.

With respect to tying the water to build-out, I believe that that's covered in the water restrictive covenants that we've met as part of this development with the County Commission. I believe that that's not a concern. It will be covered through the water restrictive covenants, and it is within the jurisdiction of the Office of the State Engineer as well.

And I did state earlier that if the County was able to serve this development that we would most certainly enter into negotiations with you. That is what I stated with regard to connecting to the utility system.

The word policy has been thrown out, Commissioners, and it's been stated that these are your policies, that these are policies that you should look at. That you should change. What you have before you is a subdivision that meets not only the stated policies of this Commission but it meets the County Code requirements as are set out in the Code currently and are applicable to this subdivision. I stand for questions if you have any.

CHAIRMAN CAMPOS: Okay, discussion. Commissioner Sullivan.

COMMISSIONER SULLIVAN: Are we finished with Ms. Vazquez?

CHAIRMAN CAMPOS: Yes. No questions.

COMMISSIONER SULLIVAN: Mr. Chair, we have focused and rightfully so on water. The dichotomy that I think is difficult to deal with on this subdivision is first of all, they're going to put County water lines all the way through the subdivision. The subdivision is going to have County water lines all the way through it. And they're going to be tied to fire hydrants. And that's how they're going to provide the fire safety for the subdivision. So this subdivision is going to be built with water lines tying on to the County system, through Las Campanas, all the way through the whole subdivision. And yet they're going to drill a well.

So number one, that doesn't seem to be good planning. We did, through our water agreement with the City, give us some breathing space to the tune of 375 acre-feet to deal with subdivisions that come before us between now and the time that the Buckman diversion comes on line. And I think it's the consensus of most of the Commissioners and those on the Regional Planning Authority that those subdivisions that are considered for those water rights should be ones that meet the criteria that we've outlined in our growth management and our Regional Planning Authority Development plan. Those policies and issues and guidelines that we developed for smart growth, for open space, for concentrated development to efficiently utilize our natural resources. This subdivision doesn't do that.

We've talked here primarily about water. But in my judgement this is really a poor subdivision plan. Let's say the water was all available and that wasn't an issue. This is just not a good plan. It doesn't conform at all to the growth principles and the development principles that we've been talking about. It doesn't have adequate public open space. It doesn't have affordable housing. It's not at all what we want to use our scarce water resources on. So I think

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if we just focus on the plan and even set aside for a moment the fact that water issues haven't been dealt with completely yet, it's not a good plan. I think this plan needs reworking. It has all the attributes of a 1950s cookie-cutter type development plan. And I just don't feel it's where we should be going or it's the model we should be setting for other development in the future in Santa Fe.

COMMISSIONER DURAN: I've always been one to uphold the Code and I believe that this project probably has come forward meeting the Code. Everyone out there that's opposed to this is my constituent. I don't know if all of you voted for me. I know Tom Blog didn't. That's okay, Tom.

COMMISSIONER SULLIVAN: They all did, Commissioner. They've taken an oath.

COMMISSIONER DURAN: But I have definitely heard what you have said tonight. And it concerns me that all of the neighbors for this particular subdivision have stayed here all night to express their concern. I think water is a big issue. I think water is something that we need to deal with probably a lot differently than we have in the past. I think that bringing water rights from Socorro to our community may not be the best thing. I don't think that that's our jurisdiction but I think that we need to allow the State Engineer the time to make that decision. And I think that it would behoove this Commission to table this until a final determination is made by the State Engineer so that you all can make the right decision after he's made that decision. So when everyone's through saying something I'd just like to make a motion to table it.

CHAIRMAN CAMPOS: Let's see if anybody else has anything else to say.
Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, thank you. First of all I'd like to thank all the people out there for showing up and for all your comments, because this is part of the process. This is not a final development plan. This is the master plan. This is a conceptual plan. I think that the developer needs to work with staff on the water budget. I hear from .49 to .25. I think that the developer should work with staff on graywater and re-use. I think that the developer should work with the County on affordable housing, whether it be water resources set aside for affordable housing, land set aside for affordable housing, and resources provided to help affordable housing.

I don't agree with the developer on guesthouses on all the lots, whether it be attached or detached. I think that needs a little bit of work. I am very concerned about the water rights in the La Cienega, Pojoaque, Tesuque and the Nambe area. And I know that the Office of State Engineer will discuss these with the developer and they'll get back to the County and we'll know more about it. Right now, I don't have the answer. But like I said, this is the master plan. It is not the final plan.

As I look at this map, I count the lots that are surrounding this development. There's 46 lots just around this development. Commissioner Sullivan mentioned that it's not smart growth. Well, when you have planned roads, exits, entrances, water, the hydrants, I think that's smart growth. They're not just coming in here and piecemealing it one at a time. So I want to thank

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you all again for coming but I think that we need to move forward, and Mr. Chair, I'd like to make a motion but I'll wait. Those are my comments. One more comment on the affordable housing. Santa Fe County and the Commission is committed to helping to provide affordable housing and we will need public and private sectors to work together on this. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: Commissioner Montoya.

COMMISSIONER MONTOYA: Thank you, Mr. Chair. I think what's been heard at least on my part tonight has been a proposed development that has some qualities that I think can be worked with. I think what I've heard from the community and quite frankly haven't really heard much of exactly what was going on with the acequia and the transfer of water rights in that regard and to me that's near and dear to my heart and to my culture and to who I am, having been raised in that manner. So I think my comments, Mr. Chair, would be that I would encourage the developer to continue the dialogue that has – and hopefully you'll all start going to the same meetings so we'll hear the dialogue coming back to us. It's something more in line with what each one is talking about.

But that's my thinking on what I would encourage at this point in terms of further discussion between the developer, the community, and the County staff as well. I think the comments that have been made, and we've talked about forever, well, for two years I'll say because that's how long I've been on the Commission. For two years about developing a community water utility and a water system. We need to look at different avenues as to how that can be done and I would hope that that can be accomplished. Thank you, Mr. Chair.

CHAIRMAN CAMPOS: My comments are real brief. The County has worked really hard the last few years to come up with money to create a water system that works, and we can use water from the river and save the groundwater for times of great emergency. I think we're positioned now to do that and make a lot of progress in the next two, three years. We have the money. We have an RFP out and we will study locations where we could find places to drill wells that do not, are not detrimental to anybody or to the fewest people possible. And I think that's the way to go. I think Mr. Peters should recognize that a lot of things about this subdivision aren't really in the public interest, do not really excite me as something that is benefiting this community. It would be nice if he would back off a little bit. Those are my comments.

COMMISSIONER SULLIVAN: Mr. Chair, Commissioner Duran said he had a motion to table.

COMMISSIONER DURAN: Well, I haven't made a motion yet.

CHAIRMAN CAMPOS: Why don't you make a motion.

COMMISSIONER DURAN: I make motion to table.

COMMISSIONER MONTOYA: Second.

COMMISSIONER SULLIVAN: Mr. Chair, move to table for sixty days to give the applicant time to further explore the issues discussed here this evening. That would be at the February land use meeting.

COMMISSIONER DURAN: Mr. Chair.

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CHAIRMAN CAMPOS: Sir.

COMMISSIONER DURAN: Just a matter of clarification. So it's 60 days until
- and during that time they would bring more, new information to the State Engineer's Office.

COMMISSIONER SULLIVAN: Correct. And address some of the acequia
issues and some of these other issues that are not yet documented tonight.

CHAIRMAN CAMPOS: Also, we have to address the regional planning issues,
the regional water issues.

COMMISSIONER DURAN: Well, that will never happen in 60 days.

CHAIRMAN CAMPOS: I know it's not going to happen in 60 days. That's
why I'm concerned about the motion to table.

COMMISSIONER SULLIVAN: That will be 30 days. We'll have that done.
Just kidding.

COMMISSIONER DURAN: Well, did someone table your second or am I
seconding it?

COMMISSIONER SULLIVAN: You're seconding my table.

COMMISSIONER DURAN: Okay, I second it.

CHAIRMAN CAMPOS: I think Harry tabled it.

COMMISSIONER SULLIVAN: Oh, that's correct. Commissioner Montoya
did.

CHAIRMAN CAMPOS: There's a motion to table for about 60 days to the
February meeting for land use. Is that right?

COMMISSIONER SULLIVAN: Yes.

COMMISSIONER ANAYA: Mr. Chair, discussion.

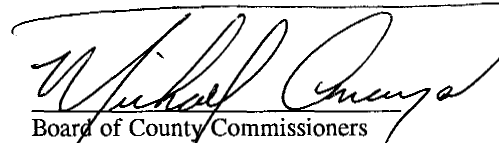
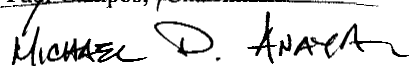
CHAIRMAN CAMPOS: No discussion on a table.

**The motion to table CDRC Case #DP 04-5780 passed by majority 4-1 voice vote,
with Commissioner Anaya casting the nay vote.**

XIII. ADJOURNMENT

Chairman Campos declared this meeting adjourned at approximately 10:55 p.m.

Approved by:


Board of County Commissioners
Paul Campos, Chairman


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Respectfully submitted:

Karen Farrell
Karen Farrell, Commission Reporter

ATTEST TO:

Valerie Espinoza
VALERIE ESPINOZA
SANTA FE COUNTY CLERK

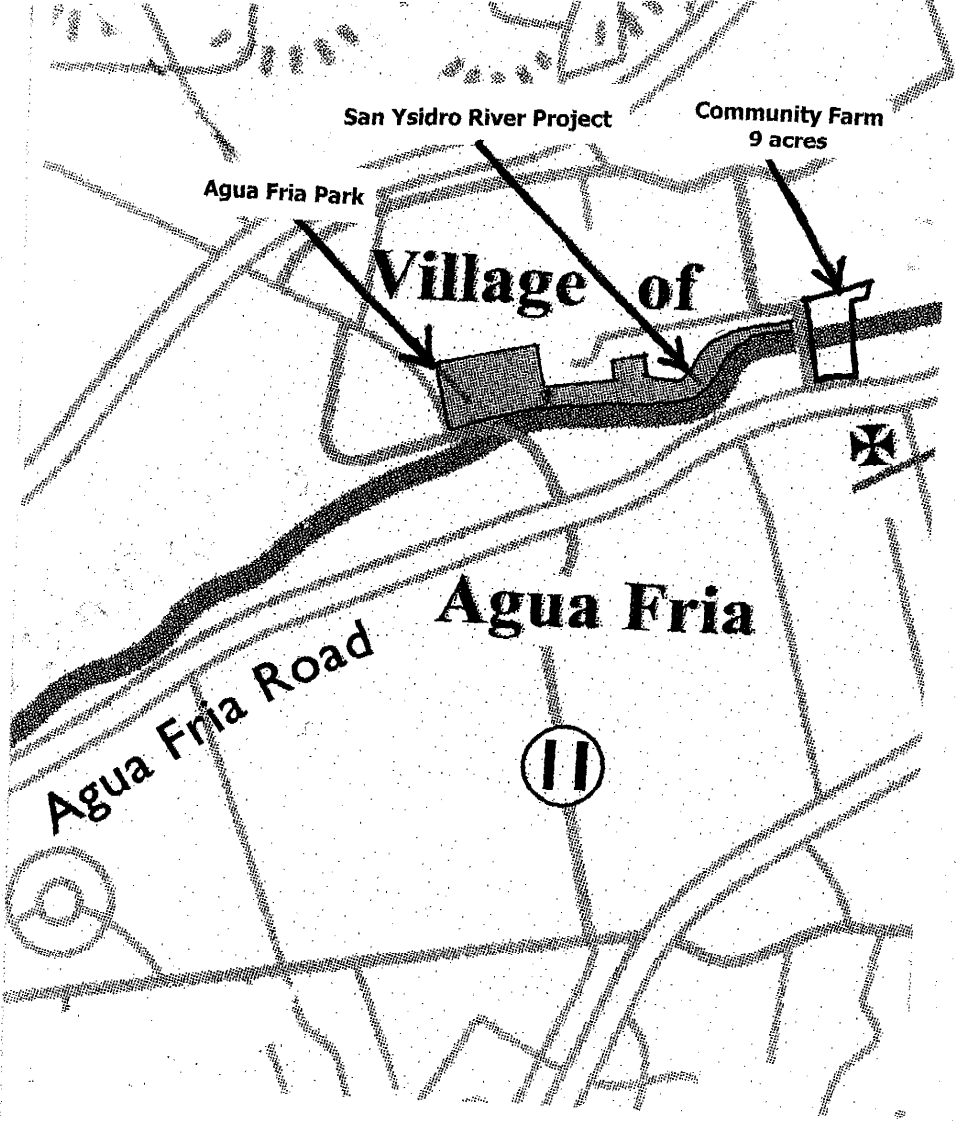


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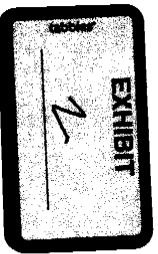


**General Location Map:
Santa Fe River Corridor**

Proposed Community Farm 9 acre Acquisition

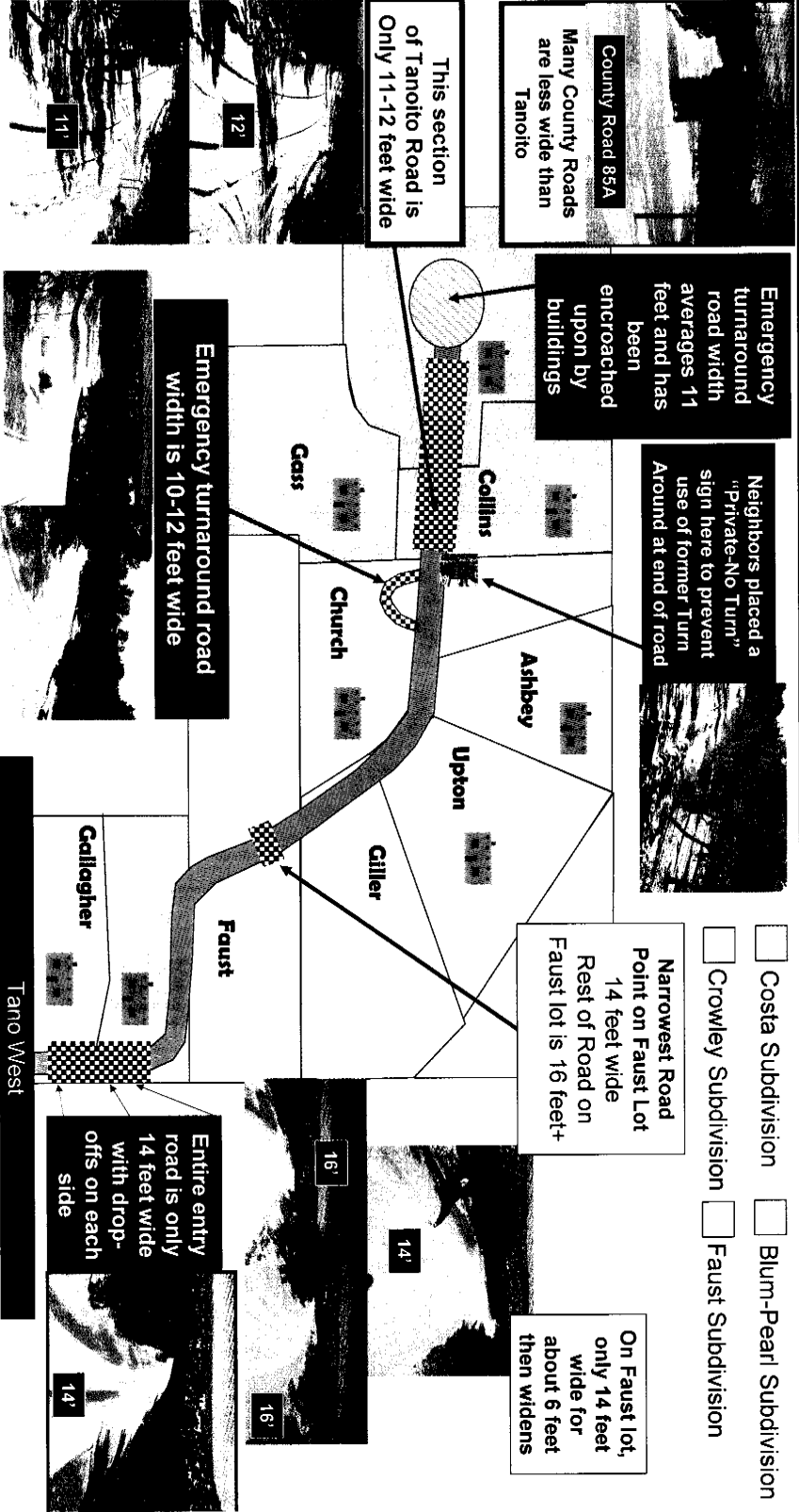


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Dale & Claudia Faust Request Approval of a Lot Split on Tanoito Road - Process began on April 10, 2004



County Road 85A
Many County Roads are less wide than Tanoito

This section of Tanoito Road is Only 11-12 feet wide

Emergency turnaround road width averages 11 feet and has been encroached upon by buildings

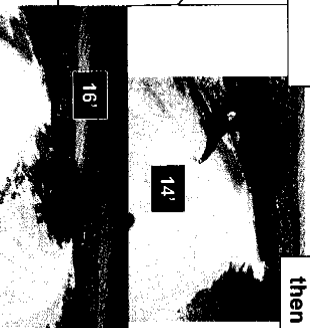
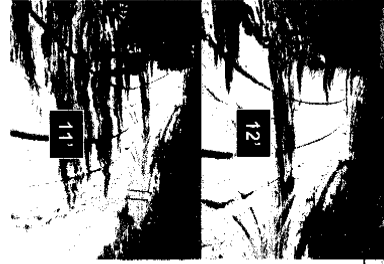
Neighbors placed a "Private-No Turn" sign here to prevent use of former Turn Around at end of road

Emergency turnaround road width is 10-12 feet wide

- Costa Subdivision
 - Blum-Pearl Subdivision
 - Crowley Subdivision
 - Faust Subdivision
- Narrowest Road Point on Faust Lot
14 feet wide
Rest of Road on Faust lot is 16 feet+
- On Faust lot, only 14 feet wide for about 6 feet then widens

Entire entry road is only 14 feet wide with drop-offs on each side

Tano West



MEMORANDUM

Date: December 14, 2004

To: Board of County Commissioners ("BCC")
Santa Fe County, New Mexico

From: Dale and Claudia Faust

Re: Response to Collin's Appeal and Land Use Staff Recommendations

We ask the BCC to affirm the Extraterritorial Zoning Commission's ("EZC") decision to approve our lot split. With this decision, the EZC directed that Condition #1 (on site access road for both lots shall be provided with a minimum 38-foot easement and a 20-foot driving surface) be removed and Condition #3 be modified to recommend that the applicant pay 1/10 of bringing the cul-de-sac located on the Church property to code (a cost which the Collins indicated was \$4,500 in total to complete). Further, we ask that the BCC clarify that this contribution is completely voluntary and not subject to enforcement under Section 10.2 Off-Site Improvements and Impact Fees of the Extraterritorial Zoning Ordinance ("EZO") or other laws, ordinances and regulations.

In the interests of providing for adequate fire safety on Tanoito Road, and so that we and others can sell our property without a cloud over our title, we request the BCC to direct the Fire Marshall to provide clarity in writing within 30 days as to what exactly needs to be done to the entire road to satisfy the Urban Wildlife Interface Code, to determine the responsible parties, and to the extent such improvements should have already been completed based on developments in place, to cause the responsible parties to immediately make such improvements. We also ask the Fire Marshall record his findings and determinations in the public record.

Background

Tanoito Road is a Common Access Roadway located off of Tano West. The road currently serves 10 lots. There were three previous land divisions completed on this road (see attached diagram).

- The first was the **Costa** land division at the end of Tanoito Road which was platted in 1992 and which involved splitting one parcel into four lots. One of the lots can be accessed directly from Tano West and the other three lots

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must be accessed by driving on Tanoito Road from Tano West through our property to the end of the road.

- The second was the **Blum-Pearl** land division at the top of Tanoito Road closest to Tano West which we believe was platted in 1993 and which involved splitting one parcel into two lots.
- The third was the **Crowley** land division which was platted in 1995 and which involved splitting one parcel into five lots. Four of the five lots must be accessed by driving on Tanoito Road from Tano West through our property. Joe Catanach was responsible for overseeing this land division on behalf of the Santa Fe County Land Use Department.
- The only property on the road that has never been subdivided is the **Faust's** 5 acre lot, which is our property. Prior to our ownership, the land was owned for approximately 30 years by a woman who we believe bought the property from the Joseph Bakos estate.

Subdivision Law Requirements of Roadways

The requirement to improve access roadways such as Tanoito Road to a 20-foot driving surface with a 38-foot easement including enforcement provisions such as inspection and bonding requirements as a condition of subdividing lands was in existence when the three prior land divisions were platted in 1992, 1993 and 1995, based on various New Mexico State ("State"), Santa Fe County ("County") and local laws, ordinances and regulations governing land use and the subdivision of lands. These provisions would have resulted in the full length of Tanoito Road (including through our property) having been already widened to a 20-foot driving surface with a 38-foot easement. In addition, consistent with same laws, ordinances and regulations, requirements of at least two of the three land divisions (Crowley and Costa) were to create two different emergency turnarounds having a 20-foot driving surface and a 50-foot circumference along the road. One of the emergency turnarounds was to be on the Church property, which is part of the Crowley land division, and the other was to be on the Rothbauer property at the end of the road, which is part of the Costa land division.

Condition of Tanoito Road

The current condition of Tanoito Road is as follows. With respect to the width of Tanoito Road, we asked Allan Curtis of Curtis Land Surveying, Inc. to take measurements of sections along the entire length of Tanoito Road. Mr. Curtis rightly pointed out to us that it is difficult to assess the exact width of a road without curbs and gutters. However, keeping this in mind, the following were his approximate findings.

- **Blum-Pearl.** The width of the road through the Blum-Pearl land division averages 14' with a steep fall off on both sides as one enters from Tano West.
- **Faust.** Based on an actual survey prepared for us by Mr. Curtis, Tanoito Road averages 16' in width through our property. In addition, according to Mr. Curtis' approximate measurements, the thinnest width of Tanoito Road through our property is roughly 14' and this width only extends through a very short section of probably no longer than six feet.
- **Crowley.** The road widens to an average width of 16' through the Crowley land division, except the emergency turnaround on the Church property has a driving surface that averages 10' to 12' in width. As the Land Use Department ("Staff") indicates in their memorandum to the BCC dated December 14, 2004, the "existing turnaround on the Church property would be acceptable (for emergency vehicles) except that it has a 12' wide driving surface rather than a 20' wide driving surface as required."
- **Costa.** The thinnest section of Tanoito Road is through the entire length of the Costa land division. The road narrows to an average of 10' to 12'. This is where the Collins live. There is also a sign on Tanoito Road around the point of entry into the Costa land division that says, "Private, No Turns", which leaves one with the impression that there is no emergency turnaround at the end of the road. However, there is what was supposed to be an emergency turnaround on the Rothbauer property but the driving surface averages 11', and as Staff indicates in their memorandum to the BCC dated December 14, 2004, the "end turnaround has been platted (with a 20' wide driving surface and a 50' circumference) but it has been encroached upon by a garage and parking area making it impossible for emergency vehicle use."

Conclusions – Subdivision Requirements

The County Land Use Department was required to enforce the subdivision laws, ordinances and regulations as they applied to the previous land divisions, which would have resulted in the full length of Tanoito Road (including through our property) having already been widened to a 20-foot driving surface with a 38-foot easement and the building of two emergency turnarounds on the road having a 20-foot driving surface and a 50-foot circumference, including one on the Church property. However, instead the County Land Use Department allowed these subdivisions to be approved and platted without proper enforcement.

Implications – Subdivision Requirements

- Existing land divisions on Tanoito Road do not comport with State, County and local subdivision laws, ordinances and regulations, and approval and

platting requirements and thus the land divisions and hence the developments thereon are not legal.

- If the County selectively enforces the State, County and local subdivision laws, ordinances and regulations by requiring and enforcing upon us the responsibility of: (i) widening Tanoito Road to a 20-foot driving surface with a 38-foot easement through our property and (ii) improving the emergency turnaround on the Church property to a 20-foot driving surface and a 50-foot circumference, such actions could be construed as a violation of our constitutional rights to equal treatment under the law.
- Had the County Land Use Department properly enforced the laws, ordinances and regulations as they applied to the previous land divisions, the improvements would already have been done to Tanoito Road. We would not have had to wait for eight months to have our lot split approved. We would not have had to spend countless hours trying to get this lot split accomplished. We would have spent a fraction of what we estimate to be \$22,000 in out of pocket legal and surveying costs. In addition, the land could have been sold by now and we could have had the proceeds of this sale returned to us and available to deploy otherwise (i.e., opportunity cost). Finally, as we will explain, we would not have what we believe is a cloud over our title resulting from inadequate improvements to Tanoito Road to provide for fire service – a condition that exists even if we do not split our lot. The actions, or should we say inaction of Staff has created an incredible hardship for us.

The Collins Appeal

Section 3.3.11.A of the Extraterritorial Subdivision Regulations (“Regulations”) covering submittals for appeals states the following:

“A petition to appeal administrative or EZC decisions shall be submitted by persons aggrieved, in writing, to the Land Use Administrator, stating the grounds for the appeal. The petition shall consist of specific statements of fact, specifying the sections of the Regulations upon which the appeal is based, and cause for appeal”

The Collin’s appeal did not conform to these requirements. For example, no Regulations were cited as the basis of their appeal. So, we are not sure what they are. The Collin’s only reference to any “law” is their assertion that the “EZC’s refusal to enforce the county’s public-safety law” violates their equal protection rights. Again, we are unaware of the “county’s public safety law” and what section of the Regulations to which they are referring. With respect to their equal protection rights to public safety as a general rule, we are not sure how this dovetails with their appeal requirements. And, if such an argument is appropriate, we believe such grounds should also apply to all others who own property along

the road and perhaps individuals living and driving on other roads in the County, including County roads that may not be up to code.

Staff's Recommendation

Staff referenced two sections of the Regulations on the bottom of page three of their memorandum to the BCC dated December 14, 2004 that included their recommendations with respect to the Collin's appeal. The Sections refer to common access roadway requirements for subdivisions of four or less lots as having a 20' width, easement of 38' and six inch gravel base course. We are aware of this requirement but we also note the same requirements were in place when the previous land divisions on the road were done. Proper enforcement by Staff of previous subdivisions requirements would have resulted in the entire road (including through our property) already being upgraded to Regulation standards.

Staff also noted various sections of the Urban Wildlife Interface Code we assume as an additional basis of imposing a requirement on us to widen the road through our property and perhaps the turnaround on the Church property. However, with respect to the Urban Wildlife Interface Code ("Code"), we believe the following:

- Land Use Staff has no authority to enforce (i.e., put into effect, implement, impose, make obligatory, make compulsory) this Code. Chapter 1, Section 2.1 states only the Santa Fe County Fire Marshal's Office may take such actions.
- According to Chapter 1, Section 1.4 Applicability, the Code does not apply to vacant land, unless the "addition of a road or driveway or transfer of ownership is in conjunction with the planned or actual development of the property." This does not apply to us. However, this section does state the following:

"This Code shall apply to conditions arising after the adoption thereof (the ordinance was adopted in 2001) and conditions not legally in existence at the time of Adoption of this Code. It shall apply to all permit applications submitted after the date of adoption of the Code for the construction, alteration, moving and use of any building, structure or premises within the urban wildland interface areas in the Extraterritorial Zoning District (with certain exceptions noted). Buildings or conditions in existence at the time of the adoption of this Code are allowed to have their use, occupancy or condition if such use, occupancy or condition was legal at the time of adoption of this Code."

Staff cites Chapter 4, Section 3 Access as a way of applying the Code to our vacant lot versus the correct section which is Chapter 1, Section 1.4 Applicability. Chapter 4, Section 3.1 Fire Apparatus Access Road states:

"Fire apparatus access roads for new subdivisions and individual structures hereafter constructed or relocated into urban wildland interface areas shall be in accordance with the Fire Code. The minimum practicable widths and turning radii for access roads, driveways, driveway turnarounds, and driveway turnouts shall be based on the minimum vehicle size appropriate to firefighting conditions found in the designated urban wildland interface areas within the Extraterritorial Zoning District."

The first sentence of the above paragraph states the section shall apply to "new subdivisions and individual structures hereafter constructed" which implies both conditions must collectively apply (i.e., subdivisions of land intended for construction which is consistent with Chapter 1, Section 1.4 Applicability or perhaps construction within subdivisions after the Code is in effect). If the section was to apply to new subdivisions only, it would have said "new subdivisions or individual structures hereafter constructed", which is consistent with the use of "and" as well as "or" in the Code and other sections previously noted.

- The Code does apply to the Church development on Tanoito Road which was completed in 2003. If enforced by the Fire Marshall, Chapter 4, Section 3.1 and 3.2 would require that Mr. Church widen Tanoito Road from Tano West through his property and the emergency turnaround on his property to meet "the minimum vehicle size appropriate to firefighting conditions" and "in accordance with the Fire Code, the Extraterritorial Zoning Ordinance ("EZO") and the (ESR)."
- The same would hold true for fire apparatus access roads, access roads, driveways, driveway turnarounds and turnabouts serving the other residences on Crowley lands as well as residences on the Blum-Pearl and Costa lands to the extent the "use, occupancy or condition" of such developments was not "legal" when the Code was adopted. As noted earlier, we believe the existing land divisions on Tanoito Road do not comport with State, County and local subdivision laws, ordinances and regulations, and their approval and platting requirements and thus the land divisions and hence the developments thereon are not legal.

Conclusions -- Application of the Urban Wildlife Interface Code and Fire Safety Requirements

Buster Patty's letter to Ellen Collins dated July 9th stated two important things:

- First, the "original approval for this subdivision (the Costa and Crowley subdivisions) required a twenty-foot wide road and emergency turnarounds at the end of Tanoito and ...another...on the South side of Tanoito on the Church property."

- Second, he determined the cul-de-sac at the end of the road to be “inadequate for Emergency vehicles.” But noted the turnaround on the Church property would be adequate if the road is brought up to the original requirement of twenty-feet wide with an all weather driving surface and a change in the location of the phone pedestal or re-rout the road to the East of the phone pedestal... (which) would give the Fire Department a staging area that would be within 1000 (feet) of any structure in the area.”

We interpret this to mean that Captain Patty believes the existing land divisions were not completed according to the requirements of their approval and this has resulted in a fire safety issue on the road.

As owners of property on the road, we are concerned about this. At this point, even if we withdraw our request to have this lot split completed, we still cannot sell our land because through this process, we have been informed that Tanoito Road cannot be properly served in the event of a fire because the road is inadequate for the Fire Department to bring in equipment. This information needs to be disclosed to a prospective buyer and may make it unmarketable. We believe this is an issue for all owners of property on the road.

Findings -- Application of the Urban Wildlife Interface Code and Fire Safety Requirements

- We believe unquestionably that our land would be suitable for subdivision under the laws, ordinances and regulations governing land use and the subdivision of lands and for future development under the Urban Wildlife Interface Code and other fire safety requirements if Tanoito Road had been upgraded as Captain Patty points out as previously required for the approval of existing land divisions on the road, and if Church development in 2003 was completed in a manner which we believe conforms with the Urban Wildlife Interface Code.
- Of utmost importance to the safety of residents and the preservation of value of property on Tanoito Road is bringing the road to a standard that comports with the Urban Wildlife Interface Code and other fire safety requirements.
- Since only the Fire Marshall can enforce the Urban Wildlife Interface Code, we believe it is important for the Fire Marshall to provide clarity as to what exactly needs to be done to the entire road to satisfy the Urban Wildlife Interface Code, to determine the responsible parties, and to the extent such improvements should have already been completed based on developments in place, to cause the responsible parties to immediately make such improvements.

- We also believe it is equally important for land owners' constitutional rights to equal treatment under the Urban Wildlife Interface Code be respected.

Concept of Fair Share

Finally, Staff's concept of our having us pay our "fair share" of the costs of the improvement of the emergency turnaround on the Church property was based on what they referred to in their October 14, 2004 memorandum to the EZC as Section 10.2 Off-Site Improvements and Impact Fees of the EZO. We believe Staff has also misused this ordinance.

We believe Section 10.2 relates to the need to make additional improvements to in this case the emergency turnaround on Eric Church's property to ensure the continued efficient function of the emergency turnaround given the "addition of new development." However, Staff is requesting that the emergency turnaround be brought to the same standard that should already be in place given existing development of the road. In addition, Section 10.2 applies to "development" not divisions of land.

We believe the question of enforcement of our paying 1/10 of the costs of the emergency turnaround on the Church property did come up when the EZC approved our lot split in October and the EZC responded that it could not be enforced. We agree with their findings on this matter as we are unaware of laws, regulations or ordinances that could be applied here. However, we wanted to make sure the turnaround was completed and felt it was the neighborly thing to do to chip in. In fact, when we heard the Collins were appealing the approval of our lot split, we called them and offered to pay a fourth of the cost of improving the turnaround on the Church property provided they would get it completed immediately and we did not have to prepare to defend our position with respect to their appeal, both the time and the costs which are likely to amount to \$5,000. In essence, we would rather spend our money on getting the turnaround fixed versus spending the funds on legal. The Collins rejected our offer.

Additionally, the Collins indicate in their appeal that "the purpose of the road agreements (in place on Tanoito Road) are to provide for the sharing of costs connected with the maintenance of the road surface and bar ditches and snow removal." First of all, we have a road agreement with the owners of the Blum-Pearl and Crowley lands. We know of no agreement with the owners of the Costa land. We believe residents on the Costa land are only afforded an easement through our property based on the provisions of common law. Second, our agreement with Blum-Pearl and Crowley only requires us to participate in the cost of maintenance of the road after a structure is built on our property and only to share in the costs of maintenance of the road through our property and Blum-Pearl and not through the Crowley property where the Church turnaround is located. Third, our road agreement with Blum-Pearl and Crowley was signed and an easement was granted through our property for the purpose of making

improvements, including widening the road for the Crowley land division. While "maintenance" is not defined in our road agreement as the Collin's appeal suggests, typically, "maintenance" means bringing something back or returning something to an original or similar operational or physical standard versus an "improvement" which is bringing something to a higher or greater operational or physical standard. For this reason, and because the Crowley land division would have required that the road from the top of Tanoito Road where it intersects Tano West through the Blum-Pearl land, our land and the Crowley land be of a standard that has a 20' width, an easement of 38' and a six inch gravel base course, that repairs to bring the road to its original intended standard should be considered as deferred maintenance under the road agreement. The only exception perhaps is that there is only a 20' wide easement granted through our property (and perhaps Blum-Pearl as well) under the current agreement so in order to properly repair the road, property owners that are party to the existing road agreement would need to amend it accordingly and to the extent that a road agreement does not exist with the Costa land owners and other parties on the road, an agreement should be created and signed with these parties.

Summary

- We ask the BCC to affirm the EZC's decision to approve our lot split. With this decision, the EZC directed that Condition #1 (on site access road for both lots shall be provided with a minimum 38-foot easement and a 20-foot driving surface) be removed and Condition #3 be modified to recommend that the applicant pay 1/10 of bringing the cul-de-sac located on the Church property to code (a cost which the Collins indicated was \$4,500 in total to complete). Further, we ask that the BCC clarify that this contribution is completely voluntary and not subject to enforcement under Section 10.2 Off-Site Improvements and Impact Fees of the EZO or other laws, ordinances or regulations.
- In the interests of providing for adequate fire safety on Tanoito Road, and so that we and others can sell our property without a cloud over our title, we request the BCC to direct the Fire Marshall to provide clarity in writing within 30 days as to what exactly needs to be done to the entire road to satisfy the Urban Wildlife Interface Code, to determine the responsible parties, and to the extent such improvements should have already been completed based on developments in place, to cause the responsible parties to immediately make such improvements. We also ask the Fire Marshall record his findings and determinations in the public record.

**Dale & Claudia Faust
Tanoito Road Lot Split
EZC Case # App 0-4201 Patrick & Ellen Collins Appeal**

Document Index

Tab nos.	Description
1	2003 Faust Plat of Lot Split Survey
2	2003 Faust Site Plan
3	Plat of 1991 Costa Subdivision
4	1995 Plat of Crowley Subdivision
5	1993 Plat of Blum-Pearl (Gallagher) Lot Split
6	Crowley Subdivision Application
7	8-17-92 EZC Decision to approve Crowley Application with conditions
8	4-1-94 Crowley Road Development Permit Application
9	X-X-95 County Memorandum from Public Works to Land Use re road inspection
10	Blum-Pearl-Crowley Road Grant of Easement & Road Maintenance Agreement
11	Costa to Deeter Trust Warranty Deed
12	Deeter Trust to Collins Warranty Deed
13	Costa-Deeter Common Road Easement Use and Maintenance Agreement
14	Church Plat of Boundary Survey
15	Crowley Plat from Church Building Permit Application File
16	Church Building Permit Application with approved site inspection
17	07-09-04 Fire Department letter to Collins regarding Site Visit
18	06-15-04 Fire Marshall Report on the Faust Land Division
19	1997 Uniform Fire Code section 902.2.2.1
20	Extraterritorial Subdivision Regulations section 3.5.F.3.c
21	Extraterritorial Subdivision Regulations, Appendix E, Figure 3.1, fn 7
22	12-14-04 Land Use Memorandum to BCC
23	Urban Wildlands Interface Code
24	Land Use Ordinance § 10.2.A

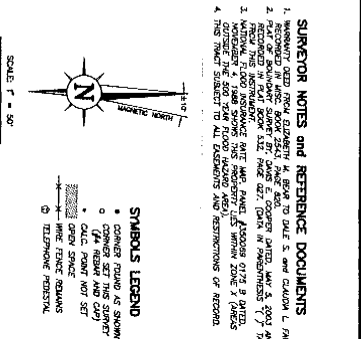
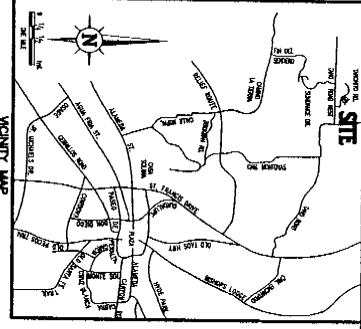
SFC CLERK RECORDED 04/06/2005

SFC CLERK RECORDED 04/06/2005

LOT SPLIT SURVEY PLAT

PREPARED FOR
DALE S. and CLAUDIA L. FAUST
WITHIN THE NORTHWEST 1/4 SECTION 4, T17N, R9E, N.M.P.M.
SANTA FE COUNTY, NEW MEXICO

(FORMER OF THE EAST 1/2 SECTION 4, T17N, R9E, N.M.P.M.)

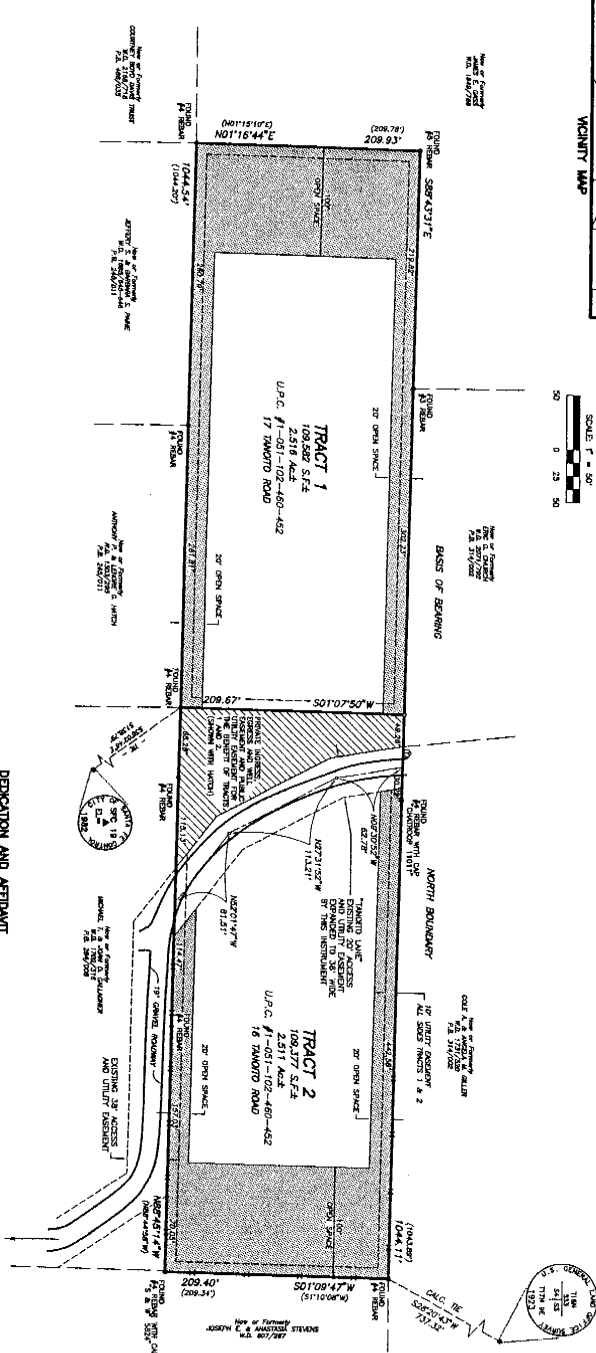


- SURVEYOR NOTES and REFERENCE DOCUMENTS**
1. SURVEYOR OBTAINED RECD. EVIDENCE IN 1998 TO THAT S. AND CLAUDIA L. FAUST;
 2. PLAT OF SOUTHWEST QUARTER SEC. 4, T17N, R9E, N.M.P.M. RECORDED IN PUBLIC RECORDS OF SANTA FE COUNTY, NEW MEXICO, BOOK 11, PAGE 111.
 3. RECD. EVIDENCE IN 1998 TO THAT S. AND CLAUDIA L. FAUST;
 4. THIS PLAT IS SUBJECT TO ALL APPLICABLE AND RESTRICTIONS OF RECORD.

- SYMBOLS LEGEND**
- CORNER FOUND AS SHOWN
 - (1/4) MARK AND CAP
 - (1/4) MARK AND CAP
 - (1/4) MARK AND CAP
 - (1/4) MARK AND CAP
 - TELEPHONE POLE

PROPERTY DESCRIPTION: TRACT 2

A CERTAIN TRACT OF LAND LING WITHIN THE NORTHWEST QUARTER OF SECTION 4, T17N, R9E, N.M.P.M. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 4 FROM WHENCE THE POINT OF BEGINNING BEARS S77°14'19" W, 232.82' TO THE POINT OF BEGINNING BEARS S77°14'19" W, 232.82' TO THE POINT OF BEGINNING AND CONTAINING 2.311 ACRES, MORE OR LESS.



UTILITY COMPANY NOTIFICATION:

OWNER COMPANY/PERSONS	DATE
STATE ELECTRIC SERVICES	DATE
PAUL GAS SERVICES	DATE
STANLEY W. CANTON WATER CO.	DATE
CONDUIT COMMUNICATIONS	DATE

SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT THIS PLAT AND THE NOTES SHOWING HEREON WERE PREPARED UNDER MY PERSONAL SUPERVISION AND ARE A TRUE AND CORRECT COPY OF THE ORIGINAL SURVEYING RECORDS OF THIS SURVEY AS FILED IN THE PUBLIC RECORDS OF SANTA FE COUNTY, NEW MEXICO.

ALAN S. CANTON, SURV. #15066



DEDICATION AND AFFIDAVIT

KNOW ALL PEOPLE BY THESE PRESENTS THAT THE UNDERSIGNED DALE S. FAUST AND CLAUDIA L. FAUST HAVE HEREBY DEDICATED AND CONVEYED TO THE COUNTY OF SANTA FE, NEW MEXICO, THE TRACT OF LAND HEREIN DESCRIBED AS TRACT 2, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 4 FROM WHENCE THE POINT OF BEGINNING BEARS S77°14'19" W, 232.82' TO THE POINT OF BEGINNING AND CONTAINING 2.311 ACRES, MORE OR LESS.

THIS DEDICATION IS MADE FOR THE USE AND BENEFIT OF THE COUNTY OF SANTA FE, NEW MEXICO.

DALE S. FAUST, SURV. DATE

CLAUDIA L. FAUST, OWNER DATE

DALE S. FAUST, SURV. DATE

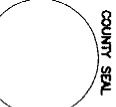
CLAUDIA L. FAUST, OWNER DATE

SANTA FE COUNTY APPROVAL NOTES AND CONDITIONS

THE MAINTENANCE OF ACCESS ROADS AND UTILTY SERVICES IS THE RESPONSIBILITY OF THE LANDOWNER. THE COUNTY OF SANTA FE DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION CONTAINED HEREIN. THE APPROVAL OF ANY PLAT BY THE COUNTY CLERK DOES NOT CONSTITUTE AN ENDORSEMENT OF THE PLAT OR A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED THEREIN. THE COUNTY OF SANTA FE DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION CONTAINED HEREIN. THE APPROVAL OF ANY PLAT BY THE COUNTY CLERK DOES NOT CONSTITUTE AN ENDORSEMENT OF THE PLAT OR A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED THEREIN.

CITY OF SANTA FE REVIEW

CITY ENGINEER	DATE
CITY CLERK	DATE



Curto & Lud Surveying, Inc.

1300 Central Avenue, Suite 100, Santa Fe, NM 87505

Phone: (505) 424-2421 Fax: (505) 424-2421

SFC CLERK RECORDED 04/06/2005

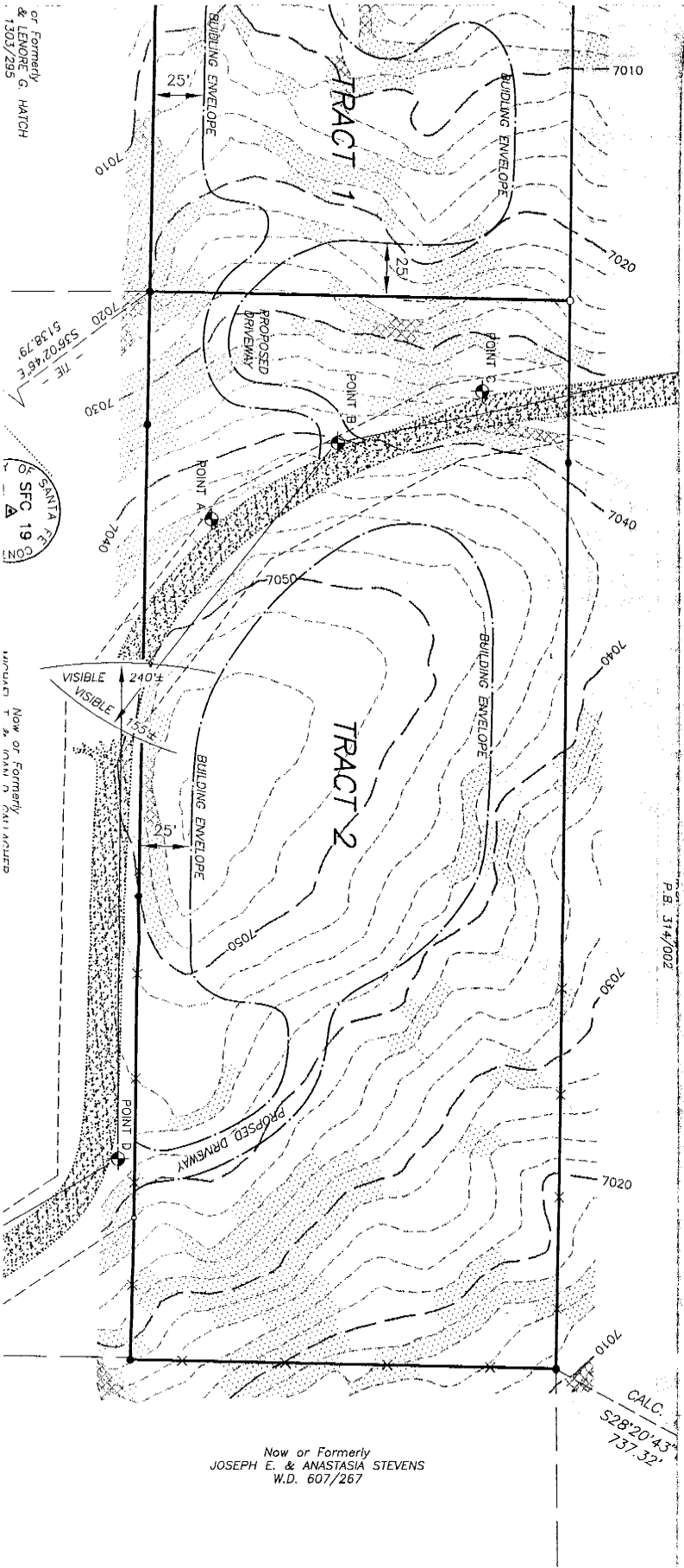
PROPERTY DESCRIPTION: TRACT 2

A CERTAIN TRACT OF LAND LYING WITHIN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 17 NORTH, RANGE 9 EAST, NEW MEXICO PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 4 FROM WHENCE THE POINT OF BEGINNING BEARS S28°20'43"W, 737.32'; THENCE FROM SAID POINT S01°09'47"W, 209.40'; THENCE N88°45'14"W, 521.94'; THENCE N01°07'50"E, 209.67'; THENCE S88°43'31"E, 522.06' TO THE POINT OF BEGINNING AND CONTAINING 2.511 ACRES, MORE OR LESS.

SITE PLAN

SHOWING DEVELOPABLE AREAS OF TRACTS 1 & 2 AND PROPOSED DRIVEWAY LOCATIONS WITHIN THE NORTHEAST 1/4, SECTION 4, TOWNSHIP 17 NORTH, RANGE 9 EAST, N.M.P.M. SANTA FE COUNTY, NEW MEXICO



Now or Formerly
JOSEPH E. & ANASTASIA STEVENS
W.D. 607/267

or Formerly
& LENOIRE G. HATCH
1303/295



Now or Formerly
MANUEL T. & ANITA M. CALIANDRO

N/F JOHN CONRAN

BK. 840 PG. 406

BEARING

S 89°36'58" E

1159.30

(1169.24)

11/3/95

(S 89°37'00" E) (12.89)

S 89°37'08" E 12.67

S 89°37'07" E

245.13

N/F COLLINS BK. 969 PG. 375

OPEN SPACE

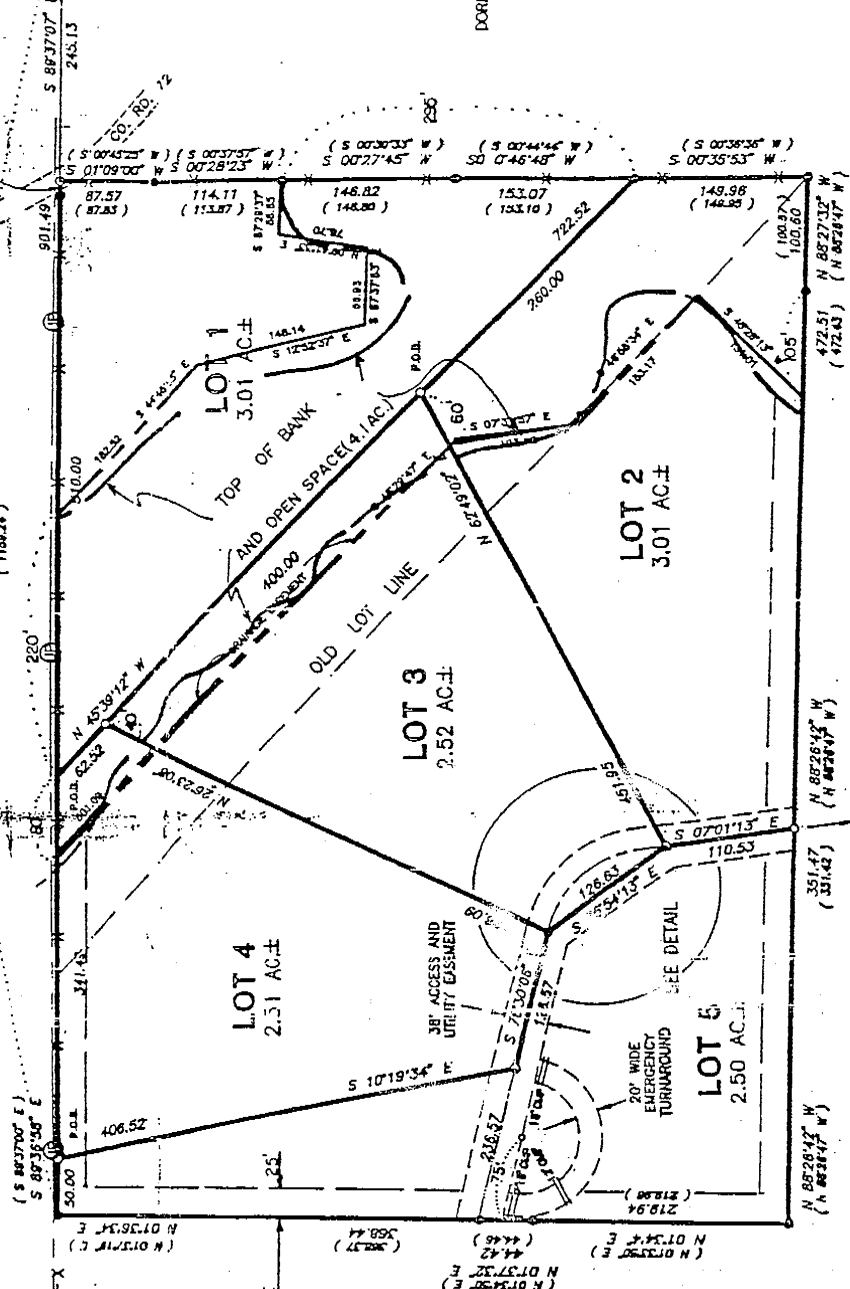
N/F HOFFMAN BK. 902 PG. 113

= 107.33 S 41°45'40" E

= 94.17 L = 114.20

S 07°01'13" E

22.68



SEE DETAIL

TO CO. RD. 85A

N 88°26'45" W

351.47

(351.45)

N/F ELIZABETH M. BEAR

BK. 317 PG. 253

N/F

STEVENS BK. 607 PG. 267

SFC CLERK RECORDED 04/06/2005

DEVELOPMENT PERMIT APPLICATION

DATE: 7/13/92 Dr. Richard Crowley

NAME OF APPLICANT: Yo (Hatrop Richard) A.
PLEASE PRINT LAST FIRST MIDDLE

MAILING ADDRESS: Yo Rick (Hatrop
Rt. 1 Box 504 Pecos NM. 87552
STREET CITY STATE ZIP

PHONE: (HOME) _____ (BUSINESS) 470-0037

LOCATION OF PROPERTY: SECT. 4 TNSHP. 17N RNG. 9E

NAME OF SUBDIVISION (IF APPLICABLE) _____

WITHIN THE EZ BOUNDARIES: YES ___ 2 MILE ___ 5 MILE ___ NO ___

IS WITHIN SPECIAL REVIEW DISTRICT: YES ___ SPECIFY _____ NO ___

HYDROLOGIC ZONE: BASIN ___ BASIN FRINGE ___ HOMESTEAD ___ MTN. ___
METROPOLITAN AREA ___ URBAN ___

TYPE OF DEVELOPMENT: (CHECK ONE)

BUILDING PERMIT ___ UTILITY AUTHORIZATION ___ SUBDIVISION ___

DIVISION OF LAND (NOT A SUBD.) X MOBILE HOME PARK ___ DEMOLITION ___

COMMERCIAL/INDUSTRIAL ___ HOME OCCUPATION (BUSINESS) ___ MINING: ___

EXPLORATION ___ MINING: EXTRACTION ___ PLACEMENT OF MOBILE HOME ___

OTHER ___

COMMISSION DISTRICT _____

[Signature]
ON BEHALF OF
Dr. Richard Crowley
APPLICANT'S SIGNATURE

FOR OFFICE USE ONLY

DATE: _____ APPLICATION COMPLETED.

REFERRED TO CDRC _____ DATE: _____ DATE OF HEARING _____

REFERRED TO THE FOLLOWING STATE AGENCIES FOR COMMENT: _____

PERMIT CHECK LIST

- CONFORMS TO DENSITY REQUIREMENTS: YES ___ NO ___
- SURVEY PLAT: YES ___ NO ___
- WARRANTY DEED: YES ___ NO ___
- SITE PLAN: YES ___ NO ___
- FLOOD HAZARD ZONE (COMMUNITY PANEL NO. _____) YES ___ NO ___
- TRADITIONAL COMMUNITY (SPECIFY _____) YES ___ NO ___

SFC CLERK RECORDED 04/06/2005

CITY AND COUNTY EZC COMMISSION
SANTA FE CITY AND COUNTY
LAND USE DIVISION

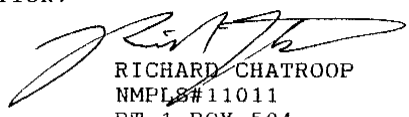
DEAR STAFF AND COMMISSIONERS:

ON BEHALF OF RICHARD CROWLEY I AM SUBMITTING THE FOLLOWING "LAND DIVISION OF TRACTS 16A & 16B" FOR REVIEW AND APPROVAL BY THE EXTRA TERRITORIAL ZONING COMMISSION AT THEIR NEXT MEETING. THIS PARCEL LIES APPROXIMATELY 3.00 MILES WEST OF THE HIGHWAY 84-285 ALONG TANO RD CONNECTING TO CO ROADS 72 AND 85A, WITHIN SECTION 4, T17N, R9E, NMPM, SANTA FE COUNTY, NEW MEXICO, AND CONTAINS 13.55 ACRES WHICH WE ARE PROPOSING TO SPLIT INTO TWO 3.01 ACRE LOTS AND ONE LOT EACH AT 2.52, 2.51, AND 2.50 ACRES AT THIS TIME.

ATTACHED PLEASE FIND

1. 7 COPIES OF TRACT 16A & 16B LAND DIVISION
2. OWNERS DEED
3. PROOF OF TAXES PAID
4. PREVIOUS SURVEY
5. DEVELOPMENT APPLICATION
6. ADDITIONAL SUBMITTAL DATA
7. DISCLOSURE STATEMENT
8. PRIVATE COVENANTS
9. VICINITY MAP

THANK YOU FOR YOUR CONSIDERATION.



RICHARD CHATROOP
NMPL#11011
RT.1 BOX 504,
PECOS N.M.
87552
PAGER# 984-4717

7/13/92

SFC CLERK RECORDED 04/06/2005



BOARD OF
COUNTY
COMMISSIONERS

Raymond M. Chavez
District No. 1

Nancy Rodriguez
District No. 2

Linda Grill
District No. 3

Richard D. Anaya
District No. 4

Betty Platts
District No. 5

Gil D. Tercero
County Manager

August 17, 1992

Mr. Richard Crowley
c/o Richard Chatroop
Rt. 1 Box 504
Pecos, NM 87552

Re: Requesting plat approval to divide 13.55 acres into
five parcels.

Dear Mr. Crowley:

The Extraterritorial Zoning Commission at its regularly
scheduled meeting of August 14, 1992 met and acted upon the
above referenced case.

The decision of the Commission was to approve your request
subject to the following conditions:

COUNTY CONDITIONS:

1. The applicant must record water restrictions
simultaneously with the plat of survey
imposing .25 acre feet of water per year for
each Tract 3 through 5 and .30 for Lot 1 and
2. A water report for each tract must be
submitted showing annual usage at the request
of the Land Use Office if deemed
appropriate. This requirement must be noted
on the plat of survey and incorporated into
the disclosure statement. This will
adequately disclose to potential buyers of
the requirement.
2. A 38 ft. platted easement including a 50 ft.
emergency turn-around must be depicted on the
face of the plat. The private access to the
lots must be developed with a 20 ft. driving
surface meeting the County's common access
roadway standards.
3. Any natural drainage channels, including
arroyos, running through the proposed lots
must be shown on the plat and pre- and
post-drainage calculations will need to be
delineated on the topo and location and site
of retention pond, including erosion control
measures.

SFC CLERK RECORDED 04/06/2005

Richard Crowley
August 17, 1992
Page two

4. A note on the plat must be delineated prior to its recordation stating that the proposed lots are located outside of the 100 year flood hazard zone boundaries as per FIRM Panel Number 350062 0175B.
5. Address legal access through private easement leading to County Road 85.
6. Declaration of intent regarding sale of lots.
7. Compliance with 30% open space in accordance with Extraterritorial Zoning Ordinance.
8. Approval of street name and rural addressing by County Public Works Staff.
9. All requested changes to the subject plat as per Santa Fe County plat checklist.
10. Any other conditions the EZC Committee might deem appropriate.

CITY CONDITIONS:

1. Prior to filing the plat, the plat and land division shall meet all provisions of the Extraterritorial Subdivision Regulations.
2. The access road design is not acceptable and shall be redesigned with an acceptable horizontal curve. Lot frontages may be curvilinear.
3. Place a note on the plat stating that Terrain management Regulations shall be complied with at the time of building permit application for each lot.
4. Provide proof of legal access to County Road 85A.
5. Place a note on the plat stating that on-site sanitary sewer is the responsibility of the owner.

SFC CLERK RECORDED 04/06/2005

Richard Crowley
August 17, 1992
Page three

If you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,



GILBERT CHAVEZ
Land Use and Code Administrator

:rom

SFC CLERK RECORDED 04/06/2005

DISTRIBUTED
PAC S&D TFC-AR
001004 407

SANTA FE COUNTY LAND USE ADMINISTRATION
P.O. BOX 276
SANTA FE, NEW MEXICO 87504-0276
(505) 986-6225

3/94

DEVELOPMENT PERMIT APPLICATION

PERMIT NUMBER: 94-592 APPLICATION DATE: 4/1/94

OWNER NAME: John P. and Patricia S. Crowley
AND Richard S. Crowley
(last) (first) (middle)

ADDRESS: 4291 ELMER AVE
CITY: North Hollywood STATE: Ca ZIP: 91602
TELEPHONE: (Home): _____ (Work): _____

AGENT NAME: McGinnis Paul E.
(last) (first) (middle)

ADDRESS: P.O. Box 2351
CITY: SANTA FE STATE: N.M. ZIP: 87504
TELEPHONE: (Home): _____ (Work): 505 983-1563

*** PROJECT INFORMATION ***

DESCRIPTION: Road Cut
PROJECT TYPE: DRCA

LOCATION ADDRESS: OFF TANO RD AND County Rd 85A (See Vicinity Map on Dwg.)
CITY: Santa Fe STATE: N.M. ZIP: _____

SUBDIVISION: Prather TR: 16A+16B BLK: _____ LOT: _____

TOWNSHIP: 17N RANGE: 9E SECTION: 4 Q1: _____ Q2: _____ Q3: _____
GRANT: _____

Paul E. McGinnis
APPLICANT'S SIGNATURE

AREA BELOW THIS LINE FOR OFFICE USE ONLY

PRIOR PERMIT #: _____ PLAT BK/PAGE: _____ PRIOR BK/PAGE: _____
LOCATION ID: _____ ACREAGE: _____

NUMBER OF LOTS: _____ # DWELLING UNITS: _____
TOTAL BUILDING SQ. FT.: _____ BUILDING VALUATION: _____

COMMISSION DIST: _____ JURISDICTION: _____ URBAN AREA: _____
TRADITIONAL COMM MAP #: _____ AIRPORT ZONE: _____ HIGHWAY: _____
HISTORIC/CULTURAL DIST: _____ ARCH DIST: _____
HYDROLOGIC ZONE: _____ METRO AREA: _____
FLOOD HAZARD ZONE: _____ COMMUNITY PANEL #: _____

SURVEY PLAT: _____ CONFORMS TO DENSITY REQUIREMENTS: _____
WARRANTY DEED: _____ MEETS CODE REQUIREMENTS: _____
SITE PLAN: _____ LEGAL NONCONFORMING USE: _____

SFC CLERK RECORDED 04/06/2005

**SANTA FE COUNTY
MEMORANDUM**

DATE: February 7, 1995
TO: Arturo Moya, Land Use Department
FROM: Alan Vigil, Public Works Department AV
SUBJECT: Richard Crowley Lot Split

This memorandum is to inform you that the above stated lot split has been inspected and does meet Santa Fe County common orad way standards.

AV/sl

SFC CLERK RECORDED 04/06/2005

**SANTA FE COUNTY
MEMORANDUM**

DATE: February 7, 1995
TO: Arturo Moya, Land Use Department
FROM: Alan Vigil, Public Works Department AV
SUBJECT: Richard Crowley Lot Split

This memorandum is to inform you that the above stated lot split has been inspected and does meet Santa Fe County common road way standards.

AV/sl

SFC CLERK RECORDED 04/06/2005

GRANT OF EASEMENT, RATIFICATION OF EASEMENT, QUITCLAIM DEEDS
AND ROAD MAINTENANCE AGREEMENT

1017957

This Grant of Easement, Ratification of Easement, Quitclaim Deeds and Road Maintenance Agreement ("Agreement") is made and entered by and between Arthur Blum and Dorothy Pearl, husband and wife (collectively "Blum-Pearl"), and John P. Crowley and Patricia S. Crowley, husband and wife (collectively, "Crowley") and Elizabeth Bear, a single woman ("Bear"). The parties to this Agreement are owners of land located in Santa Fe County, New Mexico.

A. Blum-Pearl owns real property consisting of approximately 5.000 acres and identified as "Tract A" (the "Blum-Pearl Property") more particularly described in the Warranty Deed dated March 18, 1988 and filed for record in Book 608, page 398, in the records of Santa Fe County, New Mexico as document number 645,949 and as shown on the plat of survey prepared on November 19, 1982 and titled *Improvement Plat, Lands in NE Quarter, Section 4, T17N, R9E, Santa Fe Co., N.M.*, prepared by Guy D. Hayden, NMLS #4070, and recorded on December 10, 1982 in Book 123, page 034, of the records of Santa Fe County, New Mexico, as document number 507,114 ("1982 Hayden Survey").

B. Crowley owns real property identified as Tract "16" (the "Crowley Property") in that certain Grant Deed dated January 29, 1993 and filed for record in Book 894, pages 682-683, in the records of Santa Fe County, New Mexico as document number 802,603 and further described as follows:

Beginning at a point on the north line of Section 4, Township 17 North, Range 9 East, N.M.P.M., from which the NE corner of Section 4 bears S 89° 37' E 245.9 feet; thence from point of beginning;

S 0° 38' W 653.0 feet;
N 88° 22' W 924.9 feet;
N 1° 38' E 653.0 feet;
S 89° 37' E 914.3 feet;

to the point of beginning. Said Tract 16 being in the N½ NE¼ Section 4, T17N, R9E, N.M.P.M., Santa Fe County, New Mexico;

and as shown on the plat of survey titled *Prather Division, Section 4, T17N, R9E, Santa Fe County, New Mexico*, prepared by Guy D. Hayden, N.M.P.S. No. 4070, and filed for record on April 5, 1989 in Book 197, page 016, of the records of Santa Fe County, New Mexico as document number 674,739.

C. Bear owns real property consisting of approximately 5.00 acres (the "Bear Property") which is more fully described in the Warranty Deed dated November 15, 1968 and filed for record in Book 311, page 253, in the records of Santa Fe County, New Mexico on November 25, 1968 and identified as a tract of "5.000 Acres" on the plat of survey prepared on June 10,

SFC CLERK RECORDED 04/06/2005

1966 and titled *Lands Surveyed for Jozef G. Bakos, Santa Fe County, New Mexico*, prepared by M.C. Livermore, II, NMLS #4073, filed for record on December 6, 1982 in Book 452, page 684, in the records of Santa Fe County, New Mexico (the "Livermore Survey").

1017958

D. A dispute has arisen between the parties as to whether the Crowley Property and the Bear Property are benefited by an easement across the Blum-Pearl Property shown by the centerline description on the Livermore Survey and more particularly described in the Warranty Deed dated January 24, 1966 and filed for record in Book 243, page 137, of the records of Santa Fe County, New Mexico and in the Warranty Deed dated July 17, 1966 and filed for record in Book 241, page 410, of the records of Santa Fe County, New Mexico (the "Bakos Easement").

E. Blum-Pearl desire to grant an access and utility easement across the Blum-Pearl Property in favor of the Crowley Property and the Bear Property. Bear desires to ratify and grant an access easement across the Bear Property in favor of the Crowley Property. The parties also desire to abandon and extinguish the Bakos Easement across the Blum-Pearl Property and to agree to certain terms and conditions concerning usage and maintenance of the easements granted by this Agreement.

Now, therefore, in consideration of the premises, the following grant and agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners hereby incorporate the foregoing Recitals and agree as follows:

1. **Grant of Easement; Ratification of Easement; Blum-Pearl and Bear.**

(a) Blum-Pearl hereby grants to Crowley and Bear, a nonexclusive easement appurtenant to the Crowley Property and Bear Property, an easement for ingress and egress over an area twenty feet (20') in width lying along the eastern and northern boundary of the Blum-Pearl Property as is shown on the 1982 Hayden Survey ("Blum-Pearl Easement").

(b) Bear hereby ratifies and grants to Crowley, a nonexclusive easement appurtenant to the Crowley Property, a centerline easement for ingress and egress over an area twenty feet (20') in width across the Bear Property as is shown on the Livermore Survey and more fully described in the Warranty Deed dated November 15, 1968 and filed for record in Book 311, page 253, in the records of Santa Fe County, New Mexico on November 25, 1968 ("Bear Easement").

2. **Quitclaim Deeds; Crowley and Bear.** Crowley and Bear quitclaim to Blum-Pearl any right, title, interest or claim that they may have in the Bakos Easement.

3. **Use of Easements.**

(a) The Blum-Pearl Easement shall be used for the purpose of vehicular and pedestrian ingress, egress, and the construction and maintenance of underground utilities including, without limitation, water, electricity, gas, telephone, sewer and cable television. The Bear Easement shall be used for vehicular and pedestrian ingress and egress. Neither

Grant of Easement, Ratification of Easement,
Quitclaim Deeds and Road Maintenance Agreement
Blum-Pearl/Crowley/Bear, Page 2

SFC CLERK RECORDED 04/06/2005

the Bear Easement or the Blum-Pearl Easement will be used by persons operating motorized vehicles such as all-terrain vehicles, motorcycles, or similar vehicles for recreational purposes except for access to and from a dwelling.

1017959

4. **Obstructions.** The parties to this Agreement shall not obstruct, impede or interfere, within or with the other, in the reasonable use of the Blum-Pearl Easement or the Bear Easement.

5. **Road Maintenance.**

(a) The parties to the Agreement agree to share the cost of annual maintenance of the road within the Blum-Pearl Easement and the Bear Easement based upon the formula set forth in paragraph 5(b) below.

(b) Neither the Crowley Property nor the Bear Property are improved with dwellings. Until building permits are obtained from the appropriate governmental agencies for the construction of a dwelling on either the Crowley Property or the Bear Property, the owners of the Blum-Pearl Property, the Crowley Property and the Bear Property shall have no responsibility for sharing in the costs associated with maintenance of the Blum-Pearl Easement and the Bear Easement. After a building permit is obtained for the construction of a dwelling on the Crowley Property or the Bear Property, the owner of the proposed dwelling will equally share the costs associated with maintenance of the Blum-Pearl Easement and the Bear Easement with the owners of the Blum-Pearl Property, the owners of completed dwellings located on the Bear Property and the Crowley Property, and the owners of any other proposed dwelling for which a building permit has been obtained.

(c) Maintenance shall include snow removal and any necessary road improvements agreed to, by the owners required to participate in the maintenance of the Blum-Pearl Easement and the Bear Easement under paragraph 5(b), at the meeting described in paragraph 6 of this Agreement.

6. **Operation.** In January of each year, the owners of Crowley Property and the Bear Property obligated to share the costs of maintenance and repair under paragraph 5(b) and subject to and benefitted by this Agreement shall determine a maintenance budget for the next year. The owners shall also select by lot, or otherwise as they may agree, one (1) owner who shall be charged with the responsibility for engaging road maintenance personnel and who shall periodically advise the owners of their assessments for maintenance costs, collect those assessments, and pay all costs of maintenance.

7. **Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law and/or in equity by any owner of the Crowley Property or the Bear Property or any part thereof, or any of their respective legal representatives, heirs, successors and assigns against any person or persons violating or attempting to violate any covenant or restriction, either to restrain any violation and/or to recover damages. Every owner shall have the right to assert and record a lien against any owner who fails to timely pay for maintenance amounts due. In such action the prevailing party shall be entitled to

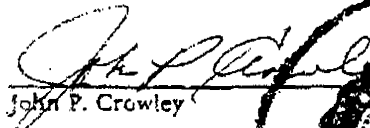
recover such prevailing party's costs, including reasonable attorneys' fees. Any failure by any owner of the Bear Property or the Crowley Property or any part thereof, to enforce any covenant or restriction hereto contained shall in no event be deemed a waiver of the right to do so thereafter.

1017960

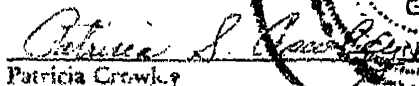
8. **Law and Binding Affect; Running of Benefits and Burdens.** This Agreement shall be governed and interpreted by the Laws of the State of New Mexico. The covenants of this Agreement shall run with and bind the land, and shall inure to the benefit of and be binding upon each owner of the Crowley Property and the Bear Property or any part thereof, their respective legal representatives, heirs, successors and assigns.

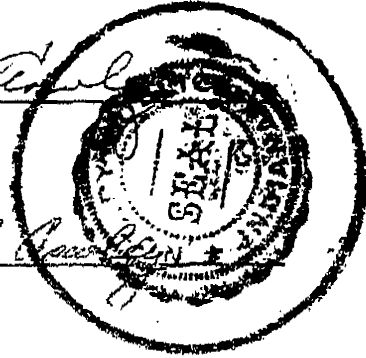
9. **Effective Date.** This Agreement is effective as of the date of the last signature hereto and recordation of this Agreement in the land records of Santa Fe County, New Mexico.

Dated: 1/25/94


John P. Crowley

Dated: 1/25/94


Patricia Crowley



Grant of Easement, Ratification of Easement,
Quitclaim Deeds and Road Maintenance Agreement
Blum-Pearl/Crowley/Bear, Page 4

SFC CLERK RECORDED 04/06/2005

Dated: 1/27/94

Arthur Blum
Arthur Blum

1017961

Dated: January 27, 1994

Dorothy Pearl
Dorothy Pearl

Grant of Easement, Ratification of Easement,
Quitclaim Deeds and Road Maintenance Agreement
Blum-Pearl/Crowley/Blum, Page 6

SFC CLERK RECORDED 04/06/2005

Dated: January 24, 1994

Elizabeth Bear
Elizabeth Bear

SFC CLERK RECORDED 04/06/2005

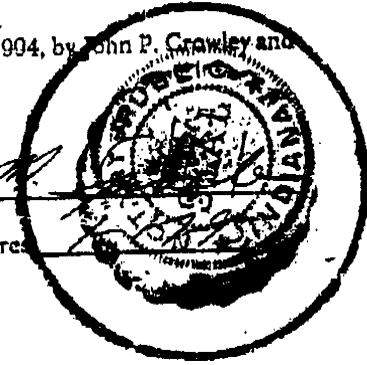
State of Indiana)
) ss.
County of Allen)

1017964

This instrument was acknowledged before me on January 25, 1994, by John P. Crowley and Patricia Crowley, husband and wife.

LEANN M. SPITALE
My Commission Expires 1/17/98
Residence-Allen Co., IN


Notary Public
My commission expires _____



Grant of Easement, Ratification of Easement,
Quitclaim Deeds and Road Maintenance Agreements
Bram-Pearl/Crowley/Spa, Page 8

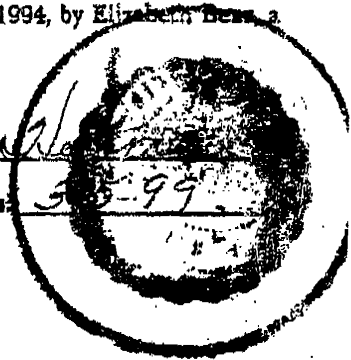
SFC CLERK RECORDED 04/06/2005

State of South Carolina)
County of Charleston) ss.

1017965

This instrument was acknowledged before me on January 24, 1994, by Elizabeth Best, a single woman.

Emma Lee
Notary Public
My commission expires: 3-3-99



847940

COUNTY OF SANTA FE)
STATE OF NEW MEXICO)
I hereby certify that this instrument was filed
for record on the 28 day of Jan, A.D.
19 94 at 2:40 o'clock PM
and was duly recorded in book 21013
page 957-965 of the records of
Santa Fe County.

Witness my Hand and Seal of Office.
Jona G. Armijo
County Clerk, Santa Fe County, N.M.

Lester L. Carter
Deputy



Grant of Easement, Extension of Easement,
Quitclaim Deeds and Rent Maintenance Agreement
Elmer Reed/Crosby/Best, Page 9

SFC CLERK RECORDED 04/06/2005

WARRANTY DEED

803065

JONATHAN BEN COSTA and MARTIE H. COSTA, husband and wife
for consideration paid, grant

to JOHN DEEVER TRUST

whose address is

the following described real estate in SANTA FE County, New Mexico:

Lots 2, 3 and 4 as shown on plat of survey entitled "LOT SPLIT AND CONSOLIDATION FOR JONATHAN COSTA AND MARTIE COSTA SITUATE WITHIN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 17 NORTH, RANGE 9 EAST, N.M.P.M., COUNTY OF SANTA FE, NEW MEXICO", prepared by Mitchell K. Noonan, N.M.P.L.S. No. 6998, Project No. C-1015, recorded as Document No. 763,956, appearing in Plat Book 232 at page 39, records of Santa Fe County, New Mexico.

SUBJECT TO: Restrictions, reservations and/or easements of record.

768,212
COUNTY OF SANTA FE
STATE OF NEW MEXICO
I hereby certify that this instrument was filed for record on the 26th day of March, 1992 at 11:02 a.m. and was duly recorded in book 803 page 105 of the records of Santa Fe County, New Mexico. My commission expires on 12/31/94.
Suzanne L. Davis
Notary Public



with warranty covenants.
WITNESS our hands and seal, this 26th day of March, 1992.
Jonathan Ben Costa (Seal) Martie H. Costa (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO } ss.
COUNTY OF SANTA FE }
The foregoing instrument was acknowledged before me this 26th day of March, 1992, by Jonathan Ben Costa and Martie H. Costa (Name of Person or Persons Acknowledging)
My commission expires 12/31/94 (Seal)
Suzanne L. Davis Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO } ss.
COUNTY OF }
The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by _____ (Name of Officer) of _____ (Name of Corporation Acknowledging) a _____ (State of Incorporation) corporation, on behalf of said corporation.
My commission expires: _____ (Seal) Notary Public

SFC CLERK RECORDED 04/06/2005

WARRANTY DEED

969075

JOHN DEETER TRUST
to PATRICK S. COLLINS and ELLEN L. COLLINS, husband and wife as joint tenants
whose address is
the following described real estate in Santa Fe County, New Mexico:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

with warranty covenants.
WITNESS its hand and seal this 14th day of September 1993
John Deeter Trust (Seal)
By: John Deeter, Trustee (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO NEVADA
COUNTY OF Washie
on this 14 day of September 1993
The foregoing instrument was acknowledged before me by John Deeter, Trustee of the John Deeter Trust
Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO
COUNTY OF
The foregoing instrument was acknowledged before me this day of 19 by
Notary Public

FOR RECORDER'S USE ONLY
COUNTY OF SANTA FE 830188272
STATE OF NEW MEXICO
I hereby certify that this instrument was filed for record on the 16 day of Sept A.D. 1993 at 4:20 o'clock P.M. and was duly recorded in book page 25 of the records of Santa Fe County.
Witness my Hand and Seal of Office
Jona G. Armijo
County Clerk, Santa Fe County, N.M.
Deputy



SFC CLERK RECORDED 04/06/2005

Lot 2 as shown on plat of survey entitled "LOT SPLIT AND CONSOLIDATION FOR JONATHAN COSTA AND MARTIE COSTA SITUATE WITHIN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 17 NORTH, RANGE 9 EAST, N.M.P.M., COUNTY OF SANTA FE, NEW MEXICO", prepared by Mitchel K. Noonan, NMP/LS No. 6998, Project No. C-1015, recorded as Document No. 763,956, and appearing in Plat Book 232 at page 39, records of Santa Fe County, New Mexico, as amended on September 3, 1993.

SUBJECT TO:

1. Taxes for the year 1993, and thereafter.
2. Reservations, conditions and exceptions contained in the Patent from The United States of America to Joseph G. Bakos, dated April 14, 1937 and recorded in Book C of Patents at Page 7, records of Santa Fe County, New Mexico, and the acts of congress under which said patent was issued.
3. Restrictions and Protective Covenants for "THE BAKOS TRACT" dated May 13, 1962 and recorded in Book 189 Misc., page 461-463, records of Santa Fe County, New Mexico.
4. Notation concerning water well withdrawal as shown on plat of survey entitled "HUGH PRATHER LOT SPLIT" recorded in Plat Book 143 at page 28 as Document No. 547,636.
5. Water Restrictive Covenants executed by Hugh Prather and Gayle Prather and recorded in Book 496 Misc., pages 837-840, records of Santa Fe County, New Mexico.
6. Declaration of covenants and Restrictions for Lots 1, 2, 3 and 4 by Jonathan and Martie Costa, dated November 14, 1991 and filed for record February 19, 1992 in Book 792 at pages 170-174, records of Santa Fe County, New Mexico.
7. "ENTINGLISHMENT OF A 20' INGRESS, EGRESS AND UTILITY EASEMENT" between Jonathan Costa and Martie Costa, owners of Lot 1, John Deeter Trust, owner of lots 2 and 4 and Rose M. Meisch, owner of lot 3 dated May 10, 1993 and recorded in Book 926, page 605, records of Santa Fe County, New Mexico.
8. "COMMON ROAD EASEMENT USE AND MAINTENANCE AGREEMENT" between Jonathan Costa and Martie Costa and John Deeter Trust dated January 28, 1993 and recorded in Book 895, page 845, records of Santa Fe County, New Mexico.
9. "WATER WELL AGREEMENT" from John Deeter Trust to the future owners of Lots 2, 3, and 4 dated February 1, 1993 and recorded in Book 895 at page 840, records of Santa Fe County, New Mexico.
10. Easements, notations and all other matters appearing on plat of entitled "LOT SPLIT AND CONSOLIDATION FOR JONATHAN COSTA AND MARTIE COSTA SITUATE WITHIN THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 4 TOWNSHIP 17 NORTH, RANGE 9 EAST, N.M.P.M., COUNTY OF SANTA FE, NEW MEXICO", prepared by Mitchel K. Noonan, N.M.P.L.S. No. 6998, Project No. C-1015, recorded as Document No. 763,956, appearing in Plat Book 232 at page 39, records of Santa Fe County, New Mexico, as amended on September 3, 1993.

EXHIBIT "A"

SEC CLERK RECORDED 04/06/2005

COMMON ROAD EASEMENT
USE AND MAINTENANCE AGREEMENT

895845

This Agreement is made and entered into by and between Jonathan Costa and Martie Costa (hereinafter "Costa") and John Deeter Trust (hereinafter "Deeter").

RECITALS

WHEREAS, Costa is the owner of lot 1 as shown on plat of survey entitled "Lot Split and Consolidation for Jonathan Costa and Martie Costa" as recorded in the Santa Fe County Clerk's Office in Book 232 Page 039; and

WHEREAS, Deeter is the owner of Lots 2 and 3 of Costa Lot Split;

WHEREAS, the parties wish to enter into covenants which shall attach to and run with the land benefited and to obligate said Lot owners and all present and future users of the common easement with respect to the use and maintenance of the common road and utility easement granted from the County Road, also known as Tano Road, across certain lands for the benefit of Lots 1, 2 and 3.

NOW, THEREFORE, the parties hereto agree as follows:

1. MAINTENANCE OF COMMON ROADWAY. Maintenance of the common roadway shall include all necessary and appropriate repairs, maintenance and services to the surface of the common roadway (including snow removal), drainage facilities as required and such retaining walls and devices as the parties may from time to time agree are required.

SEC. CLERK RECORDED 04/06/2005

995846
A. The common roadway, which shall consist of a packed dirt surface, shall be graded once each year, or more or less frequently, as may be required by the circumstances to keep the roadway in reasonable good repair. Snow removal shall be performed within a reasonable time after snowfall but, unless the parties shall agree to the contrary, shall not be required unless snow depth on the driveway exceeds four inches.

2. APPROVAL OF REPAIR AND MAINTENANCE WORK. The owners of Lots 1, 2 and 3 shall confer with each other concerning all work to be performed hereunder prior to the undertaking of any such work. Except for routine repair or maintenance work costing less than \$300.00, in aggregate, each owner shall approve such work and related expenses in writing prior to the undertaking of any such work.

3. CONTRACTING FOR MAINTENANCE. The owners of Lots 1, 2 and 3 shall cooperate with each other in arranging and contracting for the maintenance of the common roadway, its related drainage facilities and retaining walls, if any. Said services shall include regular grading services, repairs to drainage facilities and retaining walls as required and snow removal. Each owner hereby agrees and covenants to pay his proportionate share, as same is determined and allocated below, of such

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CLERK
RECORDED
04/06/2005
BOOK 895
X-5-73
MORNING SANCHEZ

895847

costs for maintenance and repairs as required hereunder or, if work is not ordinary maintenance, when such work is completed and so as to prevent the property of any other owner from being subjected to any mechanic's or materialman's lien.

4. SHARING AND ALLOCATION OF MAINTENANCE EXPENSES.

Repair and maintenance expenses to the common roadway, its related drainage facilities and retaining walls shall be shared by the owners as follows:

A. No property owner shall be required to contribute to maintenance expenses and costs until that property owner shall have commenced construction of a residence on his Lot.

B. Among those Lot owners who have an existing residence or who have commenced construction of a residence upon their Lot, the maintenance costs for the common roadway shall be allocated as follows:

- (1) The owners of each Lot shall pay an equal share of the maintenance costs associated with that portion of the common roadway utilized for access to the Lot. Because the distance traveled over the common roadway to Lots 1, 2 and 3 is approximately equal, the owners of



803,270
 COUNTY OF SANTA FE)
 STATE OF NEW MEXICO) JSS
 I hereby certify that this instrument was filed
 for record on the 9 day of July, A.D.
 19 90, at 11:52 o'clock AM.
 and was duly recorded in book 895,
 page 845 of the records of
 Santa Fe County.

Witness my Hand and Seal of Office
 Jona G. Armas
 County Clerk, Santa Fe County, N.M.
Marcella
 Deputy

INSTRUMENT NO. 895
 BOOK 895
 2-8-93
 IYONNE SANCHEZ

SFC CLERK RECORDED 04/06/2005

those Lots shall pay equal shares
for maintenance of the entire **895848**
length of the common roadway.

(2) Any and all current and future users of the common roadway shall be make part of this agreement and shall be required to participate in the sharing of the maintenance costs of the common roadway utilized to access their lots.

5. MANAGEMENT OF MAINTENANCE. On or about the first Saturday in November of each year, or on such other date as the parties may agree, the owners of Lots 1, 2 and 3 shall meet to designate an individual who shall be responsible for arranging and contracting for maintenance services. the designated individual shall be the "Road Manager." In addition, at that meeting the parties shall establish an estimated budget and second, a maintenance and grading budget. On or about November 1, of each year, each Lot owner shall deliver his proportionate share of the estimated snow plowing budget to the Road Manager who shall utilize those funds, together with his own contribution, to the costs of maintaining the common and Private Driveways during the winter months. Similarly, on or about April 1, of each year, the parties shall each deliver their proportionate share of the budget for non-snow

BOOK 895 2-8-93 RONNE SANCHEZ

REC'D CLERK RECORDED 04/06/2005

895849

plowing maintenance expenses to the Road Manager who shall use these funds and his own contribution to pay the expenses of ordinary maintenance as required hereunder. The Road Manager may commingle said funds in his or her regular checking account, but shall maintain a separate ledger recording all receipts, expenses and payments from said funds and further, shall keep copies of all billings received for maintenance expenses. At least once annually, and more often if requested by the remaining Lot owners, the Road Manager shall provide copies of said ledger and receipts to the remaining Lot owners. In the event that either the snow plowing budget or road maintenance or snow plowing work as described herein, the appointed Road Manager shall so indicate in writing to the remaining Lot owners, providing with said notice a copy of the ledger maintained for road expenses and receipts for work paid for through that date. The Lot owners shall then agree upon such additional amounts as may be required to be contributed to the maintenance fund through the next regular, contribution date.

- 6. INDEMNIFICATION, INSURANCE. The parties hereto, their successors, heirs and assigns agree to indemnify and hold harmless the Road Manager against all contract claims, debts or judgments which may be rendered against him or her in the performance of the duties

21-0000710

RECORDED IN THE OFFICE OF THE COUNTY CLERK OF LOS ANGELES COUNTY
BOOK 895 2-8-93 YONNE SANCHEZ

SFO CLERK RECORDED 04/06/2005

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delegated hereunder. In addition, the parties hereto agree to indemnify and hold harmless each other for all debts, claims or judgments which grow out of or relate to their maintenance or use of the common roadway, except as same may relate to an individual act or omission amounting to negligence by any one of them. Provided, however, that a party who has not commenced construction of a residence and does not otherwise utilize the common roadway shall not be required to indemnify the others against claims by third parties unless same relate to his or her own act or omission amounting to negligence. The parties further agree that, upon commencing construction of a residence, they shall maintain homeowner's insurance with liability coverage of not less than \$100,000.00 and, if required by that company, shall carry a separate endorsement covering use of the common roadway by themselves, their licensees and guests.

7. DAMAGE TO ROADWAY. Any damage to the surface, retaining walls or drainage facilities of the common driveway which is caused by construction contractors and subcontractors shall be remedied solely by the lot owner responsible for said construction. The result of the negligent or intentional act or omission of any of the parties hereto, their employee, agent, lessee, guest or invitee, shall be repaired at the sole expense of such party and such repair work shall be undertaken in a prompt and expedient fashion.

SFC CLERK RECORDED 04/06/2005

BOOK 895

X-2-73

NONN & COMPANY

Get w/KAV Tano Area

SANTA FE COUNTY DEVELOPMENT PERMIT APPLICATION

CONTROL # 03-593 APPLICATION DATE _____ ISSUE DATE _____

APPLICANT INFORMATION

OWNER NAME: CHURCH ERIC
(LAST) (FIRST) (MIDDLE)

MAILING ADDRESS: 124 SOLANO DR. SANTA FE NM 87501
STREET OR P.O. NUMBER CITY STATE ZIP

HOME PHONE: (505) 820-1449 WORK PHONE: (505) 953-1421

AGENT/CONTRACTOR NAME: CYNICO, FRANKLIN DINA MATOS ENTERPRISES LLC
(LAST) (FIRST) (MIDDLE)

AGENT/CONTRACTOR ADDRESS: 848 CAMINO CONSUELO SANTA FE, NM 87507
STREET OR P.O. NUMBER CITY STATE ZIP

AGENT HOME PHONE: (505) 438-4918 WORK PHONE: (505) 660-1308

PROPERTY INFORMATION

COUNTY RURAL ADDRESS: 23 TANOITO
THIS ADDRESS IS AVAILABLE FROM THE SANTA FE COUNTY RURAL ADDRESSING DEPT. 986-6330

PROPERTY LOCATION ID: 960002319 TAXES PAID: (Y/N) ACREAGE: 2.5

LEGAL DESCRIPTION - TOWNSHIP: T17 N RANGE: R9 E SECTION: 4 Q1 _____ Q2 _____ Q3 _____

SUBDIVISION: _____

GRANT/CLAIM: _____ UNIT: _____ TRACT: _____ BLOCK: _____ LOT: _____

DEED RECORDED AS - Deed Book 2871 Page: 791 PLAT RECORDED AS - Plat Book 314 Page: 202
Date Recorded 2-18-02 Date Recorded: 8-24-05

PROJECT INFORMATION

DESCRIPTION: SINGLE FAMILY DWELLING PROJECT TYPE: PERMS

TOTAL NEW ROOFED AREA TO BE CONSTRUCTED: 3100 sq. Ft.

BUILDING MATERIAL: WOOD FRAME & STUCCO

PROJECT VALUATION (from appraisal): \$ 300,000.00 # EXISTING LOTS: _____

EXISTING STRUCTURES: 0 TOTAL EXISTING BLDG. SQ. FT.: _____

EXISTING USE(S): Vacant 18" min @ D.W.

APPROVED WITH CONDITIONS

Approved
PK
1/24/05
R.03

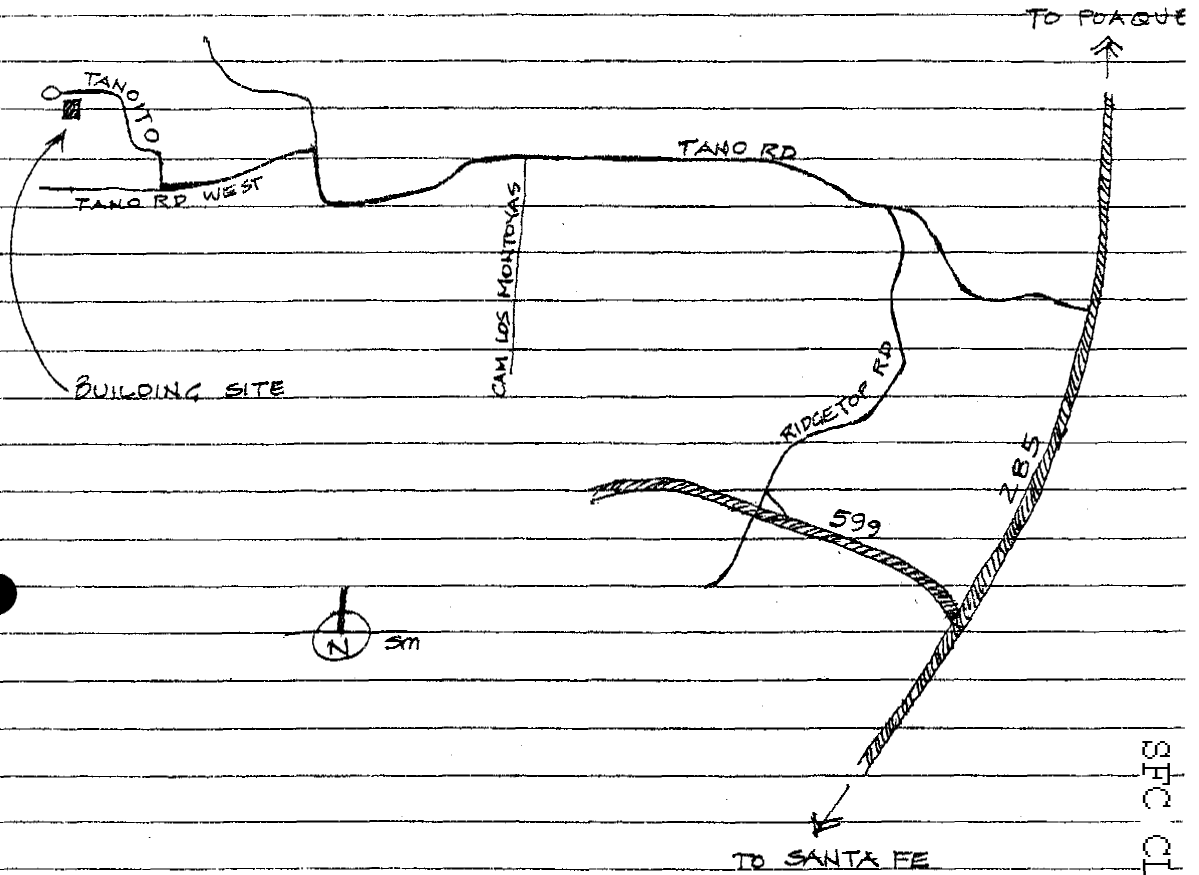
ALL OF THE ABOVE INFORMATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

SFC CLERK RECORDED 04/06/2005

CHURCH/ENSIGN

VICINITY MAP

4/22/2003



SFC CLERK RECORDED 04/06/2005

COLUMN DISTRICT BUILDING WAREHOUSE N065M
0100007209 NM 05 01

LOCATION ID: 1-23-0010-1-02-04

03-593

File Seq:0002

SKP BOX NBR: SFM00009178 PUTAWAY - FILE



NM HALF DAY 06/28/2004 5:00pm MDT SF
N065M 42532509-000002 For: MCHAV
SANTA FE COUNTY LAND USE DEPT
PO BOX 276
2ND FLOOR
SANTA FE, NM 87504-0276

37428

MARTI CHAVEZ
03-593



SFM00009178-0002 Return To IRON MOUNTAIN

SFC CLERK RECORDED04/06/2005

Harry B. Montoya
Commissioner, District 1

Paul Duran
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. González
County Manager

Santa Fe County Fire Department

Fire Prevention Division

Planning/Development Review Unit

July 9, 2004

Ellen Collins
PO Box 2674
Santa Fe, NM 87507

Tanoito Fire Protection

Dear Mrs. Collins,

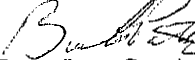
In reviewing the request for a lot split on the Faust property on Tanoito, the Santa Fe County Fire Department has discovered a problem with the fire protection access for this subdivision.

The original approval for this subdivision required a twenty-foot wide road and emergency turnarounds at the end of Tanoito and it also required another emergency turnaround on the South side of Tanoito on the Church property.

I conducted a site visit and found the cul-de-sac at the end of the road to be inadequate for Emergency vehicles. It is too narrow and the turn is too tight with obstructions for Fire Equipment. The turnaround on the Church property would be adequate if the road is brought up to the original requirement of twenty-feet wide with an all weather driving surface and a change in location of the phone pedestal or re-route the road to the East of the pedestal. This would give the Fire Department a staging area that would be within a 1000 foot of any structure in this area.

If I may be of further assistance, please do not hesitate to call 992-3075.

Sincerely,


Buster Patty, Captain

Through: Hank Blackwell, Fire Marshal/Asst. Chief

File: Buster/Collins/7-9-04

07/21/04

#35 Camino Justica • Santa Fe



505-992-3070 • FAX: 505-992-3073

SFC CLERK RECORDED 04/06/2005

Harry B. Montoya
Commissioner, District 1

Paul Duran
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. Gonzalez
County Manager

Santa Fe County Fire Department

Office of the Fire Marshal

Official Submittal Review

Project Name Dale and Claudia Faust

Project Location Tanoito Sec 4 Township 17 N, Range 9 E

Commercial Residential Sprinklers Wildland Hydrant Acceptance

Description Land Division Case Manager Jan Danleis

Applicant Name Dale and Claudia Faust County Case # 044200

Applicant Address 19 Avenida Aldea, Fire District Tesuque
Santa Fe, NM 87507

Applicant Phone 505-988-8980

Review Master Plan Preliminary Final Inspection Lot Split

Fee due \$25.00 Date 6/15/2004

The Fire Prevention Division/Code Enforcement Bureau of the Santa Fe County Fire Department has reviewed the above submittal and requires compliance with applicable Santa Fe County fire and life safety codes, ordinances and resolutions as indicated:

Fire Department Access

Shall comply with Article 9 - Fire Department Access and Water Supply of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Fire Access Lanes

Section 901.4.2 Fire Apparatus Access Roads. (1997 UFC) *When required by the chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.*

Curbs or signage adjacent to the building, fire hydrant, entrances and landscape medians in traffic flow areas shall be appropriately marked in red with 6" white lettering reading "FIRE LANE - NO PARKING" as determined by the Fire Marshal prior to occupancy. Assistance in details and information are available through the Fire Prevention Division.

#35 Camino Justica • Santa Fe, NM 87505 • 505-992-3070 • FAX: 505-992-3073



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▪ **Roadways/Driveways**

Shall comply with Article 9, Section 902 - Fire Department Access of the 1997 Uniform Fire Code inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development.

902.2.2.1 of the 1997 Uniform Fire Code (Dimensions) requires fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. Cul-de-sacs shall be a minimum 50' radius. SFC Land Use Code, Section 8.2.1d, (cul-de sacs over 250' in length).

The Santa Fe County Fire Department requires the existing emergency turn around on the Church property to meet the minimum requirements of this the code. The driving surface shall be a minimum of 20 feet wide and the turning radius around the phone pedestal to be modified to meet the code. Final acceptance based upon the Fire Marshal's approval.

▪ **Street Signs/Rural Address**

Section 901.4.4 Premises Identification (1997 UFC) *Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.*

Section 901.4.5 Street or Road Signs. (1997 UFC) *When required by the Chief, streets and roads shall be identified with approved signs.*

All access roadway identification signs leading to the approved development area(s) shall be in place prior to the required fire hydrant acceptance testing. Said signs shall remain in place in visible and viable working order for the duration of the project to facilitate emergency response for the construction phase and beyond.

Properly assigned legible rural addresses shall be posted and maintained at the entrance(s) to each individual lot or building site within 72 hours of the commencement of the development process for each building.

▪ **Slope/Road Grade**

Section 902.2.2.6 Grade (1997 UFC) *the gradient for a fire apparatus access road shall not exceed the maximum approved.*

Slope shall not exceed 11%. This shall also apply to any potential driveways on any lots in this development.

Privet driveways shall be a minimum of 14 feet in width.

▪ **Restricted Access/Gates/Security Systems**

Section 902.4 Key Boxes. (1997 UFC) *When access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life-saving or firefighting purposes, the chief is authorized to require a key box to be installed in*

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an accessible location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the chief.

A final inspection by this office will be necessary to determine the applicability of the installation of the Knox lock access system in regards to emergency entrance into the area. Should it be found suitable for such, the developer shall install the system.

Fire Protection Systems

Automatic Fire Protection/Suppression

Automatic Fire Protection Sprinkler systems shall be required as per 1997 Uniform Fire, Article 10 Section 1003.2 in accordance with the Building Code as adopted by the State of New Mexico and/or the County of Santa Fe.

All Automatic Fire Protection systems shall be developed by a firm certified to perform and design such systems. Copies of sprinkler system design shall be submitted to the Fire Prevention Division for review and acceptance prior to construction. Systems will not be approved unless tested by the Santa Fe County Fire Department. Fire sprinkler systems shall meet all requirements of NFPA 13 and 13-D Standard for the Installation of Sprinkler Systems.

All residential dwellings within this subdivision shall install automatic fire protection sprinkler systems in compliance with NFPA 13 and 13-D as applicable to the water source available output.

The required system riser shall meet the requirements of the NFPA 13 1996, but not less than 1-1/2" inches.

All sprinkler and alarm systems as required shall be tested and approved by the Santa Fe County Fire Department, prior to allowing any occupancy to take place. It shall be the responsibility of the installer and/or developer to notify the Fire Prevention Division when the system is ready for testing.

The requirement for residential fire protection sprinkler systems shall be recorded on the plat and in the covenants at the time of filing or as otherwise directed by the County Fire or Land Use Department.

Fire Alarm/Notification Systems

Automatic Fire Protection Alarm systems may be required as per 1997 Uniform Fire and Building Codes as adopted by the State of New Mexico and/or the County of Santa Fe. Required Fire Alarm systems shall be in accordance with NFPA 72, National Fire Alarm Code for given type of structure and/or occupancy use. Said requirements will be applied as necessary as more project information becomes available to this office during the following approval process.

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▪ **Fire Extinguishers**

Article 10, Section 1002.1 General (1997 UFC) *Portable fire extinguishers shall be installed in occupancies and locations as set forth in this code and as required by the chief. Portable fire extinguishers shall be in accordance with UFC Standard 10-1.*

Life Safety

Fire Protection requirements listed for this development has been taken into consideration the hazard factors of potential occupancies as presented in the developer's proposed residential use. Each and every individual structure of a private/commercial or public occupancy designation will be reviewed and must meet compliance with the Santa Fe County Fire Code (1997 Uniform Fire Code and applicable NFPA standards) and the 1997 NFPA 101, Life Safety Code, which have been adopted by the State of New Mexico and/or the County of Santa Fe.

Urban-Wildland Interface

SFC Ordinance 2001-11, Urban Wildland Interface Code

This development location is rated within a "Very High Wildland-Urban Hazard Area" and shall comply with all applicable regulations within the SFC Ordinance 2001-11 / EZA 2001-04 as applicable for the Urban Wildland Interface Code governing such areas.

▪ **Building Materials**

Buildings and structures located within urban wildland interface areas, not including accessory structures, shall be constructed in accordance with the Fire Code, the Building Code and the Urban Wildland Interface Code.

Location/Addressing/Access

Per SFC 2001-11/EZA 2001-04, addressing shall comply with Santa Fe County Rural addressing requirements.

General Requirements/Comments

Inspections/Acceptance Tests

Shall comply with Article 1, Section 103.3.2 - New Construction and Alterations of the 1997 Uniform Fire Code, inclusive to all sub-sections and current standards, practice and rulings of the Santa Fe County Fire Marshal.

Prior to acceptance and upon completion of any permitted work, the Contractor/Owner shall call for and submit to a final inspection by this office for conformation of compliance with the above requirements and applicable Codes.

▪ **Permits**

As required

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Final Status

Recommendation for Final Development Plan approval with the above conditions applied.

Buster Patty, Captain


Code Enforcement Official

6-15-04
Date

Through: Hank Blackwell, Fire Marshal/Asst. Chief

File: Buster/Landuse/Faust/6-15-04

CC: District Chief
Regional Crews

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PART III

GENERAL PROVISIONS FOR SAFETY

ARTICLE 9 — FIRE DEPARTMENT ACCESS AND WATER SUPPLY

SECTION 901 — GENERAL

901.1 **Scope.** Fire department access and water supply shall be in accordance with Article 9.

For firesafety during construction, alteration or demolition of a building, see Article 87.

901.2 **Permits and Plans.**

901.2.1 **Permits.** A permit is required to use or operate fire hydrants or valves intended for fire-suppression purposes which are installed on water systems and accessible to public highways, alleys or private ways open to or generally used by the public. See Section 105, Permit f.1.

EXCEPTION: A permit is not required for persons employed and authorized by the water company which supplies the system to use or operate fire hydrants or valves.

901.2.2 **Plans.**

901.2.2.1 **Fire apparatus access.** Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

901.2.2.2 **Fire hydrant systems.** Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.

901.3 **Timing of Installation.** When fire protection, including fire apparatus access roads and water supplies for fire protection, is required to be installed, such protection shall be installed and made serviceable prior to and during the time of construction.

EXCEPTION: When alternate methods of protection, as approved, are provided, the requirements of Section 901.3 may be modified or waived.

901.4 **Required Marking of Fire Apparatus Access Roads, Addresses and Fire-protection Equipment.**

901.4.1 **General.** Marking of fire apparatus access roads, addresses and fire-protection equipment shall be in accordance with Section 901.4.

901.4.2 **Fire apparatus access roads.** When required by the chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.

901.4.3 **Fire-protection equipment and fire hydrants.** Fire-protection equipment and fire hydrants shall be clearly identified in an approved manner to prevent obstruction by parking and other obstructions.

When required by the chief, hydrant locations shall be identified by the installation of reflective markers.

See also Section 1001.7.

901.4.4 **Premises identification.** Approved numbers or addresses shall be provided for all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property.

901.4.5 **Street or road signs.** When required by the chief, streets and roads shall be identified with approved signs.

901.5 **Obstruction and Control of Fire Apparatus Access Roads and Fire-protection Equipment.** See Sections 902.2.4 and 1001.7.

901.6 **Fire Protection in Recreational Vehicle, Mobile Home and Manufactured Housing Parks, Sales Lots and Storage Lots.** Recreational vehicle, mobile home and manufactured housing parks, sales lots and storage lots shall provide and maintain fire hydrants and access roads in accordance with Sections 902 and 903.

EXCEPTION: Recreational vehicle parks located in remote areas shall be provided with protection and access roadways as required by the chief.

SECTION 902 — FIRE DEPARTMENT ACCESS

902.1 **General.** Fire department access roads shall be provided and maintained in accordance with Sections 901 and 902.

902.2 **Fire Apparatus Access Roads.**

902.2.1 **Required access.** Fire apparatus access roads shall be provided in accordance with Sections 901 and 902.2 for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction when any portion of the facility or any portion of an exterior wall of the first story of the building is located more than 150 feet (45 720 mm) from fire apparatus access as measured by an approved route around the exterior of the building or facility. See also Section 902.3 for personnel access to buildings.

EXCEPTIONS: 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of Sections 902.2.1 and 902.2.2 may be modified by the chief.

2. When access roads cannot be installed due to location on property, topography, waterways, nonnegotiable grades or other similar conditions, the chief is authorized to require additional fire protection as specified in Section 1001.9.

3. When there are not more than two Group R, Division 3, or Group U Occupancies, the requirements of Sections 902.2.1 and 902.2.2 may be modified by the chief.

More than one fire apparatus road shall be provided when it is determined by the chief that access by a single road might be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

For high-piled combustible storage, see Section 8102.6.1.

For required access during construction, alteration or demolition of a building, see Section 8704.2.

902.2.2 **Specifications.**

902.2.2.1 **Dimensions.** Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm) and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).

EXCEPTION: Vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance when approved.

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Vertical clearances or widths shall be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

902.2.2.2 Surface. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.

902.2.2.3 Turning radius. The turning radius of a fire apparatus access road shall be as approved.

902.2.2.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) in length shall be provided with approved provisions for the turning around of fire apparatus.

902.2.2.5 Bridges. When a bridge is required to be used as part of a fire apparatus access road, it shall be constructed and maintained in accordance with nationally recognized standards. See Article 90, Standard a.1.1. The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

Vehicle load limits shall be posted at both entrances to bridges when required by the chief.

902.2.2.6 Grade. The gradient for a fire apparatus access road shall not exceed the maximum approved.

902.2.3 Marking. See Section 901.4.

902.2.4 Obstruction and control of fire apparatus access.

902.2.4.1 General. The required width of a fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under Section 902.2.2.1 shall be maintained at all times.

Entrances to roads, trails or other accessways which have been closed with gates and barriers in accordance with Section 902.2.4.2 shall not be obstructed by parked vehicles.

902.2.4.2 Closure of accessways. The chief is authorized to require the installation and maintenance of gates or other approved barricades across roads, trails or other accessways, not including public streets, alleys or highways.

When required, gates and barricades shall be secured in an approved manner. Roads, trails and other accessways which have been closed and obstructed in the manner prescribed by Section 902.2.4.2 shall not be trespassed upon or used unless authorized by the owner and the chief.

EXCEPTION: Public officers acting within their scope of duty.

Locks, gates, doors, barricades, chains, enclosures, signs, tags or seals which have been installed by the fire department or by its order or under its control shall not be removed, unlocked, destroyed, tampered with or otherwise molested in any manner.

EXCEPTION: When authorized by the chief or performed by public officers acting within their scope of duty.

902.3 Access to Building Openings.

902.3.1 Required access. Exterior doors and openings required by this code or the Building Code shall be maintained readily accessible for emergency access by the fire department.

An approved access walkway leading from fire apparatus access roads to exterior openings required by this code or the Building Code shall be provided when required by the chief.

902.3.2 Maintenance of exterior doors and openings. Exterior doors or their function shall not be eliminated without prior approval by the chief. Exterior doors which have been rendered nonfunctional and which retain a functional door exterior

appearance shall have a sign affixed to the exterior side of such door stating THIS DOOR BLOCKED. The sign shall consist of letters having principal stroke of not less than 3/4 inch (19.1 mm) wide and at least 6 inches (152.4 mm) high on a contrasting background. Required fire department access doors shall not be obstructed or eliminated. See Section 1207 for exit and exit-access doors.

For access doors for high-piled combustible storage, see Section 8102.6.2.

902.3.3 Shaftway marking. Exterior windows in buildings used for manufacturing or for storage purposes which open directly on shaftways or other vertical means of communication between two or more floors shall be plainly marked with the word SHAFTWAY in red letters at least 6 inches (152.4 mm) high on a white background. Warning signs shall be easily discernible from the outside of the building. Door and window openings on such shaftways from the interior of the building shall be similarly marked with the word SHAFTWAY in a manner which is easily visible to anyone approaching the shaftway from the interior of the building, unless the construction of the partition surrounding the shaftway is of such distinctive nature as to make its purpose evident at a glance.

902.4 Key Boxes. When access to or within a structure or an area is unduly difficult because of secured openings or where immediate access is necessary for life-saving or firefighting purposes, the chief is authorized to require a key box to be installed in an accessible location. The key box shall be of an approved type and shall contain keys to gain necessary access as required by the chief.

SECTION 903 — WATER SUPPLIES AND FIRE HYDRANTS

903.1 General. Water supplies and fire hydrants shall be in accordance with Sections 901 and 903.

903.2 Required Water Supply for Fire Protection. An approved water supply capable of supplying the required fire flow for fire protection shall be provided to all premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction. When any portion of the facility or building protected is in excess of 150 feet (45 720 mm) from a water supply on a public street, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains capable of supplying the required fire flow shall be provided when required by the chief. See Section 903.4.

903.3 Type of Water Supply. Water supply is allowed to consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow. In setting the requirements for fire flow, the chief may be guided by Appendix III-A.

903.4 Fire Hydrant Systems.

903.4.1 General.

903.4.1.1 Applicability. Fire hydrant systems and fire hydrants shall be in accordance with Section 903.4.

903.4.1.2 Testing and maintenance. Fire hydrant systems shall be subject to such periodic tests as required by the chief. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall be in accordance with approved standards.

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c. A common access roadway has two (2) ten foot (10') driving lanes with a six (6) inch thickness of crushed gravel base course material. It has at least one (1) four (4) foot utility corridor adjacent to the roadway and drainage shall be provided for in ditches, swales or culverts; the remainder of the easement or right-of-way may be unimproved with natural vegetation. The Land Use Administrator shall assure that adequate turn-around for fire protection and emergency vehicles is provided. No on street parking will be allowed on common access roadways. The minimum right-of-way or easement required is thirty eight (38) feet; additional drainage or cut and fill easements may be required where the access cannot be engineered or constructed within the 38 feet because of difficult terrain or drainage constraints. (See Appendix D)

3.5.3 REQUIRED IMPROVEMENTS FOR ROADS.--

A. Construction and design standards for new roads or improvements to existing roads whether publicly or privately maintained, shall be determined by the level of service and projected use of the road. Standards for required improvements are set forth by the Street and Road Classification and Design Standards Matrix (Appendix F, Figure 3.2) and the Schedule of Required on-site and off-site Road Improvements (Appendix E, Figure 3.1) which are hereby adopted and incorporated into these Regulations.

B. The design guideline for on-site and off-site roads for minimum level of service at peak hour shall be standard C as set forth in the Transportation Research Board, Special Report 209, Highway Capacity Manual, as updated. Where the amount of traffic generated by a development will cause the level of service at peak hour to exceed standard C or will further deteriorate the level of service on a road that already exceeds standard C, the subdivider shall make such improvements or contribute a fair share of improvements required in an amount to be determined by the Board to increase the capacity of the public road to an acceptable level of service pursuant to 3.5.1 B, supra and this Section 3.5.3.

C. Required on-site road improvements for residential subdivisions shall be determined by consultation of the Schedule of Required Road Improvements. Off-site improvements requirements shall be determined on the basis of a traffic analysis report.

D. Required road improvements for non-residential subdivisions shall be determined as applicable, for on-site and off-site road improvements, on the basis of a traffic analysis report and the standards designed by the American Association of State Highway Transportation Officials (AASHTO) Policy on Geometric Designs of Highways and Streets, latest edition, hereinafter referred to as AASHTO Standards.

SEALING STAMPES
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APPENDIX E. FIGURE 3.1

SCHEDULE OF REQUIRED ON-SITE AND OFF-SITE ROAD IMPROVEMENTS BY SCALE OF DEVELOPMENT

Reference Section 3.5.3

	REQUIRED IMPROVEMENTS (1, 5, 6)			
	Local (4) Common Access Roadway (7)	Collector (4) Local	Minor Arterial (4) Collector Local	Arterial (4) Minor Arterial Collector or Local
AVERAGE DAILY TRAFFIC (ADT)	0 - 599	600 - 1999	2000 - 4999	5000 +
RESIDENTIAL USES (3) Number of single family lots or total units, including existing	2 - 59	60 - 199	200 - 499	500 +
NON-RESIDENTIAL USES, MIXED USE AND MASTER PLANNED PROJECTS (2)				

Traffic Analysis Report estimate of ADT, Peak Hour Volume, and Level of Service (See 3.5.3, infra.)

FOOTNOTES:

- (1) The sum of all traffic generated shall be used to determine road classification and design specifications.
- (2) Required improvements for non-residential uses may be modified by AASHTO Standards for the type of traffic generated, such as heavy equipment or oversize vehicles in industrial areas.
- (3) Assumes ten (10) trips per dwelling unit.
- (4) See the Street and Road Classification and Design Standards matrix (Figure 3.2) and Section 3.5.2, infra, for description of right-of-way standards and other design requirements.
- (5) See Appendix for structural sections by road classification.
- (6) It is assumed that most subdivision proposals will obtain access from an existing road or street. The Traffic Analysis Report shall include information on the existing conditions, traffic counts, design capacity, and improvements which may be needed.
- (7) Common Access Roadways apply to subdivisions of 4 lots or less, family transfers, and division of "strip" parcels less than 120 ft. wide.



Harry B. Montoya
Commissioner, District 1

Paul Duran
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. Gonzales
County Manager

MEMORANDUM

DATE: December 14, 2004

TO: Board of County Commissioners

FROM: Jan Daniels, Development Review Specialist

VIA: Dolores I. Vigil, Land Use Director
Joe Catanach, Subdivision Review Director

FILE REF.: EZ CASE # APP 0-4201 Patrick and Ellen Collins Appeal.

ISSUE:

Patrick and Ellen Collins, applicants, are appealing the decision of the Extraterritorial Zoning Commission for EZ Case # 04-4200 (Dale and Claudia Faust Land Division) which approved a land division of 5.00-acres into two 2.50-acre lots and waived the condition that the on site access road for both lots shall be provided with a 20' driving surface; and amended the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone.

The property is located about 400-feet from Tano Road West on the east side of Tanoito Road within Section 4, Township 17 North, Range 9 East (2-Mile EZ District).

SUMMARY:

On October 14, 2004 the EZC met and acted on this case (#04-4200). The decision of the EZC was to approve this request and waive the condition that the on site access road for both lots shall be provided with a 20' driving surface; and amend the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone, (Exhibit A).

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Patrick and Ellen Collins Appeal
December 14, 2004
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The Collins's maintain that it would be unrealistic for the 10 property owners to contribute toward the turnaround improvement. Not all of the lots are occupied; or they are occupied by renters, and one lot is in bankruptcy and owned by two different banks in two states. The fair share participation between property owners that live on their property is four (4), and the Faust's for the two (2) lots the EZC approved.

The Collins's are also concerned about how fair share participation would be coordinated if the Faust plat is recorded prior to an agreement between the relevant property owners.

Before the October 14 meeting, Claudia Faust met with Staff/Land Use Administrator who requested a letter from her stating her concerns. The forthcoming letter arrived too late to be included in the packet of the October EZC meeting, (Exhibit E)

At the October 14 EZC meeting, the applicants' attorney, Paula Cook, stated the Fausts objected to conditions #1 and 3 (see page one of Exhibit A) because they should have been taken care of at sometime in the past.

May 7, 2004, the appellants delivered a petition to Santa Fe County Land Use opposing the lot split for the May 13, 2004 EZC meeting, which was tabled, (Exhibit B).

July 9, 2004, the appellants received a letter from SFC Fire Department stating that Captain Buster Patty had made a visit to the site and that he found it to be inadequate for Emergency vehicles, (Exhibit C).

August 1, 2004, the appellants mailed a letter to residents along Tanoito Road stating that Santa Fe County Land Use made a site visit to inspect the lot split and found the road was not in compliance with county requirements. Further, the letter stated that the residents met with Captain Buster Patty of the SFCFD on July 29, 2004 who explained to them why the off site emergency turnaround was not large enough to serve its purpose, (Exhibit D).

It was at this time that the resident's came to an agreement to hire a contractor to upgrade the turnaround, (Exhibit D).

The appellants state that they volunteered (to the neighbors) to appeal to the BCC to encourage and support the county to implement and enforce its safety regulations in their neighborhood, (Exhibit F).

Tanoito Road is a 1600' cul-de-sac. The end turnaround is platted but has been encroached upon by a garage and parking area making it impossible for emergency vehicle use. The existing turnaround on the Church property would be acceptable except that it has a 12' foot wide driving surface rather than a 20' foot wide driving surface as required.

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The width of driving surface on Tanoito varies from 13.5' to 16' through the Faust property (Exhibit N); therefore, the county recommended widening the road and improving the off-site turnaround as two of the conditions of the Faust Land Division, (see "conditions" in Exhibit A)

The Faust's maintain that they have no responsibility for widening Tanoito on their property or sharing the cost of improving the turnaround on the Church property because these matters were the responsibility of Mr. Crowley who sub-divided an adjoining parcel in 1995. They further argue that the fact that the road and the turnaround do not comply with the county's standards now is a result of the county's negligence in approving Crowley's sub-division nine years ago. Consequently, the Faust's feel that the staff's recommendations violate their constitutional right of equal protection under the law.

The Collins's assert that if the staff recommendations violate the applicants' equal-protection rights, then the EZC's refusal to enforce the county's public-safety law must violate the same rights of the resident property owners.

Also, the Collins's disagree with the EZC's decision to require the Faust's to pay 1/10 of the costs of the turnaround because it sets unrealistic conditions for the sharing of costs from the Faust's to the resident property owners, (Exhibit L). Out of nine (9) lots on Tanoito, only four (4) of the owners are residents (Exhibit L) who may make voluntary payments. A more realistic approach would be to allocate the total cost to six (6) lots – the two (2) lots owned by the Faust's and the four (4) lots owned by the residents.

The Collins's want the mechanics by which the Faust's and the residents can contract and pay for the turnaround improvements to be based on a contractor's bid, and the Fausts should pay no more than 33.33% of the total amount, (Exhibit L).

If the Faust's do not pay the costs of creating safe conditions on the road to accommodate the two lots which they will sell after the lot-split is recorded, then the resident property owners will be left with the daily risks of unsafe conditions on the road long after the Faust's have sold the lots.

Exhibit M shows the history of the three subdivisions and their accompanying plats on Tanoito Road, which was built-out before the Faust's request for a land division.

Section 3.5.2.F.3.c. of the Extraterritorial Subdivision Regulations states a common access roadway has two (2) ten foot (10') driving lanes with a six (6) inch thickness of crushed gravel base course material...and the minimum right-of-way or easement required is thirty-eight (38'), (Exhibit G).

Common Access Roadways apply to subdivisions of 4 lots or less, family transfers, and division of "strip parcels less than 120-feet wide, (Exhibit H).

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Page 2 (Roadways/Driveways) of the Santa Fe County Fire Department's official submittal review letter for the Dale and Claudia Faust Land Division states roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development; and the Santa Fe County Fire Department requires the existing emergency turn around on the Church property to meet the minimum requirements of this the code. The driving surface shall be a minimum of 20 feet wide and the turning radius around the phone pedestal to be modified to meet the code. Final acceptance based upon the Fire Marshal's approval, (Exhibit I).

Chapter 3, Section 1.10 of the Urban Wildland Interface Code (Ordinance 2001-4) shows that the Faust Land Division lies within its boundaries, (Exhibit J).

Chapter 4, Section 3.1 (Fire Apparatus Access Road) of the Urban Wildland Interface Code (Ordinance 2001-4) of the Urban Wildland Interface Code (Ordinance 2001-4) states fire apparatus access roads for new subdivisions and individual structures hereafter constructed or relocated into urban wildland interface areas shall be in accordance with the Fire Code. The minimum practicable widths and turning radii for access roads, driveways, driveway turnarounds, and driveway turnouts shall be based on the minimum vehicle size appropriate to firefighting conditions found in the designated urban wildland interface areas within the Extraterritorial Zoning District, (Exhibit K).

Chapter 4, Section 3.2 (Roads and Driveways) of the Urban Wildland Interface Code (Ordinance 2001-4) states that access roads, driveways, driveway turnarounds, and driveway turnouts shall be in accordance with the applicable provisions of the Fire Code, the Extraterritorial Zoning Ordinance, and the Extraterritorial Subdivision Regulations, as amended, (Exhibit K).

REQUIRED ACTION:

The BCC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions, or table for further analysis of this request.

RECOMMENDATION:

The EZC recommended approval of the land division and waived the condition that the on site access road for both lots shall be provided with a minimum 38' easement and a 20' driving surface; and amended the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone.

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Staff recommends that an agreement is executed between the relevant property owners (resident property owners) prior to the Fausts recording their plat, and within 30 days; and that the Fausts should widen the section of road that is within their property as determined by the Fire Department.

EXHIBITS:

Exhibit "A"- October 14, 2004 EZC Meeting Minutes
Exhibit "B"- May 7, 2004 Resident Petition Opposing Land Division
Exhibit "C"- July 9, 2004 Fire Department Letter About Site Visit
Exhibit "D"- August 1, 2004 Collins' Letter to Residents Re: Terms of Agreement
Exhibit "E" – Faust Summary Addressing Their Concerns (Received Before 10/4/04)
Exhibit "F" – Collins' Statement of Involvement
Exhibit "G" – Section 3.5.2.F.3.c. of the Extraterritorial Subdivision Regulations
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EZ Case # DL 04-4200 Dale and Claudia Faust Land Division. Dale and Claudia Faust, applicants, request plat approval to divide 5.027 acres into two (2) tracts. The tracts will be known as Tract 1 (2.516 acres) and Tract 2 (2.511 acres). The property is located about 400 feet from Tano Road West on the east side of Tanoito Road within Section 4, Township 17 North, Range 9 East, (2 Mile EZ District)

Noting the case was heard two months ago, Ms. Daniels said she believed there was still no agreement among the neighbors concerning off-site improvements. She understood the neighbors received a lower bid on the turn-around and were willing to share in the cost. She gave the following report:

"At it's regularly scheduled meeting of August 12, 2004 the EZC tabled the above referenced case to allow the applicant to resolve the off-site turn-around issue. The described property lies within the Basin Hydrologic Zone where the minimum lot size for a land division is 2.50 acres with a 0.25-acre ft. per year per lot water restriction. Both lots are vacant.

"The property also lies in a designated high-hazard zone of the Urban Wildlife Interface Ordinance (2001-4), which provides for special regulations to mitigate fire and life safety hazards. The objective of this Code is to minimize the occurrence of fires and the potential threat to life and property from fire and resulting erosion, and provide for adequate fire apparatus access to control the spread of fire in these areas. This Code applies to conditions arising after the adoption thereof and conditions not legally in existence at the time of adoption of this Code.

"At a September 27, 2004 meeting with Ms. Faust, her attorney, Paula Cook, and case manager, Jan Daniels, Dolores I. Vigil, the Land Use Administrator, requested a list of Ms. Faust's concerns over some of the conditions applied to this land division."

The application was reviewed for the following: access, water supply, liquid waste, solid waste, terrain management, fire protection, and environmental review

Ms. Daniels stated the proposed subdivision meets all requirements of the Extraterritorial Subdivision Regulations Section 3.3.6 (submittals/preliminary plat procedures), and staff recommends conditional approval of this request. If the decision of the EZC is to grant approval of the request, staff recommends the following conditions be imposed:

1. On site access road for both lots shall be provided with a minimum 38' foot easement and a 20' foot driving surface.
2. Compliance with County Fire Marshall review as applicable.
3. The applicant shall pay her fair share for improvements to the cul-de-sac when these improvements take place. Section 10.2 of the Extraterritorial Zoning Ordinance, effective on September 26, 1997, describes the purpose of exacting construction of improvements to existing off-site facilities to assure that such facilities that may be negatively impacted by the addition of new development will function efficiently.
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6. The applicant must contact Rural Addressing for assignment of addresses for the proposed tracts.
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Ms. Mortimer from City Planning said the City conditions were incorporated into those of the County and no stand was taken.

Commissioner Trujillo asked whether the Fire Marshal's conditions were met and Ms. Daniels said Fire Marshal review was among the conditions. This will require a 20-foot driving surface and that the turn-around be widened to 20 feet.

Paula Cook, attorney for the applicant stated there are problems with conditions #1 and #3. The Fausts object to those condition because they should have been taken care of some time in the past. She distributed copies of the plat to the commissioners. Two land divisions have occurred in the area without offsite improvements being required. A permit was granted the Church property and no upgrade to the road or turn-around was required. She noted the conditions now being called for were originally imposed on the Krawley, the subdivider in 1992. These condition were to be met before plat recordation but this did not occur. The County was responsible for inspecting the property to assure compliance with the 1992 conditions.

Ms. Cook stated, "The Fausts' predecessor in i nterest, and hence the Fausts, have no obligation to maintain or deal with the road at all until there is construction or a dwelling, if any, on their lot." She said, "Staff is not trying to accommodate any additional impact on the existing road, but rather to make the Fausts correct a condition that the County should have dealt with originally." She added if the Fausts do not complete their lot split this condition will remain.

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She noted they have raised a number of issues in meeting with staff and believe it is unfair to expect the Fausts to correct a condition the County created by allowing the recordation of a plat without ensuring that improvements had been made. Ms. Cook said it might be unconstitutional as well, being in violation of due process, and could constitute a taking.

Duly sworn, Patrick Collins, 30 Tanoito Road, referred to a letter dated May 7, 2004, regarding safety. There are four owner-residents currently on the road. He also referred to a memorandum recommending approval of the lot split subject to certain conditions, including driveway access, road widening, and driveway slope on the west Faust lot. He noted there are actually two turn-arounds, neither of which is deemed adequate by the Fire Department.

Mr. Collins said there are potential benefits to the residents and the applicants if the improvements are made. On August 12th, the residents offered a cost-sharing arrangement which was refused by the Fausts. He suggested nothing will happen until the EZC fixes the proportions to be paid and he recommended one half be paid by the property owners and one half by the applicants. He noted the bids he had received from contractors for road improvements, one for \$10,082 and one for \$4,776.

It was established that there are approximately ten lots on the road, four of which are occupied.

Claudia Faust, under oath, said they have spent a great deal of time and money on the property, none of which would have happened had the work been done as required.

Commissioner Trujillo said he was troubled that this was not inspected at the time, but noted fire safety is paramount. He suggested tabling until it was established who needed to fix the road.

Mr. Catanach said they were "trying to piece this together." The Krawley plat was recorded in 1995 probably with the understanding that the road would be built or bonded for. The plat required an additional permit, so Krawley probably never got a permit for the road. Commissioner Trujillo asked if it was possible to go back to Mr. Krawley. Mr. Catanach said he no longer owned any of the lots.

Ms. Cook said a permit was in fact issued in 1992 but no bond was posted. She understood the County was told improvements were complete.

Commissioner Mier indicated it was unfair for the Fausts to be required to make the improvements and there should be some other remedy.

Commissioner Trujillo moved to table with the stipulation that the County staff look into remedies. The motion died for lack of a second.

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Commissioner Follingstad moved to recommend approval of the application with all staff conditions except #3 pertaining to offsite improvements.

Ms. Daniels noted that Land Use Administrator Dolores Vigil deemed it fair for the applicant to pay a fair share of the turn-around improvement.

In response to questions from the Chair, Ms. Faust said the condition #1 would be more onerous and costly, and that Buster Patty from the Fire Marshal's office said the bigger issue was the turn-around.

Commissioner Lujan asked if the improvement required in 1992 including widening the section through the Faust's property. Ms. Daniels said this is a private road.

Commissioner Follingstad's motion to grant approval with staff conditions excluding #3 died. Commissioner Mier said he would second with a friendly amendment to exclude condition #1 and include #3. Commissioner Follingstad did not accept the friendly amendment.

Commissioner Gonzales moved to approve with condition #3 and without condition #1. Commissioner Mier seconded.

Commissioner Lujan repeated his question of whether the road widening improvement was required by the 1992 conditions. Mr. Catanach said he hasn't seen the permit documents but suspects the conditions included both.

Clarifying his motion, Commissioner Gonzales said he would like to see the existing five participants each pay one fifth of the cost of improvements. Commissioner Trujillo asked that the County also be held responsible, and asked that their participation be a friendly amendment. Commissioner Gonzales did not accept that. Commissioner Mier asked that all of the property owners on the road, rather than just the homeowners participate in the cost-sharing.

Mr. Catanach asked if there would have to be a fair share agreement among the neighbors prior to recording the plat. Chair Long noted that there was no leverage to force the neighbors to agree. Commissioner Lujan said it was his understanding there was a letter from the neighbors agreeing to pay their fair share.

Mr. Collins said this was summarized in the August 1st memo. The neighbors met informally and agreed to pursue the idea of sharing the cost with all the property owners, rather than all the homeowners. Chair Long said it sounds like there was the basis for an agreement, although this could not be made a requirement.

Mr. Catanach noted once a plat is recorded the County would have no further enforcement possibilities. Commissioner Esquibel said it was unclear that the neighbors had an entity to gather the money, and this could put the applicant in limbo. He said the cost did not

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appear to be that high.

Chair Long said the condition states that the fair share should be paid when improvements take place. Commissioner Follingstad asked if it was possible for the County to enforce the 1992 conditions, since the plat had already been recorded. Mr. Catanach said it might be possible if Mr. Krawley still owned lots, but that does not appear to be the case.

Commissioner Gonzales' motion failed 1-5 with Commissioner Gonzales voting in favor.

Commissioner Mier moved to approve with all conditions except #1 and #3. Commissioner Follingstad seconded and the motion failed 2-4 with Commissioner Follingstad and Commissioner Mier voting in favor.

Commissioner Trujillo moved to table to see if the applicant could work with staff to expeditiously bring back a harmonious agreement. Commissioner Esquibel seconded and the motion to table failed 2-4.

Stating there has to be equity in the cost-sharing, Commissioner Lujan moved to recommend denial to allow the case to move on to the next body. Commissioner Trujillo seconded. The motion failed 2-4.

Commissioner Gonzales moved approval without #1 and with #3 to give the applicant an opportunity to work with all the property owners on improvement to the cul-de-sac. The motion died.

Commissioner Trujillo again moved to table, noting a mistake had been made in the past and the case was at a standstill, pending agreement from all parties. Commissioner Lujan seconded and the motion tied 3-3. Chair Long voted against the motion to table.

Commissioner Mier said the issue is one of equity. Mr. Catanach said there were approximately ten lots and Mr. Collins stated there are seven property owners. Commissioner Mier said if other property owners are not willing to contribute their fair share, it is not equitable to require the applicant to more than 1/10 or 1/7, depending on the number.

Commissioner Mier moved to approve the request and modify #3 to read to that effect, requiring the applicant to pay that amount for improvement to the turnaround. Commissioner Gonzales seconded.

Commissioner Trujillo asked what would happen if one of the property owners refuses. Ms. Faust would pay and a cul-de-sac still would not be built. He said if the neighbors do not contribute the improvement will not be made or the County will have to build it. "Why should she pay more to have a cul-de-sac?"

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Commissioner Mier's motion passed 4-3 with Commissioners Mier, Gonzales, Follingstad and Long voting in favor.

Chair Long reiterated the motion, stating it was for approval, leaving out condition #1 and modifying #3 to include all the property owners, understood to be approximately ten, and if the other owners do not contribute the improvement will not be made.

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Harry B. Montoya
Commissioner, District 1

Paul Duran
Commissioner, District 2

Michael D. Anaya
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Gerald T. E. Gonzales
County Manager

MEMORANDUM

DATE: December 14, 2004

TO: Board of County Commissioners

FROM: Jan Daniels, Development Review Specialist

VIA: Dolores I. Vigil, Land Use Director
Joe Catanach, Subdivision Review Director

FILE REF.: EZ CASE # APP 0-4201 Patrick and Ellen Collins Appeal.

ISSUE:

Patrick and Ellen Collins, applicants, are appealing the decision of the Extraterritorial Zoning Commission for EZ Case # 04-4200 (Dale and Claudia Faust Land Division) which approved a land division of 5.00-acres into two 2.50-acre lots and waived the condition that the on site access road for both lots shall be provided with a 20' driving surface; and amended the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone.

The property is located about 400-feet from Tano Road West on the east side of Tanoito Road within Section 4, Township 17 North, Range 9 East (2-Mile EZ District).

SUMMARY:

On October 14, 2004 the EZC met and acted on this case (#04-4200). The decision of the EZC was to approve this request and waive the condition that the on site access road for both lots shall be provided with a 20' driving surface; and amend the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone, (Exhibit A).

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The Collins's maintain that it would be unrealistic for the 10 property owners to contribute toward the turnaround improvement. Not all of the lots are occupied; or they are occupied by renters, and one lot is in bankruptcy and owned by two different banks in two states. The fair share participation between property owners that live on their property is four (4), and the Faust's for the two (2) lots the EZC approved.

The Collins's are also concerned about how fair share participation would be coordinated if the Faust plat is recorded prior to an agreement between the relevant property owners.

Before the October 14 meeting, Claudia Faust met with Staff/Land Use Administrator who requested a letter from her stating her concerns. The forthcoming letter arrived too late to be included in the packet of the October EZC meeting, (Exhibit E)

At the October 14 EZC meeting, the applicants' attorney, Paula Cook, stated the Fausts objected to conditions #1 and 3 (see page one of Exhibit A) because they should have been taken care of at sometime in the past.

May 7, 2004, the appellants delivered a petition to Santa Fe County Land Use opposing the lot split for the May 13, 2004 EZC meeting, which was tabled, (Exhibit B).

July 9, 2004, the appellants received a letter from SFC Fire Department stating that Captain Buster Patty had made a visit to the site and that he found it to be inadequate for Emergency vehicles, (Exhibit C).

August 1, 2004, the appellants mailed a letter to residents along Tanoito Road stating that Santa Fe County Land Use made a site visit to inspect the lot split and found the road was not in compliance with county requirements. Further, the letter stated that the residents met with Captain Buster Patty of the SFCFD on July 29, 2004 who explained to them why the off site emergency turnaround was not large enough to serve its purpose, (Exhibit D).

It was at this time that the resident's came to an agreement to hire a contractor to upgrade the turnaround, (Exhibit D).

The appellants state that they volunteered (to the neighbors) to appeal to the BCC to encourage and support the county to implement and enforce its safety regulations in their neighborhood, (Exhibit F).

Tanoito Road is a 1600' cul-de-sac. The end turnaround is platted but has been encroached upon by a garage and parking area making it impossible for emergency vehicle use. The existing turnaround on the Church property would be acceptable except that it has a 12' foot wide driving surface rather than a 20' foot wide driving surface as required.

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The width of driving surface on Tanoito varies from 13.5' to 16' through the Faust property (Exhibit N); therefore, the county recommended widening the road and improving the off-site turnaround as two of the conditions of the Faust Land Division, (see "conditions" in Exhibit A)

The Faust's maintain that they have no responsibility for widening Tanoito on their property or sharing the cost of improving the turnaround on the Church property because these matters were the responsibility of Mr. Crowley who sub-divided an adjoining parcel in 1995. They further argue that the fact that the road and the turnaround do not comply with the county's standards now is a result of the county's negligence in approving Crowley's sub-division nine years ago. Consequently, the Faust's feel that the staff's recommendations violate their constitutional right of equal protection under the law.

The Collins's assert that if the staff recommendations violate the applicants' equal-protection rights, then the EZC's refusal to enforce the county's public-safety law must violate the same rights of the resident property owners.

Also, the Collins's disagree with the EZC's decision to require the Faust's to pay 1/10 of the costs of the turnaround because it sets unrealistic conditions for the sharing of costs from the Faust's to the resident property owners, (Exhibit L). Out of nine (9) lots on Tanoito, only four (4) of the owners are residents (Exhibit L) who may make voluntary payments. A more realistic approach would be to allocate the total cost to six (6) lots – the two (2) lots owned by the Faust's and the four (4) lots owned by the residents.

The Collins's want the mechanics by which the Faust's and the residents can contract and pay for the turnaround improvements to be based on a contractor's bid, and the Fausts should pay no more than 33.33% of the total amount, (Exhibit L).

If the Faust's do not pay the costs of creating safe conditions on the road to accommodate the two lots which they will sell after the lot-split is recorded, then the resident property owners will be left with the daily risks of unsafe conditions on the road long after the Faust's have sold the lots.

Exhibit M shows the history of the three subdivisions and their accompanying plats on Tanoito Road, which was built-out before the Faust's request for a land division.

Section 3.5.2.F.3.c. of the Extraterritorial Subdivision Regulations states a common access roadway has two (2) ten foot (10') driving lanes with a six (6) inch thickness of crushed gravel base course material...and the minimum right-of-way or easement required is thirty-eight (38'), (Exhibit G).

Common Access Roadways apply to subdivisions of 4 lots or less, family transfers, and division of "strip parcels less than 120-feet wide, (Exhibit H).

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Page 2 (Roadways/Driveways) of the Santa Fe County Fire Department's official submittal review letter for the Dale and Claudia Faust Land Division states roads shall meet the minimum County standards for fire apparatus access roads within this type of proposed development; and the Santa Fe County Fire Department requires the existing emergency turn around on the Church property to meet the minimum requirements of this the code. The driving surface shall be a minimum of 20 feet wide and the turning radius around the phone pedestal to be modified to meet the code. Final acceptance based upon the Fire Marshal's approval, (Exhibit I).

Chapter 3, Section 1.10 of the Urban Wildland Interface Code (Ordinance 2001-4) shows that the Faust Land Division lies within its boundaries, (Exhibit J).

Chapter 4, Section 3.1 (Fire Apparatus Access Road) of the Urban Wildland Interface Code (Ordinance 2001-4) of the Urban Wildland Interface Code (Ordinance 2001-4) states fire apparatus access roads for new subdivisions and individual structures hereafter constructed or relocated into urban wildland interface areas shall be in accordance with the Fire Code. The minimum practicable widths and turning radii for access roads, driveways, driveway turnarounds, and driveway turnouts shall be based on the minimum vehicle size appropriate to firefighting conditions found in the designated urban wildland interface areas within the Extraterritorial Zoning District, (Exhibit K).

Chapter 4, Section 3.2 (Roads and Driveways) of the Urban Wildland Interface Code (Ordinance 2001-4) states that access roads, driveways, driveway turnarounds, and driveway turnouts shall be in accordance with the applicable provisions of the Fire Code, the Extraterritorial Zoning Ordinance, and the Extraterritorial Subdivision Regulations, as amended, (Exhibit K).

REQUIRED ACTION:

The BCC should review the attached material and consider the recommendation of staff; take action to approve, deny, approve with conditions, or table for further analysis of this request.

RECOMMENDATION:

The EZC recommended approval of the land division and waived the condition that the on site access road for both lots shall be provided with a minimum 38' easement and a 20' driving surface; and amended the condition that the applicant shall pay 1/10 of her share (rather than fair share) when the improvements take place for the off site emergency turnaround within a very high hazard area of the Urban Wildland Interface Zone.

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Staff recommends that an agreement is executed between the relevant property owners (resident property owners) prior to the Fausts recording their plat, and within 30 days; and that the Fausts should widen the section of road that is within their property as determined by the Fire Department.

EXHIBITS:

Exhibit "A"- October 14, 2004 EZC Meeting Minutes
Exhibit "B"- May 7, 2004 Resident Petition Opposing Land Division
Exhibit "C"- July 9, 2004 Fire Department Letter About Site Visit
Exhibit "D"- August 1, 2004 Collins' Letter to Residents Re: Terms of Agreement
Exhibit "E" – Faust Summary Addressing Their Concerns (Received Before 10/4/04)
Exhibit "F" – Collins' Statement of Involvement
Exhibit "G" – Section 3.5.2.F.3.c. of the Extraterritorial Subdivision Regulations
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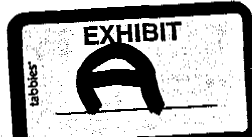
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1 SANTA FE EXTRATERRITORIAL
2 ZONING AUTHORITY

Refer To
Pages 11 & 12

3 ORDINANCE No. 2001- 4

1995768

4
5 An ordinance establishing an urban wildland interface code
6 for the Extraterritorial Zone within the City and County of Santa Fe

7
8 Be it ordained by the Extraterritorial Zoning Authority of the City and County of Santa
9 Fe that, in order to mitigate the threat to life and property from the intrusion of wildland
10 fire exposures, fire exposures from adjacent structures, and prevention of structure fires
11 from spreading to wildland fuels, the following ordinance is hereby adopted:

12 URBAN WILDLAND INTERFACE CODE

13
14
15 CHAPTER 1. ADMINISTRATION

16 Section 1. General

17 1.1 Title. This ordinance shall be known the Urban Wildland Interface Code, may be
18 cited as such and shall be referred to herein as "this Code."

19 1.2 Scope. This Code shall supplement Santa Fe County's Extraterritorial Zoning
20 Ordinance, Building Code and Fire Code to provide for special regulations to
21 mitigate the fire and life safety hazards of the urban wildland interface areas.

22 1.3 Objective. The objective of this Code is to minimize the occurrence of fires and the
23 potential threat to life and property from fire and resulting erosion, and provide for
24 adequate fire apparatus access to control the spread of fire in urban wildland
25 interface areas.

26 1.4 Applicability. This Code shall apply to conditions arising after the adoption thereof
27 and conditions not legally in existence at the time of adoption of this Code. It shall
28 apply to all permit applications submitted after the date of adoption of this Code for
29 the construction, alteration, moving, and use of any building, structure, or premises
30 within the urban wildland interface areas in the Extraterritorial Zoning District,
31 except as provided in Sections 1.5 and 1.6 herein below. Buildings or conditions in
32 existence at the time of the adoption of this Code are allowed to have their use,

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- 1 occupancy, or condition continued if such use, occupancy, or condition was legal at
2 the time of the adoption of this Code. Buildings or structures moved into or within
3 the Extraterritorial Zoning District shall comply with the provisions of this Code for
4 new buildings or structures. The addition of a road or driveway or the transfer of
5 ownership shall not cause otherwise vacant property to become subject to the
6 provisions of this Code, unless the addition of a road or driveway or transfer of
7 ownership is in conjunction with the planned or actual development of the property.
- 8 **1.5 Renovations or Modifications.** Existing buildings or structures that undergo
9 renovation or modification which affects or increases the existing roof or existing
10 exterior walls in excess of forty-nine percent (49%) of the square footage of such
11 roof or walls, as determined by the Land Use Administrator, shall be required to
12 meet the requirements of this Code. All other renovations or modifications and all
13 interior renovations regardless of square footage are exempt from this Code unless
14 they coincide with exterior modifications exceeding the 49% criteria given above.
- 15 **1.6 Exempt Structures.** The provisions of this Code shall not apply to the following
16 types of structures and conditions, whether existing or hereafter constructed or
17 relocated into the urban wildland interface area:
- 18 a. Detached accessory structures, as defined in Chapter 2 of this Code, provided the
19 floor area does not exceed six hundred (600) square feet and the structure is
20 located more than fifty (50) feet from the nearest adjacent structure.
- 21 b. Fences not over six (6) feet high, unless attached to a habitable building.
- 22 c. Outdoor walls. As used in this section, walls are solid upright barriers constructed
23 of non-flammable material and used to enclose or screen areas of land or to retain
24 soil. Walls that are part of a building or structure are not included in this
25 definition.
- 26 d. The renovation of historic buildings shall be exempt from the requirements of this
27 chapter to allow the in-kind replacement of historic fabric where the proposed
28 renovation is necessary to replace or repair materials that have deteriorated, or to
29 restore historic buildings to their historic appearance in accordance with generally
30 accepted historic preservation practices. Historic buildings relocated to and

1 displayed at recognized museums also shall be exempt from the provisions of this
2 Code.

3 1.7 Severability. If any part of this Code or the application thereof to any person or
4 circumstance is held invalid, the remainder of the Code and its application to other
5 persons or circumstances shall not be affected thereby.

6 1.8 Conflicting Provisions. Where there exists a conflict between any limitation or
7 requirement in this Code and any applicable limitation or requirement contained
8 elsewhere in this Code or in any other ordinance, regulation, or law, the Land Use
9 Administrator, the Fire Marshal, and the applicant shall resolve such conflicts so as to
10 achieve the objectives of the conflicting codes to the greatest possible degree and to
11 ensure the protection of human health and safety, soil, vegetation, wildlife habitat,
12 and air and water quality. The Land Use Administrator and the Fire Marshal shall
13 address such conflict in writing and shall publish a summary of the resolution or
14 coordination measures within thirty (30) days of the date on which such measures
15 shall become effective.

16 1.9 Effective Date. This Code shall become effective on the thirtieth (30th) day after
17 recording of this Code in the City and County Ordinance books. Any re-recordings or
18 recompilation of this Code shall not affect its effective date.

19 **Section 2. Authority of the Fire Marshal.**

20 2.1 Powers and Duties of the Fire Marshal. This Code shall be enforced by the Santa
21 Fe County Fire Marshal's Office, which office is established and operated under the
22 supervision and direction of the Chief of the Santa Fe County Fire Department. The
23 Fire Marshal shall be appointed by the Fire Chief to exercise the powers and duties as
24 set forth in the Fire Code and as necessary to carry out the purposes of this Code.

25 **Section 3. Permits.**

26 3.1 Scope. Permits shall be obtained for the activities, operations, practices, materials, or
27 functions listed in this Section and as further defined in the Fire Code. Permits shall
28 be by application to the Land Use Administrator and shall incorporate such terms and
29 conditions, as are reasonably necessary to safeguard public safety and property.

30 3.1.1. Automobile wrecking yard. To operate an automobile wrecking yard.

- 1 3.1.2 Candles and open flames in assembly areas. To use open flames or candles in
2 connection with assembly areas, dining areas of restaurants or drinking
3 establishments.
- 4 3.1.3 Explosives or blasting areas. For permits for explosives or blasting agents, see
5 Article 77 of the Fire Code.
- 6 3.1.4 Flammable or combustible liquids. See Article 79 of the Fire Code.
- 7 3.1.5 Fireworks. For permits for fireworks, see Article 78 of the Fire Code.
- 8 3.1.6 Hazardous materials. To store, transport on site, dispense, use or handle
9 hazardous materials in excess of the amounts listed in Table 105-C of the Fire
10 Code or to install, repair, abandon, remove, place temporarily out of service,
11 close or substantially modify a storage facility or other area regulated by the
12 Fire Code when the hazardous materials in use or storage exceed the amounts
13 listed in Table 105-C.
- 14 3.1.7 Liquefied petroleum gases. See Article 82 of the Fire Code.
- 15 3.1.8 Lumberyards. To store lumber in excess of 100,000 board feet, see Article 30
16 of the Fire Code.
- 17 3.1.9 Motor vehicle fuel-dispensing stations. To dispense flammable or combustible
18 liquids, liquefied petroleum gases, or compressed natural gas at commercial
19 motor vehicle fuel-dispensing stations. See Article 52 of the Fire Code.
- 20 3.1.10 Open burning. To conduct open burning.
- 21 3.1.11 Pyrotechnical special effects material. For permits for pyrotechnical special
22 effects material, see Article 78 of the Fire Code.
- 23 3.1.12 Tents, canopies, and temporary membrane structures. To erect or operate an
24 air-supported temporary membrane structure or tent having an area in excess
25 of 200 square feet or a canopy in excess of 400 square feet, except for
26 structures used exclusively for camping. See Article 32 of the Fire Code.
- 27 3.1.13 Tire storage. To use an open area or portion thereof to store tires in excess of
28 1,000 cubic feet.
- 29 3.1.14 Welding and cutting operations. To operate welding and cutting operations for
30 commercial purposes.

1 3.3 New Materials, Processes or Occupancies That May Require Permits. The Fire
2 Chief or Fire Marshal in the future and from time to time may determine that permits
3 shall be required for new materials, processes, or occupancies not now required to be
4 permitted under this Code. Such determinations and specifications shall be by
5 ordinance after public hearing giving affected persons an opportunity to be heard,
6 shall be posted in a conspicuous place in the offices of the City Clerk and County
7 Clerk, and copies thereof shall be made available to the public.

8 **Section 4. Appeals.**

9 4.1 Appeals. Whenever the Fire Marshal denies or refuses to grant an application for a
10 permit, or when it is claimed that the provisions of this Code do not apply, or that the
11 true intent and meaning of the Code have been misconstrued or wrongly interpreted,
12 the applicant may appeal from the decision of the Fire Marshal to the Extraterritorial
13 Zoning Commission. The appeal must be submitted in writing thirty (30) calendar
14 days from the date of mailing of the Fire Marshal's decision. The applicant must state
15 the grounds for the appeal, provide specific statement of fact, specify the provisions
16 of this Code and any other ordinance upon which the appeal is based, and cause for
17 the appeal.

18 **Section 5. Enforcement and Penalties.**

19 5.1 Complaints. Whenever a violation of this Code occurs or is alleged to have occurred,
20 any person may file a written complaint stating fully the cause and basis thereof. Such
21 complaint shall be submitted to the Fire Marshal. The Fire Marshal shall cause the
22 complaint to be investigated promptly and take action thereon as specified under this
23 Section.

24 5.2 Inspection and Notice. The Fire Marshal shall, when required, inspect a site or
25 building(s) where provisions of this Code are alleged to have been violated. Where
26 provisions of this Code are being violated, written notification shall be provided to
27 the owner or tenant of the subject property, indicating the nature of the violations and
28 ordering the action necessary to correct it. Such notice may also require the taking of
29 any other action authorized by this Code to ensure compliance with or to prevent
30 further violations of its provisions. This Section shall not preclude the issuance of a

1 citation without the issuance of a notice of violation where a significant life safety or
2 concern of danger exists.

3 5.3 Penalties for Violations of this Code. In addition to any penalty or other remedy
4 provided by law, any person, corporation, entity, or organization, found by a court of
5 competent jurisdiction to have violated the provisions of this Code, shall be guilty of
6 a misdemeanor punishable by a fine not to exceed three hundred dollars (\$300) per
7 day per violation, from the date written notification is provided pursuant to
8 Subsection 5.2 above, or by imprisonment not to exceed ninety (90) days, or by
9 both fine and imprisonment. In addition to the imposition of any fine for any violation
10 hereunder, the removal, correction, or remedy of any violation of this Code shall be
11 required within a reasonable period of time, as determined by the Fire Marshal.

12 5.4 Injunctive Relief. The County Attorney or City Attorney on behalf of the
13 Extraterritorial Zoning Authority, the District Attorney for the First Judicial District,
14 or the Attorney General may apply to the district court for mandatory injunctive relief
15 to compel compliance by any person with the provisions of this Code.

16 CHAPTER 2. DEFINITIONS

17 Section 1. General

18
19 1.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the
20 purposes of this Code, have the meanings shown in this chapter.

21 1.2 Interchangeability. Words stated in the present tense include the future; words stated
22 in the masculine gender include the feminine and neuter, and the singular number
23 includes the plural and the plural the singular.

24 1.3 Terms Defined in Other Codes. Where terms are not defined in this Code and are
25 defined in other applicable codes, such terms shall have the meanings ascribed to
26 them as in those codes.

27 1.4 Terms Not Defined. Where terms are not defined in this chapter, such terms shall
28 have their ordinarily accepted meanings such as the context implies.

29 Section 2. Definitions

30 Accessory Structure is a building or structure that is incidental and subordinate to a
31 principal dwelling or use and that shall:

32 a. not be used as a dwelling;

- 1 b. be non-commercial, except for approved home and agricultural
2 occupations; and
- 3 c. be operated and maintained for the benefit or convenience of the occupants
4 of the principal dwelling.
- 5 Building Code is the building code adopted by Santa Fe County Ordinance 1996-10,
6 as amended.
- 7 Defensible Space is an area either natural or man-made, where material capable of
8 allowing a fire to spread unchecked has been treated, cleared or modified to slow the
9 rate and intensity of an advancing wildfire and to create an area for fire suppression
10 operations to occur.
- 11 Driveway is a vehicular ingress and egress to a lot, building, structure, or dwelling
12 unit, located on and serving no more than three (3) lots.
- 13 Electrical Code is the electrical code adopted by Santa Fe County Ordinance 1996-
14 10, as amended.
- 15 Extraterritorial Subdivision Regulations (ESR) are the Santa Fe Extraterritorial
16 Subdivisions Regulations adopted by Santa Fe County Ordinance No. 1991-11, as
17 amended, and by the City of Santa Fe Ordinance No. 29, 1991, as amended.
- 18 Extraterritorial Zoning District means the area lying outside of the municipal
19 boundaries and within two (2) miles of the municipal boundaries of the City of Santa
20 Fe plus areas outside the municipal boundaries which have been zoned prior to the
21 enactment of Chapter 80, Sec. 2, Laws of New Mexico, 1977, as set out in the Joint
22 City/County Extraterritorial Zoning and Subdivision Agreement of March 1981, and
23 as it may be amended.
- 24 Extraterritorial Zoning Ordinance (EZO) is the Santa Fe Extraterritorial Zoning
25 Authority Ordinance No. 1997-4, as amended.
- 26 Fire Area is the floor area, in square feet (square meters), used to determine the
27 adequate water supply.
- 28 Fire Chief is Chief of the Santa Fe County Fire Department or his authorized
29 representative.
- 30 Fire Code is the fire code and standards adopted by Santa Fe County Ordinance
31 No.1998-11, as amended.

1 Fire Marshal is the Santa Fe County Fire Marshal. **Fire-Resistive Construction** is
2 the use of materials and systems in the design and construction of a building or
3 structure to safeguard against the spread of fire within a building or structure and the
4 spread of fire to or from buildings or structures to the urban-wildland interface area.
5 **Fuel Break** is an area, strategically located for fighting anticipated fires, where the
6 native vegetation has been permanently modified or replaced so that fires burning into
7 it can be more easily controlled. Fuel breaks divide fire-prone areas into smaller
8 areas for easier fire control and to provide access for fire fighting.
9 **Fuel Modification** is a method of reducing the amount of nonfire-resistive vegetation
10 or altering the type of vegetation to reduce the available fuel load, as defined in this
11 Section.
12 **Fuel Mosaic** is a fuel modification system that provides for the creation of islands
13 and irregular boundaries to reduce the visual and ecological impact of fuel
14 modification.
15 **Fuel Load** is the oven-dry weight of fuels in a given area, usually expressed in
16 pounds per acre (lb/a) or kilogram per hectare (kg/ha). Fuel load may be referred to
17 in fuel size or time log categories, and may include surface fuels or total fuels.
18 **Hazardous Materials** is as defined in the Fire Code.
19 **Heavy Timber Construction** is as described in the Building Code.
20 **Historic Building** is a building or structure placed on the New Mexico Register of
21 Cultural Properties maintained by the Cultural Properties Review Committee of the
22 State Office of Cultural Affairs in accordance with NMSA 1978, §§ 18-6-1 through
23 18-6-17, as amended.
24 **Ignition-resistant Construction, Class 1**, is a schedule of additional requirements
25 for construction in urban-wildland interface areas based on extreme or very high fire
26 hazard.
27 **Ignition-resistant Construction, Class 2**, is a schedule of additional requirements
28 for construction in urban-wildland interface areas based on high fire hazard.
29 **Ignition-resistant Construction, Class 3**, is a schedule of additional requirements
30 for construction in urban-wildland interface areas based on moderate fire hazard.

1 Land Development Code (LDC) is the Santa Fe County Land Development Code,
2 Santa Fe County Ordinance 1996-10, as amended.

3 Land Use Administrator is the director of the Santa Fe County Land Use
4 Department.

5 Log Wall Construction is a type of construction in which exterior walls are
6 constructed of solid wood members and where the smallest horizontal dimension of
7 each solid wood member is at least 6 inches (152mm).

8 Noncombustible as applied to building construction material means a material that,
9 in the form in which it is used, is either one of the following:

- 10 1. Material of which no part will ignite and burn when subjected to fire. Any
11 material conforming to ASTM E 136-79 shall be considered non-combustible
12 within the meaning of this section.
- 13 2. Material having a structural base of noncombustible material as defined in
14 Item 1 above, with a surfacing material not over 1/8 inch (3.2 mm) thick,
15 which has a flame-spread rating of 50 or less. Flame-spread rating as used
16 herein refers to rating obtained according to tests conducted as specified in
17 ASTM E 84-91a.

18 "Noncombustible" does not apply to surface finish materials applied over
19 combustible base materials. Material required to be noncombustible for
20 reduced clearances to fuels, heating appliances or other sources of high
21 temperature shall refer to material conforming to Item 1. No material shall be
22 classed as noncombustible which is subject to increase in combustibility or
23 flame-spread rating, beyond the limits herein established, through the effects
24 of age, moisture or other atmospheric condition.

25 Noncombustible Roof Covering shall be one of the following:

- 26 1. Cement shingles or sheets.
- 27 2. Exposed concrete slab roof.
- 28 3. Ferrous or copper shingles or sheets.
- 29 4. Slate shingles.
- 30 5. Clay or concrete roofing tile.
- 31 6. Approved roof covering of noncombustible material.

1 7. Earth-sheltered or "green roofs" maintained with non-woody vegetative
2 covering.

3 8. Asphalt shingles.

4 9. Tar and Gravel.

5 Slope is the variation of terrain from the horizontal, in terms of rise over a given
6 horizontal distance.

7 Structure is that which is built or constructed, an edifice or building of any kind, or
8 any piece of work artificially built up or composed of parts joined together in some
9 manner.

10 Tree Crown is the primary and secondary branches growing out from the main stem,
11 together with twigs and foliage.

12 Unenclosed Accessory Structure is an accessory structure without a complete
13 exterior wall system enclosing the area under roof or floor above.

14 Urban Wildland Interface Area is a certain geographical area where a significant
15 density of structures and other human development and occupancy meets or
16 intermingles with wildland or vegetative fuels.

17 Wildfire is an uncontrolled fire spreading through vegetative fuels, exposing and
18 possibly consuming structures.

19 Wildland is an area in which development is essentially nonexistent, except for
20 roads, railroads, power lines and similar facilities.

21 CHAPTER 3. URBAN WILDLAND INTERFACES AREAS

22 Section 1. Urban Wildland Interface Area Designations.

23 1.1 Boundaries. The boundaries of the urban wildland interface areas within the

24 Extraterritorial Zoning District are graphically presented on Appendix I attached
25 hereto and incorporated herein by reference and described as follows:

26 1. Tesuque

27 T18N/R9E/Sec. 25


28 T18N/R10E/Sec. 19

29 2. Lower Pacheco Canyon

30 T18N/R10E/Sec. 18

31

32 3. Hyde Park

- 1 T17N/R10E/Sec. 9
- 2 4. La Barberia
- 3 T16N/R10E/Sec. 8, 9, 16
- 4 5. Old Santa Fe Trail
- 5 T16/R105/Sec. 17, 21
- 6 6. Sunlit Hills
- 7 T16N/R9E/Sec. 25
- 8 T16N/R10E/Sec. 29, 30
- 9 7. Arroyo Hondo
- 10 T16N/R9E/Sec. 13, 24
- 11 T16N/R10E/Sec. 18, 19
- 12 8. La Tierra
- 13 T17N/R9E/Sec. 5,6,8,9
- 14 9. Las Campanas
- 15 T17N/R9E/Sec. 7,16,17,18
- 16  10. Tano Road
- 17 T17N/R9E/Sec. 2,3,4
- 18 T18N/R9E/Sec. 33,34

19 1.2 Classification of Urban Wildland Interface Areas. Hazard ratings and general
 20 descriptions of the urban wildland interface areas designated in Section 1.1 above are
 21 presented in the Santa Fe County Urban Wildland Interface Area Inventory
 22 Assessment (February 2001), attached hereto as Appendix II and incorporated herein
 23 by reference.

24 1.3 Site-Specific Classification. Hazard ratings may be modified on a site-specific basis
 25 by application to the Fire Marshal, or by determination of the Fire Marshal, based on
 26 a form of the Wildfire Hazard Severity Form Checklist, as amended from time to
 27 time, and attached hereto as Appendix III.

28 1.4 Review of Urban Wildland Interface Areas. The Fire Marshal shall reevaluate and
 29 recommend addition, removal, or modification to the urban wildland interface areas,
 30 based on climatic, topographic and geographic considerations, on a three-year basis
 31 or more frequently as deemed necessary by the governing body.

32

33 CHAPTER 4. URBAN WILDLAND INTERFACE AREA REQUIREMENTS

34 Section 1. General.

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1 1.1 Scope. Urban wildland interface areas shall be provided with emergency vehicle
2 access and water supply in accordance with this chapter.

3 **Section 2. Existing Conditions.**

4 2.1 General. Existing buildings shall be provided with address markers in such a position
5 as to be plainly visible and legible from the street or road fronting the property. Fire
6 protection systems and fire hydrants shall be clearly identified in an approved manner
7 to prevent obstruction by parking and other obstructions. When required by the Fire
8 Chief or Fire Marshal, hydrant locations shall be identified by installation of
9 reflective markers.

10 **Section 3. Access.**

11 3.1 Fire Apparatus Access Road. Fire apparatus access roads for new subdivisions and
12 individual structures hereafter constructed or relocated into urban wildland interface
13 areas shall be in accordance with the Fire Code. The minimum practicable widths and
14 turning radii for access roads, driveways, driveway turnarounds, and driveway
15 turnouts shall be based on the minimum vehicle size appropriate to firefighting
16 conditions found in the designated urban wildland interface areas within the
17 Extraterritorial Zoning District.

18 3.2 Roads and Driveways. Access roads, driveways, driveway turnarounds, and
19 driveway turnouts shall be in accordance with the applicable provisions of the Fire
20 Code, the Extraterritorial Zoning Ordinance, and the Extraterritorial Subdivision
21 Regulations, as amended.

22 3.3 Gates. Gates shall be a minimum of fourteen feet (14') wide and may be in one or
23 two sections. Center posts shall be prohibited.

24 3.4 Key Boxes. Where emergency vehicle access is restricted due to secured access roads
25 or driveways or where immediate access is necessary for life saving or fire fighting
26 purposes, the Fire Marshal is authorized to require a key box to be installed in an
27 accessible location. The key box shall be of an approved type and shall contain keys
28 to gain necessary access as required by the Fire Marshal.

29 **Section 4. Water Supply.**

30 4.1 General. The water supply required by this Code for purposes of initial attack and
31 flame front control shall be in accordance with the applicable provisions of the Fire

1 Code, the Extraterritorial Zoning Ordinance, and the Extraterritorial Subdivision
2 Regulations.

3 4.2 Protection of Electrical Power Supplies. When electrical pumps are used to provide
4 the required water supply for fire protection systems, not including domestic wells or
5 water supply systems, such pumps shall be connected to a standby power source to
6 automatically maintain electrical power in the event of a power loss, except that a
7 standby power source shall not be required where the primary source of power
8 service to pumps is underground, as approved by the Fire Marshal.

9 **CHAPTER 5. SPECIAL BUILDING CONSTRUCTION REGULATIONS**

10 **Section 1. General.**

11 1.1 Scope. Buildings and structures located within urban wildland interface areas, not
12 including accessory structures, shall be constructed in accordance with the
13 Extraterritorial Zoning Ordinance, the Fire Code, the Building Code, and this Code.

14 1.2 Objective. The objective of this chapter is to establish minimum standards to locate,
15 design, and construct buildings and structures or portions thereof for the protection of
16 life and property, to resist damage from wildfires, and to mitigate building and
17 structure fires from spreading to wildland fuels.

18 **Section 2. Uniform Construction Requirements.**

19 2.1 General. Buildings and structures hereafter constructed, relocated, renovated or
20 modified to the extent delineated in Ch. 1, § 1.5 of this Code, in any urban wildland
21 interface areas designated as extreme, very high, or high fire hazard shall be in
22 accordance with this Section.

23 2.2 Gutters and Downspouts. Gutters and downspouts shall be constructed of
24 noncombustible materials. Gutters and downspouts made of plastic shall not be used.

25 2.3 Exterior Walls. Exterior walls of buildings or structures shall be constructed with
26 materials approved for a minimum of one-hour-rated fire-resistive construction on the
27 exterior side, constructed with approved noncombustible materials, or constructed
28 with alternative materials approved by, and installed in accordance with, the
29 requirements of the International Conference of Building Officials Research Reports,
30 or favorable research reports by any testing agency recognized by the State of New
31 Mexico Regulation and Licensing Department, Construction Industries Division.

- 1 Such materials shall extend from the top of the foundation to the underside of the roof
2 sheathing. Exterior walls shall not be constructed of plastic or wood or wood
3 byproducts, unless said plastic, wood, or wood byproducts are at a minimum one-
4 hour-rated fire-resistive.
- 5 **2.4 Unenclosed Underfloor Protection.** Buildings or structures shall have all underfloor
6 areas enclosed to the ground with exterior walls in accordance with subsection 2.3 of
7 this Section. Complete enclosure may be omitted where the underside of all exposed
8 floors and all exposed structural columns, beams, and supporting walls are protected
9 as required for exterior one-hour-rated fire-resistive construction or heavy timber
10 construction.
- 11 **2.5 Appendages and Projections.** Unenclosed accessory structures attached to buildings
12 with habitable spaces and projections, such as decks or portals, shall be a minimum of
13 one-hour-rated fire-resistive construction, heavy timber construction or constructed of
14 approved noncombustible materials. When the attached structure is located and
15 constructed so that the structure or any portion thereof projects over a descending
16 slope surface greater than 10 percent, the area below the structure shall have all
17 underfloor areas enclosed to within 6 inches of the ground, with exterior wall
18 construction in accordance with subsection 2.3 of this Section.
- 19 **2.6 Windows.** Exterior windows, window walls, and skylights shall be tempered glass,
20 wired glass, multilayered glazed panels, or fire-resistant plastic glazing.
- 21 **2.7 Vents.** Attic ventilation openings, foundation or underfloor vents, or other ventilation
22 openings in vertical exterior walls and vents through roofs shall not exceed 144
23 square inches each. Such vents shall be covered with noncombustible corrosion-
24 resistant mesh with openings not to exceed ¼ inch. Attic ventilation openings shall
25 not be located in soffits, eave overhangs, between rafters at eaves, or in other
26 overhang areas.
- 27 **2.8 Detached Accessory Structures.** Detached accessory structures located less than 50
28 feet from a building containing habitable space shall have exterior walls constructed
29 with materials approved for a minimum of one-hour-rated fire-resistive construction,
30 heavy timber, log wall construction or constructed with approved noncombustible
31 materials on the exterior side. When the detached structure is located and constructed

1 so that the structure or any portion thereof projects over a descending slope surface
2 greater than 10 percent, the area below the structure shall have all underfloor areas
3 enclosed to within 6 inches of the ground, with exterior wall construction in
4 accordance with subsection 2.3 of this Section or underfloor protection in accordance
5 with subsection 2.4 of this Section.

6 **2.9 Spark Arresters.** Chimneys and vents serving fireplaces, barbecues, incinerators or
7 decorative heating appliances in which solid or liquid fuel is used, shall be provided
8 with a spark arrester. Spark arresters shall be constructed of woven or welded wire
9 screening of 12 standard gage wire with openings not exceeding $\frac{3}{4}$ inch.

10 **Section 3. Class 1 Ignition-Resistant Construction.**

11 **3.1 General.** In addition to the general construction requirements in Section 2 above,
12 buildings, and structures hereafter constructed, relocated, renovated or modified to
13 the extent delineated in Ch. 1, § 1.5 of this Code, in any urban wildland interface
14 areas designated as extreme or very high fire hazard shall meet the requirements of
15 this Section.

16 **3.2 Roof Covering.** Roofs shall have at least a Class A roof covering or Class A roof
17 assembly, as defined in the Building Code. For roof coverings where the profile
18 allows a space between the roof covering and roof decking, the space at the eave ends
19 shall be fire stopped or screened with non-combustible corrosion-resistant mesh with
20 openings not to exceed $\frac{1}{4}$ inch to preclude entry of flames or embers.

21 **3.3 Protection of Eaves.** Eaves and soffits shall be protected on the exposed underside
22 by materials approved for a minimum of one-hour-rated fire-resistive construction.
23 Fascias are required and must be protected on the backside by materials approved for
24 a minimum of one-hour-rated fire-resistive construction or 2-inch nominal dimension
25 lumber.

26 **3.4 Exterior Doors.** Exterior doors, other than vehicular access doors to garages, shall be
27 noncombustible or solid core not less than 1 $\frac{3}{4}$ inch thick. Windows within doors and
28 glazed doors shall be in accordance with subsection 2.6 of Section 2 above.

29 **3.5 Automatic Fire Sprinkler Systems.** Automatic fire sprinkler systems, when required
30 under the Fire Code, shall be installed in all new habitable buildings or structures in
31 accordance with nationally recognized standards.

1 Section 4. Class 2 Ignition-Resistant Construction.

2 4.1 General. In addition to the general construction requirements in Section 2 above,
3 buildings and structures hereafter constructed, relocated, renovated or modified, or to
4 the extent delineated in Ch. 1, § 1.5 of this Code, relocated in any urban wildland
5 interface areas designated as high fire hazard shall meet the requirements of this
6 Section.

7 4.2 Roof Covering. Roofs shall have a Class B roof covering, Class B roof assembly, as
8 defined in the Building Code, or an approved noncombustible roof covering. For roof
9 coverings where the profile allows a space between the roof covering and roof
10 decking, the space at the eave ends shall be fire stopped or screened with non-
11 combustible corrosion-resistant mesh with openings not to exceed ¼ inch to preclude
12 entry of flames or embers.

13 4.3 Protection of Eaves. Combustible eaves, fascias, and soffits shall be enclosed with
14 solid materials with a minimum of ¼ inch thickness. No exposed rafter tails shall be
15 permitted unless constructed of heavy timber or non-combustible materials.

16 4.4 Exterior Doors. Exterior doors, other than vehicular access doors to garages, shall
17 be noncombustible or solid core not less than 1 3/8 inch thick. Windows within doors
18 and glazed doors shall be in accordance with subsection 2.6 of Section 2 above.

19 Section 5. Class 3 Ignition-Resistant Construction.

20 5.1 General. Buildings and structures hereafter constructed, modified, or relocated into
21 urban wildland interface areas designated as moderate fire hazard shall be in
22 accordance with this Section.

23 5.2 Roof Covering. Roofs shall have a Class C roof covering, Class C roof assembly, or
24 an approved noncombustible roof covering. For roof coverings where the profile
25 allows a space between the roof covering and roof decking, the space at the eave ends
26 shall be fire stopped to preclude entry of flames or embers.

27 5.3 Unenclosed Underfloor Protection. Buildings or structures shall have all underfloor
28 areas enclosed to the ground with exterior walls. Complete enclosure may be omitted
29 where the underside of all exposed floors and all exposed structural columns, beams,
30 and supporting walls are protected as required for exterior one-hour-rated fire-
31 resistive construction or heavy timber construction.

1 Section 6. Replacement or Repair of Roof Coverings.

2 6.1 Roof Coverings. Roof covering on building or structures in existence prior to the
3 adoption of this Code that are replaced or have forty-nine percent (49%) or more
4 replaced in a 12-month period shall be replaced with roof covering required for new
5 construction based on the type of ignition-resistant construction specified in Sections
6 3, 4, or 5 of this Chapter, as applicable.

7 Section 7. Exceptions.

8 1.1. Alternative Materials or Methods. The Fire Marshal in consultation with
9 Construction Industries Division of the New Mexico Regulation and Licensing
10 Department may approve alternative construction materials or methods, provided that
11 the Fire Marshal finds that the proposed design, use, or operation of the building or
12 structure satisfactorily complies with the intent of this Code and that the alternative
13 construction materials or methods are, for the purpose intended, at least equivalent to
14 the level of quality, strength, effectiveness, fire resistance, durability and safety
15 required by this Code. Any approval by the Fire Marshal under this Section shall be
16 subject also to approval by the Construction Industries Division whenever the
17 alternative construction materials or methods involves matters regulated by the
18 Building Code.

19 CHAPTER 6. FIRE PROTECTION REQUIREMENTS.

20 Section 1. Vegetation Management for Fire Protection.

21 1.1 Objective. Provisions of this Section are intended to establish fire-safe areas and to
22 minimize the threat and occurrence of fire in the urban wildland interface areas, while
23 maintaining the ecological integrity of the landscape and recognizing the functional
24 uses of vegetation.

25 1.2 Preliminary Development Plans. In addition to information required to be
26 submitted by the Fire Code, the Extraterritorial Zoning Ordinance, and the
27 Extraterritorial Subdivision Regulations, preliminary development plans for new
28 subdivisions of twelve (12) or more lots shall also include vegetation management
29 measures required by this Chapter. Upon final approval of the development plans, the
30 vegetation management measures shall be recorded in the covenants of all new
31 subdivisions.

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1.3 Vegetation Management Measures. In areas immediately adjacent to buildings or structures subject to this Chapter, a vegetation management plan shall address the following:

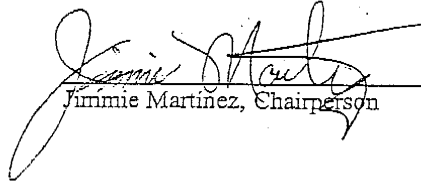
a. Management of fire-prone vegetation that may form a means of readily transmitting fire from the vegetative growth to any structure or from any structure to the vegetative growth.

b. Onsite recycling of vegetative debris such as dead trees, brush, and leaf/pine litter, with the primary intent of maintaining soil health.

c. Vegetation management under this Section shall be otherwise coordinated with the vegetation, landscaping, and terrain management requirements set forth in the applicable provisions of the Extraterritorial Zoning Ordinance and Extraterritorial Subdivision Regulations to ensure the protection of soil, vegetation, and air quality, and the preservation of wildlife habitat.

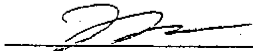
APPROVED, ADOPTED AND PASSED this 9th day of October, 2001.

SANTA FE EXTRATERRITORIAL ZONING AUTHORITY

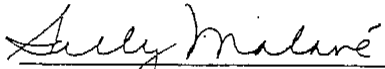


Jimmie Martinez, Chairperson

Approved as to form:



Peter Dwyer, City Attorney



Steven Kopelman, County Attorney

SFC CLERK RECORDED 04/06/2005

CERTIFICATE OF FILING

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I, Yolanda Y. Vigil, City Clerk, do hereby certify that the foregoing ordinance designated as Ordinance No. EZA 2001- 4, was filed in my office on the 23rd day of October, 2001.

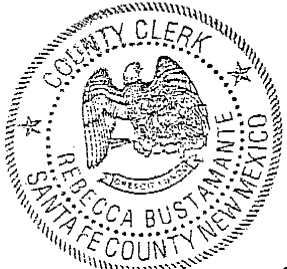


SANTA FE CITY CLERK

Yolanda Y. Vigil

CERTIFICATE OF FILING

I, Rebecca Bustamante, County Clerk, do hereby certify that the foregoing ordinance designated as Ordinance No. 2001- 4, was filed in my office on the 23rd day of October, 2001 in book number 198 at page 708-787.



SANTA FE COUNTY CLERK

Rebecca Bustamante
Rebecca Bustamante

COUNTY OF SANTA FE
STATE OF NEW MEXICO
I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED
FOR RECORD ON THE 23 DAY OF Oct A.D.
20 01 AT 10:09 O'CLOCK A M
AND WAS DULY RECORDED IN BOOK 1995
PAGE 708-787 OF THE RECORDS OF
SANTA FE COUNTY

WITNESS MY HAND AND SEAL OF OFFICE
REBECCA BUSTAMANTE
COUNTY CLERK, SANTA FE COUNTY, N.M.
Marcella J. Lopez
DEPUTY



SFC CLERK RECORDED 04/06/2005

2) Private open space shall be patio, balcony, or similar areas. Front yard, driveway and similar areas are not considered private open space.

5. Fees in lieu of park dedication may be permitted and shall comply with Section 3.7 of the Santa Fe Extraterritorial Subdivision Regulations. Such fees shall be earmarked for specific projects established by a parks and open space plan to assure that appropriate parks are developed.

10.2 OFF-SITE IMPROVEMENTS AND IMPACT FEES

A. The purpose of exacting construction of improvements to existing off-site facilities, or for collecting monies to construct off-site improvements to existing facilities, or to construct planned facilities or portions of planned facilities which can provide relief to existing facilities, is to assure that such facilities that may be negatively impacted by the addition of new development will function efficiently. Off-site facilities include, but are not limited to, roads, parks, or water or sewer systems.

B. Construction of new facilities or additions to existing facilities or payment of fees in lieu of construction shall be subject to the following:

1. Determination of the facility or service area which relates to the development;
2. Determination that the facility or service area is inadequate and cannot sustain additional development without improvements, or that the facility or service area will become inadequate because of the addition of new development;
3. Determination of a fair method for pro-rata shares of the cost of the improvements or fees;
4. Determination of a reasonable unit price in relation to the cost of the improvements or fees;
5. Determination of appropriate administration of the revenues and expenditures.

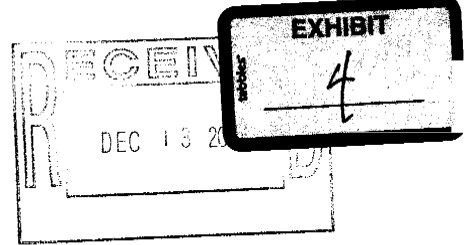
C. Until the Board of County Commissioners sets forth and adopts an Impact Fee program for the County of Santa Fe, exactions will be determined on a case by case basis.

10.3 GUARANTEE OF IMPROVEMENTS

A. GUARANTEES OF IMPROVEMENTS; DEDICATION AND MAINTENANCE AGREEMENTS

1. Completion of improvements of any phase of development, as applicable, from the plans and construction drawings approved by the Administrator or the EZA, or by the Construction Industries Division, shall be installed, inspected, and credit instruments released within eighteen (18) months after approval of any filed final plan or plat documents. Methods and requirements for guaranteeing completion of improvements are set forth in Section 3.8 of the Santa Fe Extraterritorial Subdivision Regulations, incorporated by reference herein.
2. Dedication of property to the public must be accepted by the Board of County Commissioners as a specific action item independent from any development plan or plat approval.
3. Acceptance of maintenance responsibility for property or utilities dedicated to and accepted by and for the public shall require a separate and specific action of the Board of County Commissioners or in the case of the City of Santa Fe sanitary sewer, the Santa Fe City Council.

December 10, 2004
County Land Use Administrator
P.O. Box 276
Santa FE, NM 87504-0276



Dear Administrator

Please be advised that I, Mary Costello, 24 A and 24 B Paseo Encantada NE, in the Vista Redondo section of Tesuque, NM, am the owner of two properties and lots which abut the proposed Tesuque Villas. I (and my neighbors) vehemently oppose the proposed development in its current form with 10 houses. It is totally out of character in density and layout with all the surrounding properties. Having built two houses and addition on my lots and lived under the very strict development rules in this area of Santa Fe county, I am amazed, shocked and stunned at the apparent ease with which the preliminary approval was given to the incomplete, inaccurate and misleading proposal for what may be an illegal development.

The appeal and objection filed by our Vista Redonda home owners Association via the Sommer law firm gives some indication of the problems with this outrageous development and its incomplete proposal. It is difficult for me to imagine that any staff member could have driven out here, walked the properties, and looked at the proposed development with its effect on all the nearby properties in Vista Redonda. Its visual damage to the high ridge line for proposed lots 8, 9 and 10 abutting my properties should be obvious. Proposed lots 9 and 10 are half the size of any lots in the abutting properties and crowd the ridge line overlooking my properties and my neighbors---totally out of character with the area. How could approval been given or recommended???

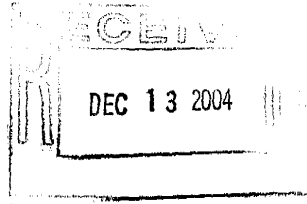
I intend to speak at the hearing on the 14th but I am also contacting the Santa Fe New Mexican, the Albuquerque Journal, and the New Mexico Attorney General's office to investigate how this preliminary recommendation for approval was "arranged" to use a kind word for this transaction.

Sincerely yours,

Mary Costello

SFC CLERK RECORDED 04/06/2005

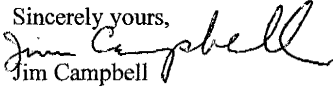
December 9, 2004
Attention: County Land Administrator
P.O. Box 276
Santa Fe, NM 87504-0276



Dear County Land Use Administrator:

The proposed development Tesuque Villas is totally not in keeping with the character, density, lot design and land utilization of the community which abuts it: Vista Redonda. It appears to be an attempt by a developer-contractor to aggressively push the county to radically change the area on 592 between mile 3 and mile 4 and impact traffic, water and fire protection negatively. I live on property (5 Paseo Encantada NE; P.O. Box 828 Tesuque, 87574) which abuts three of the lots and have watched the building of the first house under construction, I can't imagine that approval can be given to crowd 6 more houses above my residence on the ridge line. Contrary to filings by the developer which show the house in the center of lot 8, it is actually suspended on the ridge overlooking my residence and an incursion on my privacy. The flat plat drawing does not topographically represent the location of the first house now under construction. Someone from the county Land Use Department can easily verify this by a site inspection. At the meeting on the 14th I will present other similar problems with the proposal prepared by Southwest Designs and McCrea.

Please reconsider the preliminary, unfortunate approval given to this project.

Sincerely yours,

Jim Campbell

SFC CLERK RECORDED 04/06/2005

DATE

TO

FROM

SUBJECT

RE

ATTENTION

REFERENCE

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DIRECTOR

COMMUNICATIONS

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SHC CLERK RECORDED 4/06/2005



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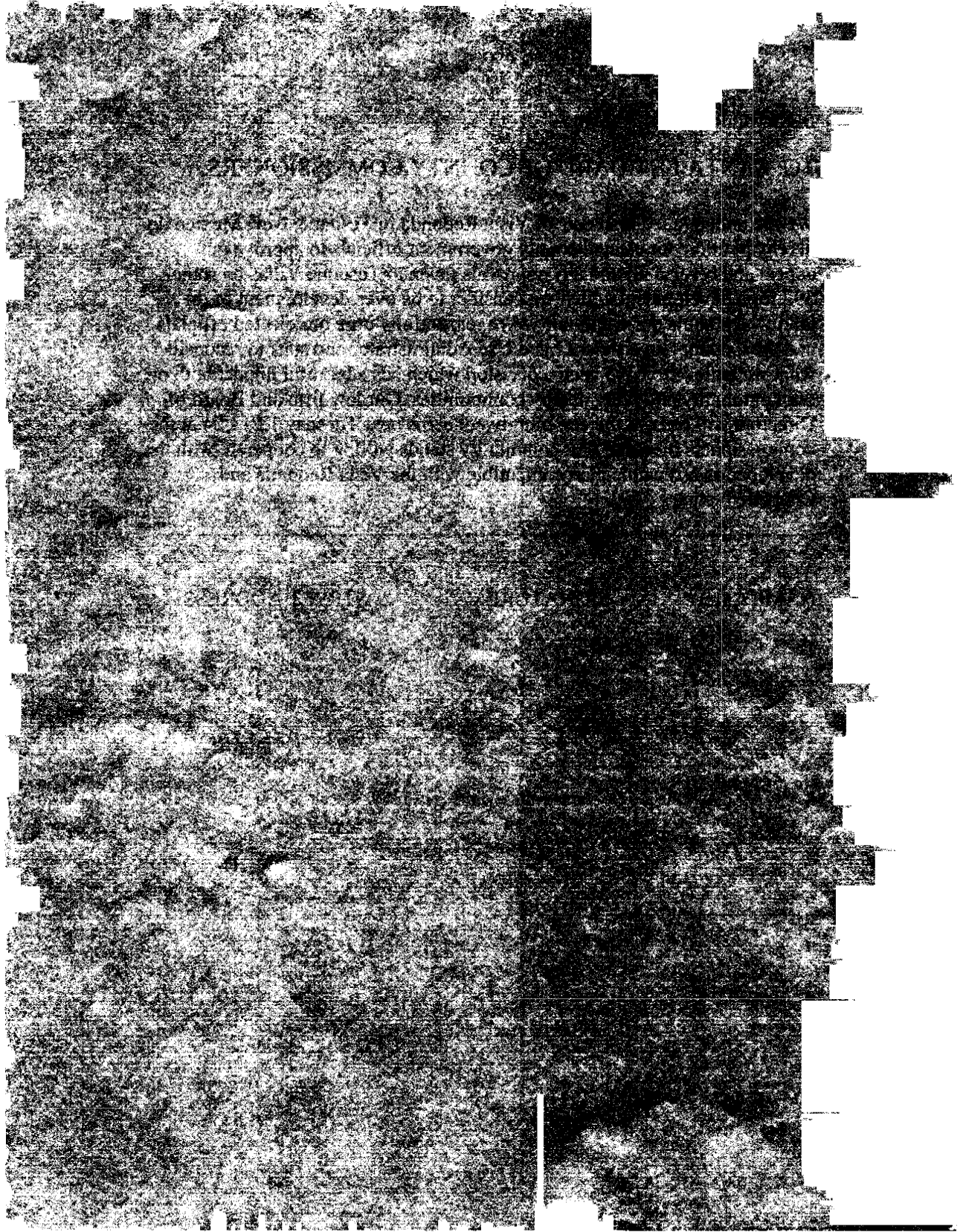
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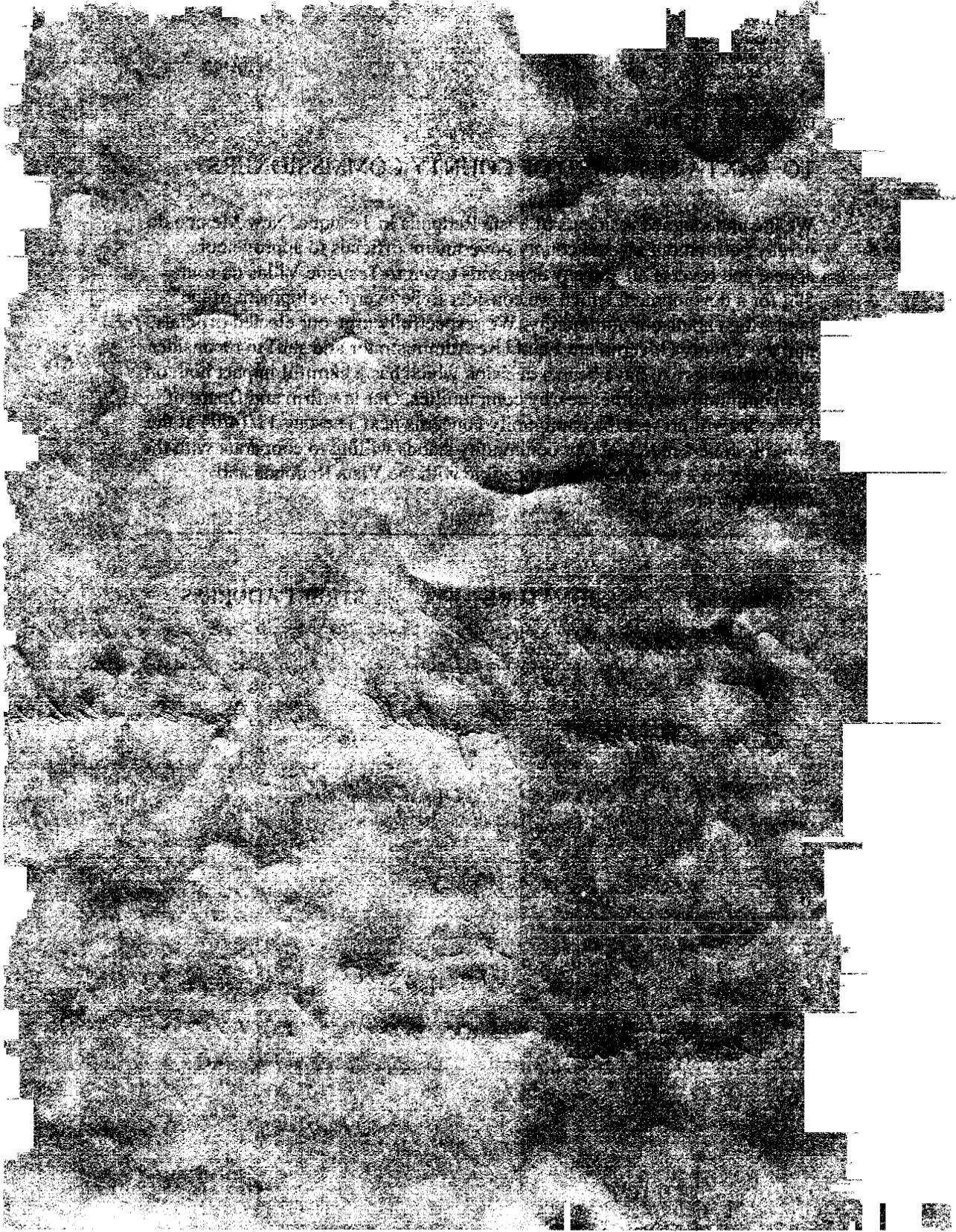
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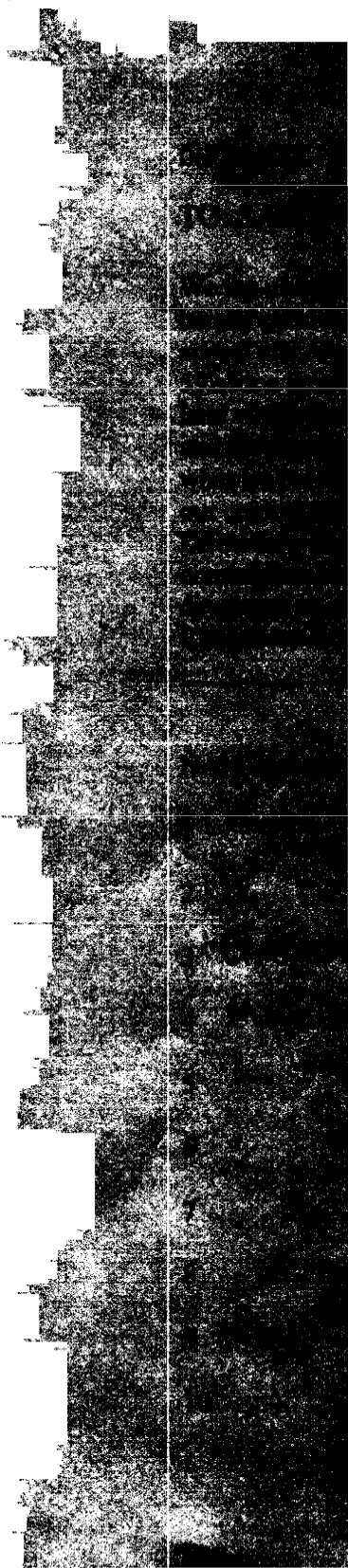
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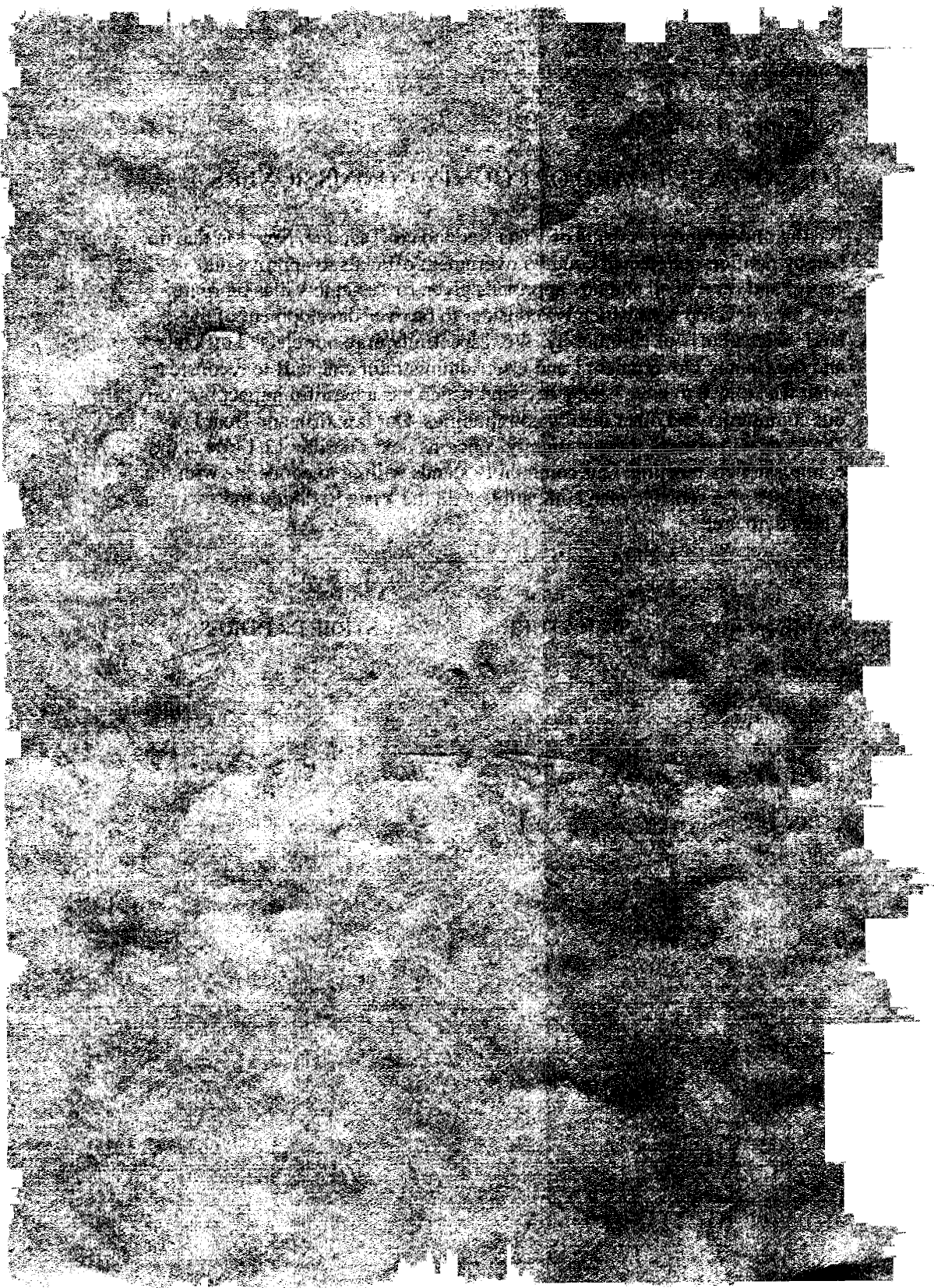


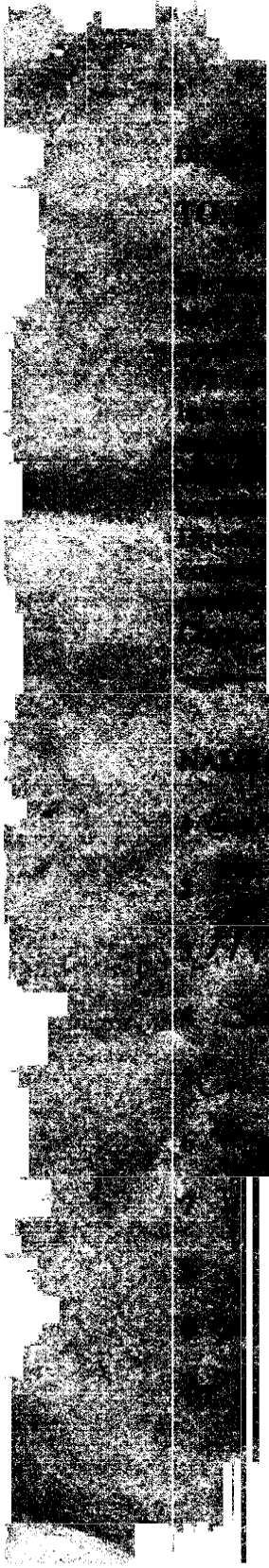
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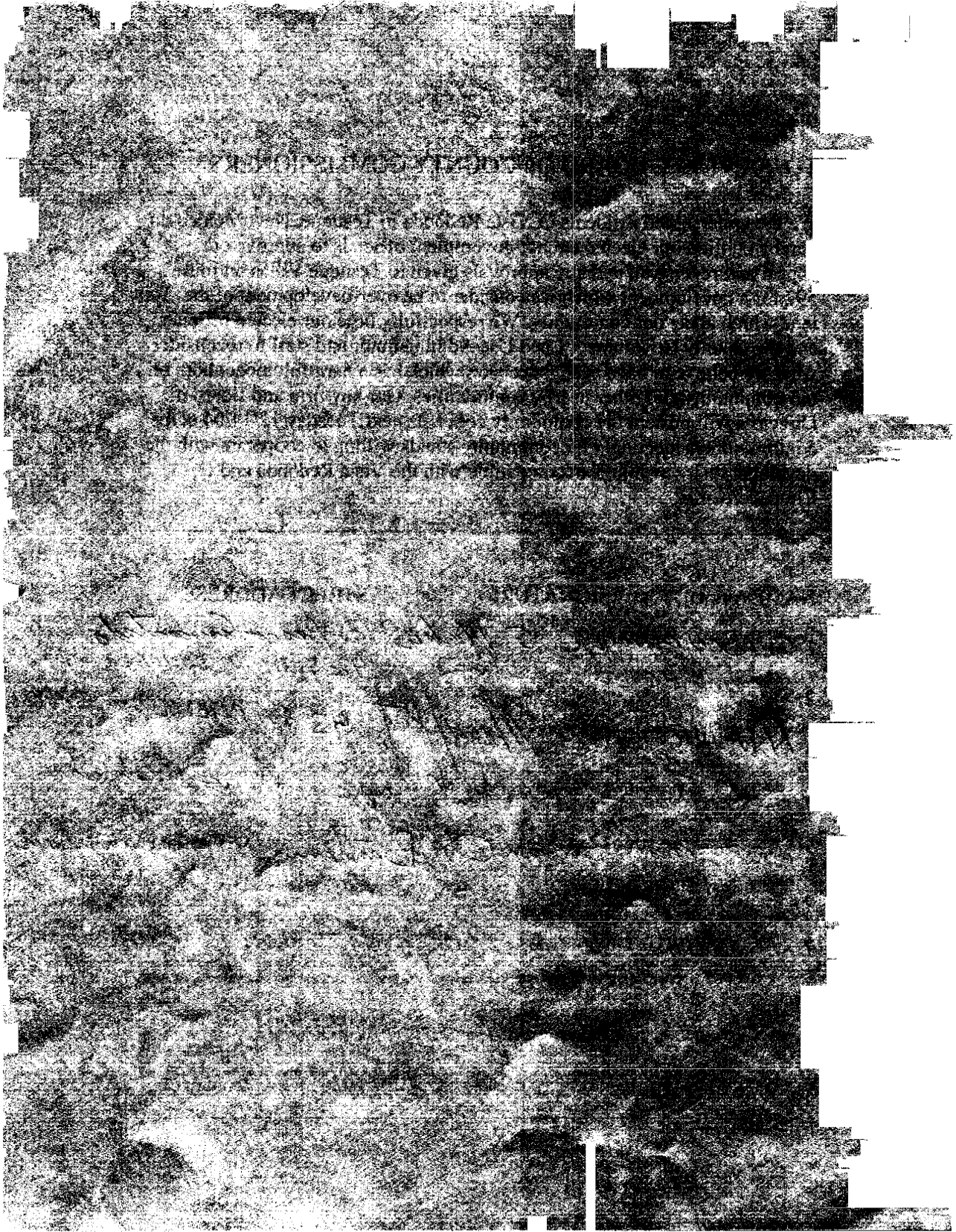


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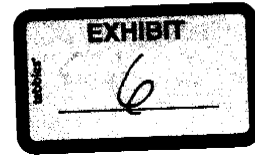


SFC CLERK RECORD ID 04/06/2005





UTILITIES DEPARTMENT



14 October 2004

TO: Vicente Archuleta, Land Use Department
FROM: Stephen Wust, County Hydrologist *SOW*
RE: EZC Case #S 04-4580 Tesuque Villas Subdivision

I have reviewed the geohydrology report submitted for the Tesuque Villas Subdivision, which was labeled for "McCrea Property". A pump test was performed, drawdown was modeled, and a transmissivity applicable to the site was calculated. The report fulfills the water supply Code requirements for this development, and has demonstrated sufficient water availability. There remains several deficiencies, some of which were discussed in my earlier review of this application. These deficiencies can be rectified by the applicant agreeing to permit conditions.

- ◆ The water quality section acknowledges that at least one MCL (water quality standard) has been exceeded. Article VII Section 6.5.2a states that MCLs shall not be exceeded, but the report simply says that "...appropriate notice will be placed..." This is insufficient to fulfill the water quality requirements. The applicant must address water quality.
- ◆ It appears that the applicant is willing to accept a limitation of 0.25 afy per lot. I recommend this as a condition of the permit, and further to meter individual homes to ensure compliance.
- ◆ It appears that, at buildout, this system could well be a Public Water Supply System under the Safe Drinking Water Act. I suggest that the owner of the system at that time contact the New Mexico Environment Department to determine their obligations under those regulations.
- ◆ Water conservation covenants are required. A statement that "The owner intends to put covenants in place..." is not an agreement to abide by the requirements. In addition, I recommend that all construction follow the water harvesting ordinance.

If you have any questions, please call me at 992-9876 or email at swust.

SFC CLERK RECORDED 04/06/2005

VISTA REDONDA WATER & PROPERTY OWNERS'
ASSOCIATION

P.O. Box 375
Tesuque, New Mexico 87574

December 14, 2004

REMARKS BEFORE BCC RE: McCrea Matter

bccpresentation-REV1-12-13-04.doc



1.0—Mr. Chairman and Commissioners: SUMMARY

- .1 My name is John Rubel.
 - a. I live at 108 Paseo Encantado S.W. in the Vista Redonda Subdivision
 - b. I have been a member of our neighborhood Board of Directors for about twenty years; I am speaking on behalf of the Board and many, many friends and neighbors, some of whom are in the audience tonight.
 - c. Vista Redonda is deeply concerned about the proposed *Tesuque Villas Subdivision* presented by Mr. James McCreight, for several reasons:
 - (1) The proposed subdivision abuts Vista Redonda along a common north-south dividing line, and will appear to be an integral part of Vista Redonda; BUT MOST IMPORTANT:
 - (2) **IF TESUQUE VILLAS IS APPROVED** for development to include **more than six** building sites on thirty acres with a large water storage tank thrown in, *IT WILL BREAK A PRECEDENT FOR OUR RURAL AREA THAT HAS STOOD FOR MORE THAN TWENTY-FIVE YEARS, A PRECEDENT REQUIRING AT LEAST FIVE ACRES PER RESIDENCE, AND IN SOME INSTANCES, DOUBLE THAT.*[#]
 - (3) Once that long-standing precedent is broken, as it will be if the commission approves more than six (6) building sites for the proposed subdivision, *THE RURAL CHARACTER OF THE ENTIRE REGION, FROM RIO EN MEDIO PAST CHUPADERO DOWN TO TESUQUE ITSELF, AMOUNTING TO SEVERAL THOUSAND ACRES OF DEVELOPABLE LANDS,* WILL BE PERMANENTLY DESTROYED..
 - (4) **MOREOVER,** THE COMPLETION OF THE NEW 285 FREEWAY, NEARLY FINISHED, WILL MAKE THIS

[#] --Vista Redonda was approved in 1969, more than 35 years ago. Los Caminitos, about 2 miles away, was approved about 25 years ago. NO SUBDIVISIONS HAVE BEEN APPROVED SINCE THEN IN THE EASTERN PORTION OF OUR REGION, EXTENDING TO THE TESUQUE VALLEY.

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VISTA REDONDA WATER & PROPERTY OWNERS'
ASSOCIATION

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REGION ESPECIALLY TEMPTING FOR HIGHER-DENSITY DEVELOPMENTS.

- (5) Today's decision regarding *Tesuque Villas* CAN, and we hope WILL, set the stage for holding the line AGAINST OVER-DEVELOPMENT (ALLOWING NO MORE THAN SIX (6) BUILDING SITES IN TESUQUE VILLAS) OR
- (6) TODAY'S DECISION **COULD** ESTABLISH A PRECEDENT THAT MANY OTHERS WILL RUSH IN TO IMITATE **IF THE COMMISSION WERE TO ALLOW MR. McCreight TO SUBDIVIDE HIS THIRTY (30) ACRES INTO MORE THAN SIX (6) BUILDING SITES. THAT PRECEDENT WOULD EVENTUALLY SEE HUNDREDS OF ACRES TRANSFORMED IN A SIMILAR NON-RURAL WAY FROM RIO EN MEDIO PAST CHUPADERO ALL THE WAY DOWN TO TESUQUE ITSELF.**

2. EXTRATERRITORIAL SUBDIVISION REGULATIONS THAT BEAR ON THESE CONSIDERATIONS:

The Regulations provide that

- a. there shall be *harmonious development* of subdivisions (3.1.4)
 - b. and that development shall be *orderly* (3.1.4-A);
 - c. That care shall be taken to preserve community assets that *benefit its residents* (3.1.4-B);
 - d. and that subdivisions shall be approved *ensuring the efficient use of regional water resources* (3.1.4-E)
- The proposed Tesuque Villas Subdivision, as presently presented and configured, does **NOT** meet any of these requirements.
 - The Regulations confirm that the Board of County Commissioners is charged with ensuring that subdivisions in our decidedly remote, rural area do **NOT** unduly impair the **rural, low-density** quality that has characterized the only two subdivisions approved in our region in the past generation. In addition, keeping density relatively low obviously preserves water resources (d above).

In short, the Board of County Commissioners is not only *authorized* to impose appropriate limits on subdivision density, it is *required* to reflect such factors in its decisions to approve or disapprove subdivision proposals presented to it. We

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**VISTA REDONDA WATER & PROPERTY OWNERS'
ASSOCIATION**

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respectfully urge these considerations upon the BCC in presenting our several objections to the proposed McCreight subdivision as currently before the Board.

3. A BRIEF HISTORY OF THIS CASE

- .1 We have known Mr. McCreight for many years.
- .2 He has owned property in Vista Redonda. Several years ago he approached us, indicating his intention to acquire the 30 acres he now owns, and suggesting his development might be allowed to join our Mutual Domestic Water Consumers' Association (7 wells, most of them 900 feet deep; 93,000 gallons of stored water; fully automatic well operation; 4.5 miles of distribution piping; ample financial resources; fully owned and operated for 35 years by the Vista Redonda Community)
3. We indicated our willingness to cooperate. BUT: we would require him to plat no more than six (6) building sites AND transfer as many water rights to our system as we would distribute to his users. There appeared to be no disagreements at this stage.
4. Later, lawyers for both sides held a number of inconclusive conversations, until, during the past year or so,
5. A few months ago we received a notice of Mr. McCreight subdivision application calling for ten (10) building sites. Since then we have had several conferences with Mr. McCreight and his associates, trying to come to an agreement both parties can accept.
6. The upshot has been our proposal (Commissioners have a copy) that
 - a. McCreight limit the number of sites to no more than 6;
 - b. He undertakes to transfer water rights to our system at least equal to the diversion expected on his subdivision;
 - c. We will incorporate his subdivision into Vista Redonda as Unit "H."
 - d. We will extend our water system to serve his development.
 - e. Vista Redonda Deed restrictions governing building size, height, design etc. will be drawn up to apply to Unit "H."
 - f. It will NOT be necessary for McCreight to erect a 30,000 gallon water storage tank;
 - g. Fire protection and a great amount of redundant capacity will be provided to the McCreight development without the necessity on his part of providing a mini-system fed by two or more wells and requiring the storage tank just mentioned.
 - h. The disposition of houses on the property, and especially the density of houses along the lined dividing Unit H from the rest of Vista

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Redonda will be mutually agreed upon, and entirely consistent with Vista Redonda standards.

7. Mr. McCreight's attorneys have NOT accepted our proposal, and their counterproposal is NOT acceptable—and it CANNOT be acceptable under Vista Redonda recorded subdivision requirements, that stipulate maximum density.

4. CHIEF REASONS FOR FAVORING OUR PROPOSAL TO MR. McCREIGHT

- .1 It limits the average density of the new unit to approximately five (5) acres per property, consistent with more than 25 years of subdivision history in the Rio en Medio-Chupadero-Tesuque region;
- .2 It provides great redundancy is the water supplied to the new Unit "II" (seven wells in existence, plus one or two more to be provided by McCreight);
- .3 It does away with the need for a 30,000 gallon storage tank in the middle of the 30-acre development, an expensive and unsightly structure;
- .4 It provides fire-hydrant protection backed up by 93,000 gallons of stored water;
- .5 It will NOT impair property values in Vista Redonda or elsewhere in the vicinity, as a higher-density development would;
- .6 The final profit earned by Mr. McCreight may be affected comparatively little, if at all, since the value added by making the development a part of Vista Redonda may more than compensate for the loss of a few, much smaller lots, to sell.

5. CHIEF REASONS FOR OPPOSING THE McCREIGHT PROPOSAL IN ITS PRESENT FORM:

To recapitulate our chief objections in summary form:

1. Mr. Chairman and Commissioners: the proposed subdivision would impinge unfavorably upon Vista Redonda as it is presently configured. Here are the principal reasons:
 - a. With 10 building sites, it would have nearly double the density of Vista Redonda, directly overlooking and adjoining Vista Redonda;
 - b. It would have to build a water tank of about 30,000 gallon capacity in the midst of this housing development, a

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- conspicuous, unaesthetic structure visible from most of Vista Redonda;
- c. At the proposed density, several houses would be constructed close to the common line dividing the development from Vista Redonda. These would also be visible from much of Vista Redonda, and would impinge undesirably on adjoining Vista Redonda houses;
 - d. This subdivision would represent a striking departure from the only two subdivisions in the Tress Villas area. At 10 sites and about 30 acres, or even 8 sites, the average density would be from 3 to 3.75 acres/household. In contrast, Vista Redonda and Los Caminitos are both rural developments of much lower density. Vista Redonda has about 6 acres per household (double the amount proposed for the McCreight development), and Los Caminitos considerably more.
 - e. As a practical matter, the McCreight subdivision would, from its physical proximity and layout, appear to be a continuous part of Vista Redonda. In its proposed configuration, this would be a most UNWELCOME outcome.
- .2 **Precedent: If the McCreight application were to be approved allowing more than six (6) building sites, a WHOLLY NEW PRECEDENT WOULD BE ESTABLISHED FOR OUR REGION.**
1. With the completion of the new US285 freeway, one can expect a lot of demand for subdivision developments between Rio en Medio and Tesuque;
 2. Hundreds of acres could well be chopped into small parcels over time. This would utterly destroy the rural climate and feeling that have remained largely intact throughout the Rio en Medio, Chupadero, Vista Redonda, Los Caminitos areas.
 3. Needless to say, we could well be talking about a BIG difference in the demand for water, among other factors—a factor of two or more, between, say, 5-14 acres/household and 2.5-3 acres/household. ***TONIGHT'S DECISION may well reverberate down the corridors of time for years to come!***

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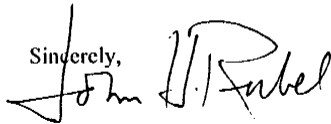
VISTA REDONDA WATER & PROPERTY OWNERS'
ASSOCIATION

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6. OUR PLEA TO YOU, COMMISSIONERS:

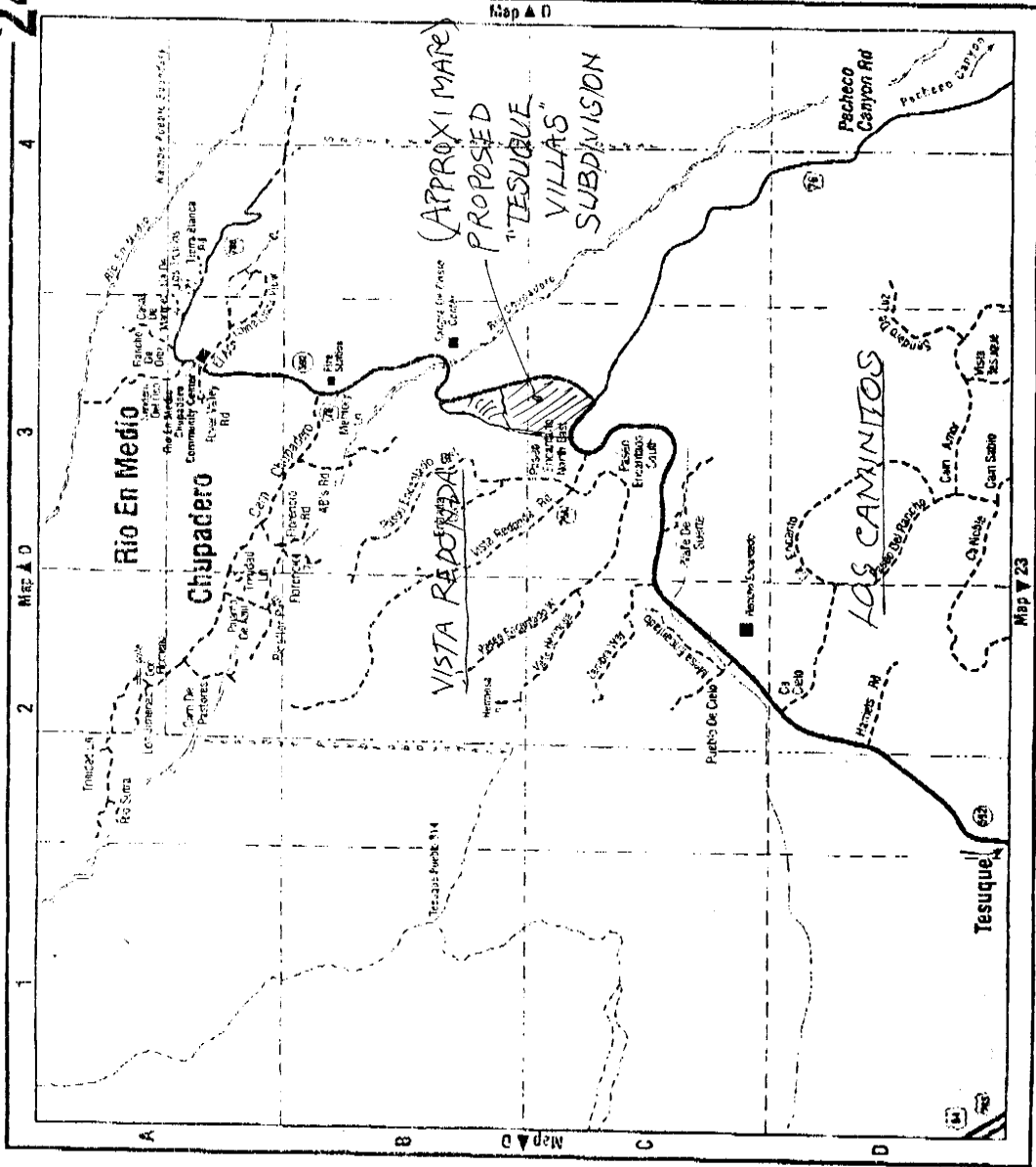
- .1 As I speak, we are one small step from a very slippery slope:
- .2 Developers will keep the pressure on for higher densities, and approving tonight's application by McCreight at ANY DENSITY HIGHER THAN SIX (6) BUILDING SITES ON HIS 30 ACRES will put us all on that slippery slope away from preserving the rural character of the Rio-en-Medio, Chupadero-Tesuque region.
3. Now, this evening, is the time to UPHOLD THE STANDARDS THAT HAVE GOVERNED ALL PREVIOUS ZONING DECISIONS FOR MORE THAN 25 YEARS IN OUR VICINITY;
4. Now, this evening, is the time to DO THE RIGHT THING.
 - Yes, APPROVE the subdivision (when all necessary approvals have been given and required conditions met by the applicant) but with a maximum of six (6) building sites,
 - Heeding the voice of an overwhelming majority of your constituents in the region who desire this outcome;
 - While remaining faithful to a generation of precedents that need to be respected and continued into the indefinite future, (pursuant to the applicable Santa Fe Extraterritorial Subdivision Regulations!)

Mr. Chairman and Commissioners: this concludes my remarks.

Sincerely,


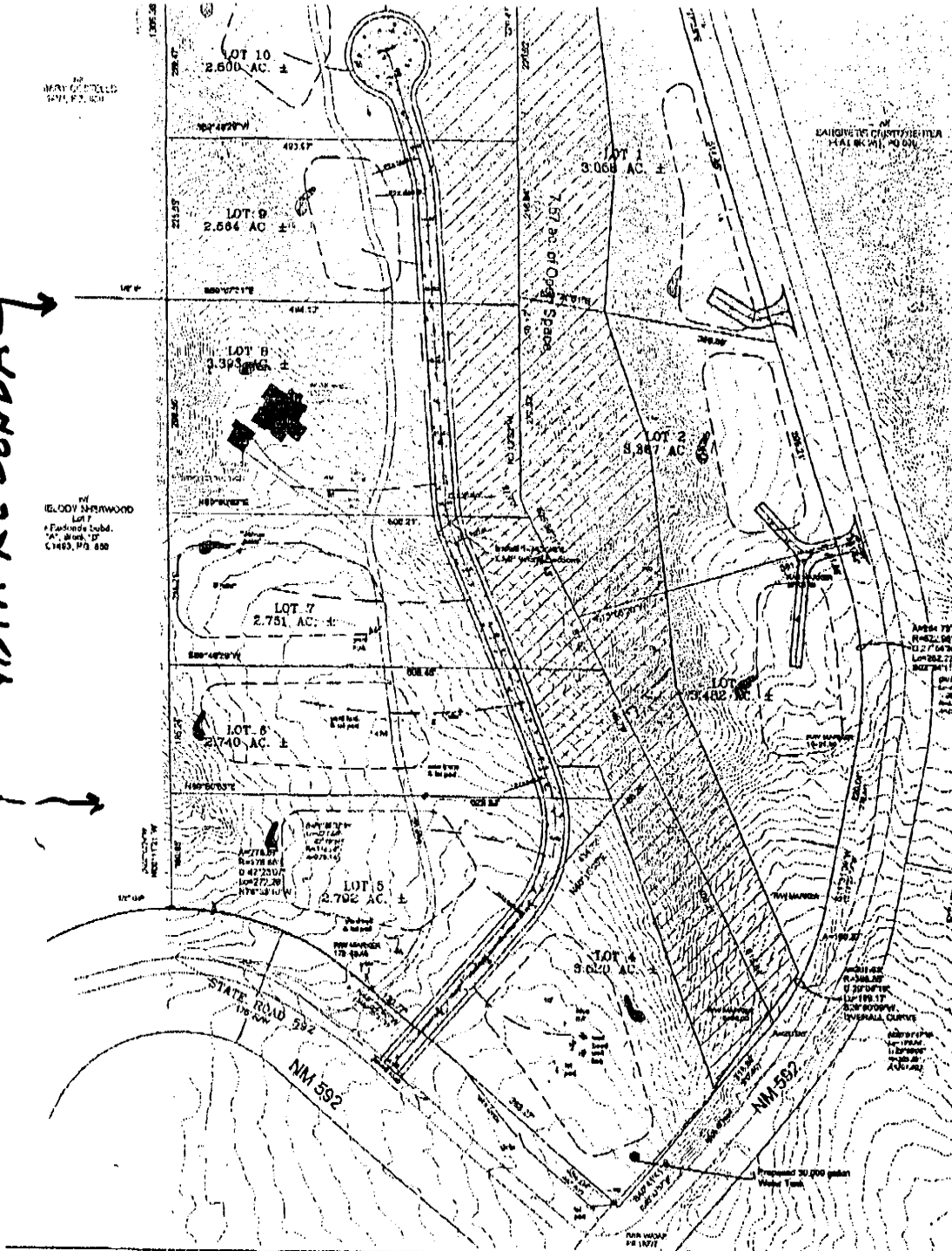
John H. Rubel, Board Member, Vista Redonda Water & Property Owners' Association
bccpresentation-REV1-12-13-04.doc

SFC CLERK RECORDED 04/06/2005



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VISTA REDONDA



McCREIGHT "TESUQUE VILLAS" PROPOSED SUBDIVISION

SFC CLERK RECORDED 04/06/2005

MAP OF ...

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STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER

SANTA FE

John R. D'Antonio, Jr. P.E.
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6175
FAX: (505) 827-6138



December 7, 2004

Donimic Gonzales, Development Review Specialist II
Santa Fe County
P.O. Box 276
Santa Fe, N.M. 87504-5102

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Reference: Suerte del Sur, Master Plan Re-Review

Dear Mr. Gonzales:

The Office of the State Engineer (OSE) is in receipt of your letter, received November 8, 2004. In it, you request OSE to re-review the water supply plan of the Suerte del Sur Subdivision proposal for compliance to your regulations concerning subdivisions. The State Subdivision Act mandates that the County request an opinion from the OSE for preliminary plat approval. OSE understands that this proposal is only at the master plan stage. The purpose of this letter is to provide this opinion.

Summary/Conclusion

The Office of the State Engineer (OSE) has re-reviewed the Suerte del Sur proposal, pursuant to the Santa Fe County Land Development Regulations (Code). The OSE withheld a positive opinion for this development on October 17, 2003. It is the opinion of this office that the developer has still not proven that he can meet his water supply requirements, pursuant to the Code. In accordance, the **negative opinion** issued by this office will not be changed at this time. In order to comply with the Code, the developer will have to create water restrictive covenants, and transfer sufficient water rights into the on-site well.

Project

The Suerte Del Sur proposal is a request to develop a 660.32-acre tract into 264 residential lots. The development is located approximately 2 miles northwest of Santa Fe, at the south end of Los Suenos Trail, in Section 19 of T17N, R9E, and Section 24 of T17N, R8E, N.M.P.M. Previously, the developer proposed using the Santa Fe County Water Utility to supply this subdivision with domestic water. The developer now proposes that water will be supplied to this development via a new community water system.

Water Demand Analysis / Water Conservation

Article VII, Section 6.6.2 of the Code requires that the developer provide a water requirement analysis. Table 5 of the Appendix of the geohydrologic report submitted includes this calculation. In it, the consultant estimates that the proposed subdivision will require 132 acre-feet per year. In the report, the consultant has also specified water restrictions to ensure that his subdivision would not exceed the amount calculated. These water restrictions, in addition to the requirement in the Code

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that lawns of non-native grasses shall not exceed 800 square feet and shall only be watered with rainwater collected by means confined to the property or with recycled household gray water, should be specified in the disclosure statement and the covenants.

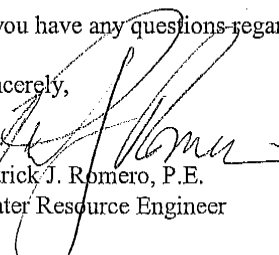
Water Supply Assessment

Article VII, Section 6.2 of the Code requires that the developer demonstrate that water is available for his subdivision for a 100-year period. In order to comply with this requirement, the developer submitted a geohydrologic report. The report included well logs, drawdown and recovery well test data, results of 100-year schedule of effects calculation, geologic cross-sections, and water level contours. In addition to this data, OSE recently received a well log for RG-82308, the exploratory well tested. The report, dated August, 2004 was authored by Tetra Tech EM, Inc.. In order to create the geohydrologic report, the consultant pump tested the on-site well. The test well proved to be a good producer, drawing down 234.6 feet after pumping 500 gallons per minute for 96 hours. The consultant concluded that water would be available for the 100-year period prescribed by the County. OSE concurs with this opinion.

Article VII, Section 6.3.2g of the Code requires that developers proposing utilizing a community water system obtain a valid water right permit. The developer proposes that the County approve their master plan, contingent on the developer transferring these water rights. The developer has applied to OSE to transfer water rights to the well to be used. The OSE Water Rights Division has rejected this application to transfer water rights to RG-82308. The application was rejected due to the fact that pumping from RG 82308 will deplete the Rio Grande, the Rio Pojoaque, and the Rio Tesuque; the water rights the developer applied to transfer in were only Rio Grande rights. The developer will need to provide Rio Tesuque and Rio Pojoaque rights also, to offset depletions caused by the proposed pumping (please see attached letter).

If you have any questions regarding this opinion, please feel free to call me at (505) 827-6790.

Sincerely,



Patrick J. Romero, P.E.
Water Resource Engineer

Cc: John Longworth, Water Use and Conservation Bureau Chief
OSE, Water Rights Division, Santa Fe Office

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STATE OF NEW MEXICO

OFFICE OF THE STATE ENGINEER

Santa Fe

John R. D'Antonio Jr., P.E.
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6120
FAX: (505) 827-6682

October 26, 2004

Suerte del Sur, L.L.C.
The Peters Corporation
c/o George F. Bingham, General Counsel
P.O. Box 908
Santa Fe, NM 87507

Re: Application(s) No. 06468 and RG-2 into RG-82308-Expl.-2

Dear Mr. Bingham:

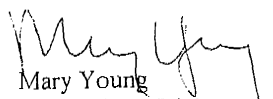
The above referenced applications are returned at this time without acceptance for filing by this office. The applications seek to change the point of diversion and place and purpose of use for 132 acre-feet of water per annum of consumptive use, diverted from the Rio Grande and a supplemental well, located within the Middle Rio Grande Conservancy District, to a well located approximately 3.0 miles west of the City of Santa Fe. Initial hydrologic modeling indicates that depletion at La Cienega Springs resulting from the requested diversion will reach approximately 26 acre-feet within 100 years. Depletion to the Rio Pojoaque and the Rio Tesuque is predicted to be 1.15 acre-feet and 3.52 acre-feet respectively. These are depletions not offset through retirement of Middle Rio Grande water rights. Consequently, prior to acceptance of your applications, this office requires simultaneous submission of application(s) to transfer sufficient water rights to fully offset the described depletions. Failure to include the La Cienega and northern tributary offset applications would constitute a new appropriation in the Santa Fe River basin. Such an application would be denied without benefit of publication.

In addition, be aware that acceptance for filing does not obligate favorable action by this office on the applications. Through the administrative review process, additional issues may come to light which preclude or limit approval, and transfer of surface water rights does not address local groundwater depletions experienced by nearby wells of other ownership.

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Please contact me if you have any questions on this matter.

Sincerely,


Mary Young
Water Rights Division

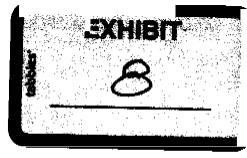
Enclosures
c: P. Saavedra

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Article V Subdivision Regulations
Section 5.2.1b

A master plan is comprehensive in establishing the scope of a project, yet is less detailed than a development plan. It provides a means for the County Development Review Committee and the Board to review projects and the subdivider to obtain concept approval for proposed development without the necessity of expending large sums of money for the submittal required for a preliminary and final plat approval.

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**Santa Fe County
Ordinance No. 1996-13**

An Ordinance Amending Article VII of the Santa Fe County Land
Development Code to Require Proof of a Valid Water Right Permit for
Type-I and Type-II Subdivisions

6.2.2c For all Type-I and Type-II subdivisions, the subdivider shall provide proof that the person providing the water has a valid water right permit issued by the State Engineer pursuant to Sections 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978, sufficient in quantity to meet the maximum annual water requirements of the proposed subdivision. The Board shall not approve the final plat unless the State Engineer has issued a water permit for subdivision use.

WATER RIGHTS vs. WATER TRANSFERS INTENT

COMMISSIONER SULLIVAN: ...I think the way we work it now...is that there has to be a commitment but the actual transfer doesn't have to occur until recordation.

MR. ABEYTA: ...that's correct.

COMMISSIONER SULLIVAN: So I don't think we'd want to require them to have a transfer completed but I think we'd want them to have what we now require at the preliminary stage insofar as water's concerned, available to us at the master plan stage...I think that answering that question at the master plan stage tells the public and tells the private property owners and developers that that's an issue that's first and foremost in the plan and we can spend many, many hours of staff time and many hours of Commission time and the public's time debating...So that's why I felt it would be an important part of the master plan.

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CONCERN ABOUT INTENT ON UP-FRONT COST

COMMISSIONER TRUJILLO: And the jeopardy is that if you spend the money in the beginning you might lose the money because there's no guarantee that the project is going to be approved on other...So again, I fail to see, with all due respect, the added value of this proposed ordinance.

...

COMMISSIONER TRUJILLO: What I am concerned with is we're going to mandate a condition that's going to have a negative impact on the applicant...but to mandate hydrological studies, reconnaissance studies, out of pocket expenditures that won't guarantee anything in the end, I don't think is right.

Minutes from Santa Fe County Clerk's Office – BCC Regular Meeting, October 8, 2002. Pp: 31-35
Office of the County Clerk, Book No. 231; Page No. 0129-0133

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CONCERN ABOUT INTENT, cont.

COMMISSIONER SULLIVAN: ...in the ordinance...later on...the concept is that water needs to be available, and water rights, although they don't necessarily need to be transferred or have a defined point of diversion. Is that your understanding to the latter ordinance?

ROMAN ABEYTA: ...it was my understanding that it would have to be a pretty defined proposal for water at the master plan stage.

COMMISSIONER SULLIVAN: Right. But not, it would simply move forward what we now require at the preliminary development plan stage to the master plan stage...And at the preliminary development plan stage we don't require that a developer actually move his or her water rights or get final agreements, we require that they show that they have the capability to do that.

...

MASTER PLAN REQUIREMENTS for TYPES 1-4 Subdivisions

ROSANNA C. VÁZQUEZ: ...I would like some clarification...on the Type I, Type II, and Type IV subdivisions, I believe that at master plan level they would have to have water rights in hand.

MR. ABEYTA: ...Those larger subdivisions do require water rights, Type I, Type II, and Type IV. Therefore, you would have to demonstrate that you have water rights available for the first phase of those subdivisions. Not the entire project, but the first phase, because that is required for that anyway at the preliminary level.

CHAIRMAN SULLIVAN: At the preliminary level?

MR. ABEYTA: Right.

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MASTER PLAN REQUIREMENTS for TYPES 1-4 Subdivisions, cont.

CHAIRMAN SULLIVAN: In the existing ordinance?

MR. ABEYTA: Right, so that would bring it forward to the master plan level for the first –

CHAIRMAN SULLIVAN: For the first phase.

MR. ABEYTA: Right.

MS. VÁZQUEZ: So it would require that water rights be purchased sufficient for at least the first phase at the master plan level?

MR. ABEYTA: Yes.

MASTER PLAN REQUIREMENTS for TYPES 1-4 Subdivisions, cont.

MR. ABEYTA: ...A typical project takes three steps prior to building permits being issued. The first is master plan, which is securing the zoning for the project. The second is preliminary development plan and the third is a final development plan. Under current, Code, you have to prove water availability at step two, the preliminary development plan. So you won't even get close to a building permit without proving water. You still have to go through two more steps in order to get a building permit. So you have to prove water now, it's just you don't do it at master plan; you do it preliminary development plan....The ordinance proposes that they show you that they have water for at least the first phase of the entire master plan. They have enough water for phase one.

AN ORDINANCE AMENDING
ORDINANCE 1996-10, THE SANTA FE COUNTY LAND
DEVELOPMENT CODE, ARTICLE V, SECTION 5.2
MASTER PLAN PROCEDURES

SECTION 5.2.2.g: Master Plan report which includes the following:

- 9) In addition to the requirements listed above, for all non-residential developments proposing to use more than 1.0 acre ft. of water per year, and all Type I, II, and IV subdivisions, the applicant must submit a water supply plan and water permits as required by Article VII, Section 6 of the Code for the first sustainable phase of development.

HEARING ON REQUEST FOR CLARIFICATION OF MASTER PLAN
ORDINANCE

CHAIRMAN CAMPOS: So my suggestion would be to delete the words "and water permits" and also to add additional language wherever Dr. Wust feels appropriate as far as modeling the draw-down so that we get more information as to impairment to adjoining properties. So that would be my suggestion as to direction. I think it solves the problem. I'm just talking to page 2 of the ordinance. Nine. So that would be my suggestion, Commissioner Duran.

...

COMMISSIONER DURAN: Okay. That's fine. How do we – the community is out there. There is a developer out there that needs some direction on what the Code says right now. So I'm not sure that we can legally say you have to wait until we go through this

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title and general summary before you can move forward on this thing. I'm not an attorney, but --

CHAIRMAN CAMPOS: Commissioner Montoya, do you have a position on this? Direction?

COMMISSIONER MONTOYA: Mr. Chair, I think as long as it's in line with the comment that I resided, that were in line with what Commissioner Varela Lopez and what Roman had, I'm fine with that, and I think what you're suggesting is doing that.

CHAIRMAN CAMPOS: Okay, so there's four people that make that suggestion so I think you have your direction.

COMMISSIONER DURAN: Could you clarify the direction for me?

CHAIRMAN CAMPOS: Let's do this as rapidly as we can to satisfy Commissioner Duran. The suggestion would be to delete the following words on page 2 of the ordinance. It would sub-paragraph.

COMMISSIONER MONTOYA: It's on line 9.

CHAIRMAN CAMPOS: Line 9 "and water permits". Delete that language. Okay? And also look at the language that Dr. Wust suggested about modeling draw-down relative to adjoining properties. And I think that's what we're doing.

...

COMMISSIONER DURAN: I'm in favor of that...

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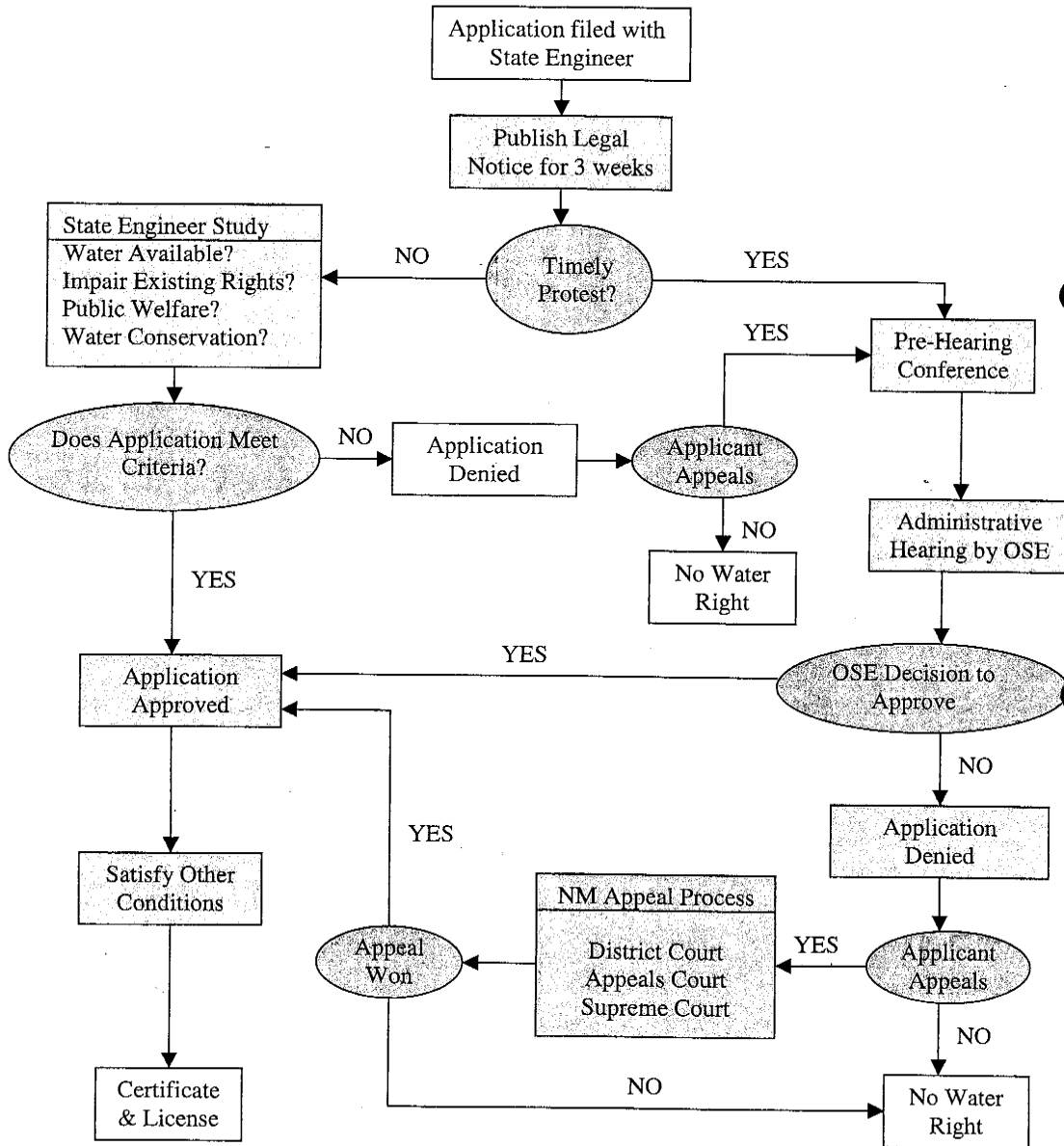
INTENT OF ORDINANCE – COMMISSIONER JOSÉ VARELA LÓPEZ

CDRC COMMISSIONER JOSÉ VARELA LÓPEZ said he attended the BCC November 9th meeting and recalled the conversation focused on the intent of the ordinance. Member Varela López said he introduced the ordinance when he was a county commissioner. Master plan is a “concept” and does not confer a vested development right to the applicant, therefore, water rights are not expected to be transferred until preliminary plan.

Minutes from the Santa Fe County Development Review Committee Meeting, November 18, 2004
Master Plan Approval – Suerte del Sur

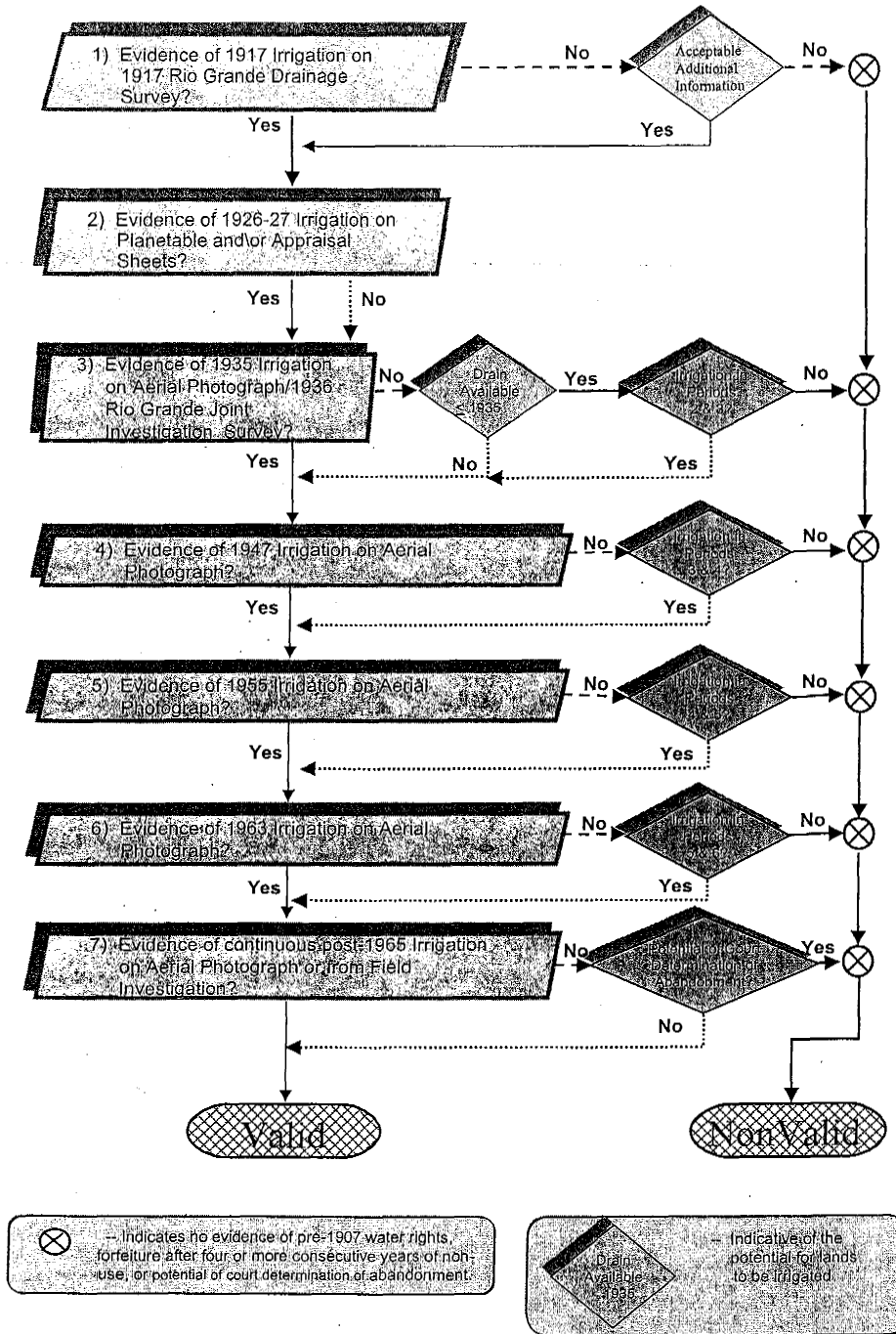
SFC CLERK RECORDED 04/06/2005

WATER RIGHT APPLICATION FLOW CHART



SEC CLERK RECORDED 04/06/2005

NM OSE CRITERIA FOR EVALUATING THE VALIDITY OF WATER RIGHTS PERFECTED PRIOR TO MARCH 19, 1907 IN THE MIDDLE RIO GRANDE BASIN

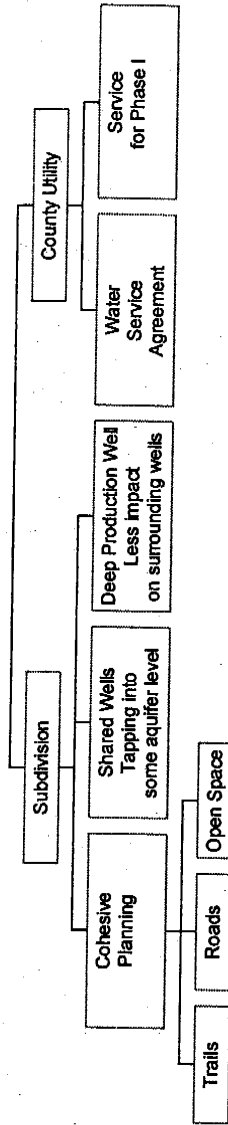


⊗ — Indicates no evidence of pre-1907 water rights, forfeiture after four or more consecutive years of non-use, or potential of court determination of abandonment.

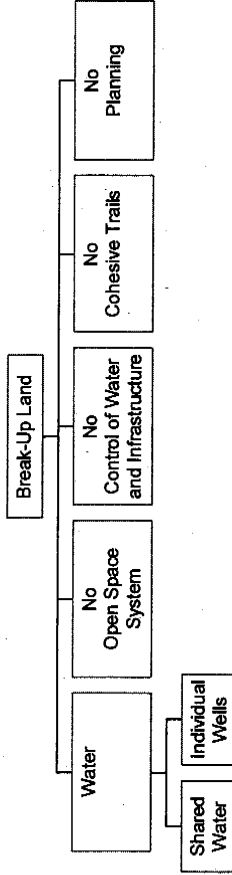
◇ — Indicates of the potential for lands to be irrigated.

SEC CLERK RECORDED 04/06/2005

DEVELOPMENT OPTIONS - 1



DEVELOPMENT OPTIONS - 2



SFC CLERK RECORDED 04/06/2005



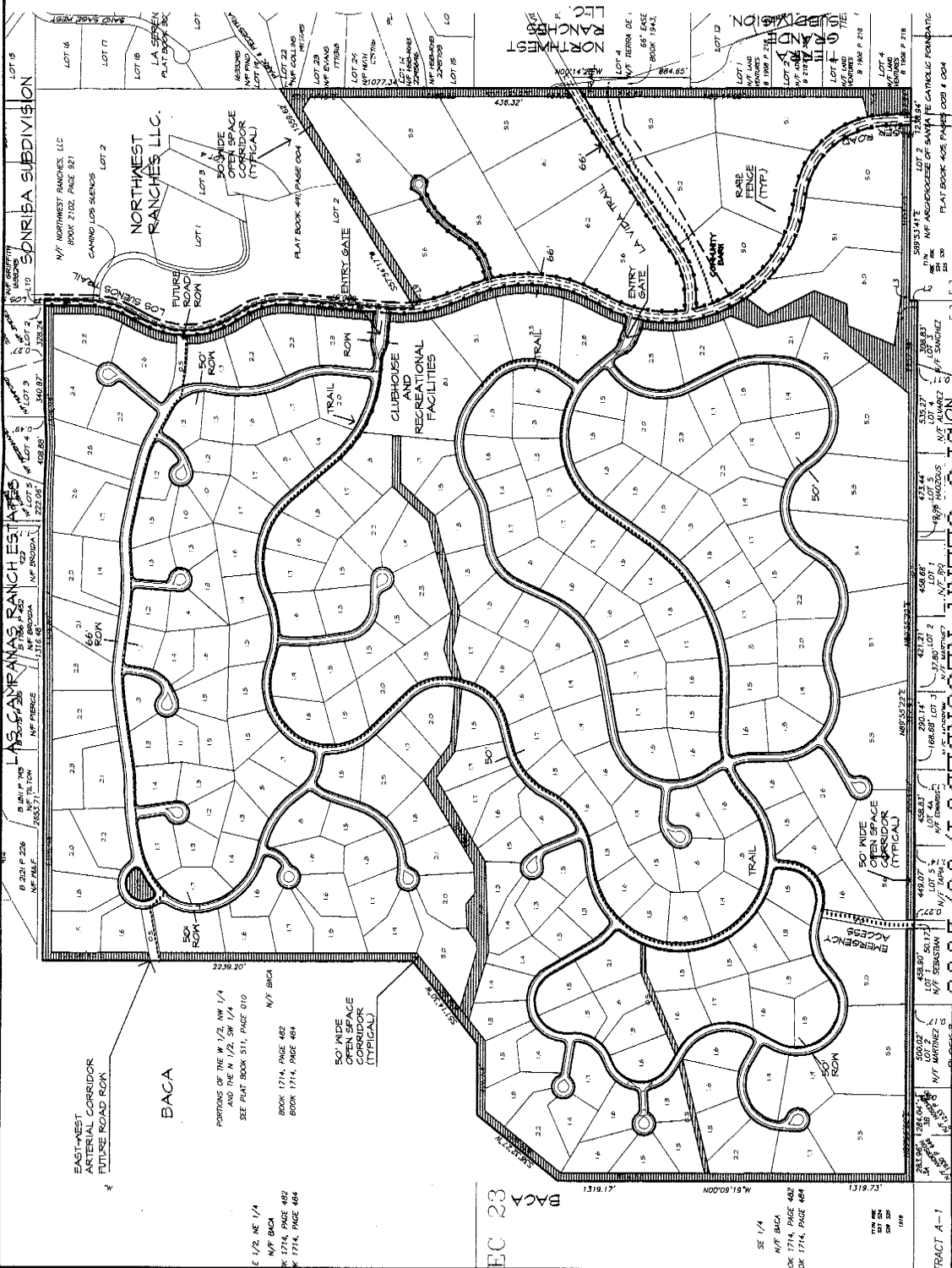
SCALE: 1" = 600'

PROJECT DATA
 660.32 ACRES
 5 ACRE RANCH LOTS
 1-3 ACRES LOTS

AVERAGE LOT SIZE
 132.06 ACRES
 132.06 ACRES
 132.06 ACRES

REQUIRED OPEN SPACE (BOOK OF 660) 110 AC.
COMMON OPEN SPACE 40.4 AC.
COMMUNITY OPEN SPACE 151 AC.
APPROXIMATELY 205 AC. FOR LOT 1 144.7 AC.
TOTAL OPEN SPACE PROVIDED (181) AC.

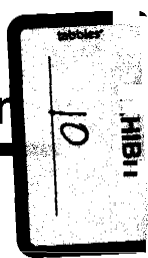
NOTE:
 ALL LOT AREA CALCULATIONS ARE APPROXIMATE



EXHIBIT

NO. SFC CLERK RECORDED 04/06/2005

Santa Fe Domestic Well Owners Association



Issues with Suerte del Sur

1. Concerns With this Well and Water Rights

- All county planning documents discuss creating a sustainable water system
- We feel attempting to transfer water rights from Socorro to a well is a bad precedent
 - It will increase net aquifer depletion for the foreseeable future
 - If others do this it will negate use of the county water system
 - It is not sustainable
- Their hydrology report shows over 150 well owners being impacted or impaired
 - We have identified other well owners who will be impacted, but are not on the list
- Well will negatively impact acequias
 - State engineer has shown offsetting rights will be needed from Rio Pojoque, Rio Tesuque and La Cienega Springs
 - Has a negative impact on acequia culture
- We would be delighted if the county had the developer wait until county water was available

2. Requests of the Commission for Suerte del Sur

- Limit average water usage to $\frac{1}{4}$ acre-ft/lot
 - They are currently seeking $\frac{1}{2}$ acre-ft/lot
 - The $\frac{1}{4}$ acre-ft should include all of their planned commercial uses
 - The county has restricted water for other developments
 - This will cut their impact on neighbors in $\frac{1}{2}$
- Restrict guest houses
 - Guest houses should be limited to either kitchen or bathroom, but not both
 - Rentals as separate living spaces should not be allowed
 - We are concerned about increased traffic as well as water use
- Limit use of well to this subdivision only
 - We are concerned with them starting a commercial utility
- Tie water use to build out
 - Assign $\frac{1}{4}$ acre-ft/lot as each home is built out
 - Avoids ability to utilize water for other purposes
- All possible conservation measures, rain catchments, gray water reuse, etc.
 - These measures could make up for .15 - .2 acre-ft/lot.
- Require connection to county available utility when available, and stop using well.
 - Require connection when water is available
 - Transfer water rights to county at that time and cap well

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