

# Zinnia L.L.C.

PO Box 1135 Albuquerque NM 87103

August 9, 2000

Bob McCabe, Planning and Development Director  
Larry Blair, Public Works Director  
City of Albuquerque  
PO Box 1293  
Albuquerque, NM 87103

RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision.  
Letter from Susan M. Calongne, dated July 31, 2000.

Dear Sirs,

Just as the lay out of Volcano Cliffs Units 2, 5 & 24 was extremely well thought out in concept and execution, so also, was the plan for the positioning of the house and septic system on Lot 2, Block 11, Unit 5 Volcano Cliffs Subdivision now known as 8019 Marigold NW.

Prior to submitting our application for a building permit we inquired and were told by Mr. Kevin Broderick, Senior Engineer, Development and Building Service Center, Public Works Department, that we did not need a drainage and grading plan for this project. Now that the house is complete we have received the attached letter from Susan M. Calongne P.E City/County Floodplain Administrator. This request for a complete analysis of the arroyo with a grading and drainage plan is unfounded, most unusual and at this point in the approval process totally irregular.

Ms. Calongnes' letter states that we MAY BE encroaching on a flood plain. Before we consider Ms. Calongne's request, it must be certain that we are encroaching on a flood plain. It is not our obligation to determine this. You must provide us with proof of a definite encroachment so that we can act accordingly. Otherwise you are just guessing which is surely arbitrary and capricious and further evidence of an illegal taking in violation of the Fifth Amendment.

The city in granting a building and sewer permit would not have done so if there had been the slightest hint of such an encroachment and rightly concluded there was not. A casual glance at the Federal Emergency Management Agency (FEMA) Map, the plat map and the physical lay out of the property shows our septic tank and lines are well outside the FEMA Floodplain Boundary and the 25' drainage easement shown on the plat map. Ms. Calongnes letter also states "a drainage easement is required for any portion of the Lot that is within the FEMA floodplain". Such an easement was granted in the original plat D3-175 dated Sept 13, 1967. This drainage easement was clearly shown on the cover page of the blueprints that were submitted with the application for the building permit.

The only conceivable reason for Ms. Calongne to generate a letter on such a pretext is the city's attempt to slow down and keep any development from taking place on top of the escarpment. This letter coupled with the city's refusal to grant access to the city's sewer system (see attachment II: Letter dated May 5, 2000) and the city's refusal to grant a license to cross two streets with water lines from a well on Lot 20, Block 8, Unit 5, Volcano Cliffs Subdivision, amounts to obstructionism for any building on the escarpment and constitutes a breach of the property owners' civil rights and an illegal taking by the City.

As you, Mr. McCabe, said at our meeting on June 26, "People believe it is all city open space on top of the escarpment. When they find out it is not they will be very upset." I'm sure this is also the reason Mr. Roger Green said at a meeting with Mr. Fred Aguirre on May the 5<sup>th</sup> 2000, when asked why the city might not grant Zinnia LLC permission to hook into the city sewer "Why if we did that it would only promote development and we do not want to promote development on top of the escarpment". To paraphrase Mayor Baca at a combined meeting of yourselves and a delegation from the Volcano Cliffs

# Zinnia L.L.C.

PO Box 1135 Albuquerque NM 87103

Property Owners Association, in referring to his desire to keep all the land on top of the escarpment undeveloped, "If I had \$120 million dollars right now we could end this conversation".

I am sure there are reasons why the city of Albuquerque does not want to see any development on the escarpment. There are proper methods for the city to acquire and create open space. A conspiracy by the city of putting undue restrictions and delays on the owners' attempts to use their property in a legal and lawful manner should not be one of them.

Your prompt issuance of a license to cross the street to bring water to the property is requested. Your prompt direction to the Environmental Health Department to proceed in working with Zinnia LLC to correctly install and inspect the septic system is requested and your prompt inspection and issuance of an occupancy agreement is requested. A reasonable time frame for such actions should be no more than five working days. Any further delay on the city's part can only be construed by the property owners as obstructionism and an unlawful taking of their property by the city.

Sincerely

*Bruce Levin for Zinnia*  
Bruce Levin

|                           |   |
|---------------------------|---|
| cc. Mayor Baca            | Mayor City of Albuquerque NM                            |
| Alan Armijo               | Councilor City of Albuquerque                           |
| Susan M. Calongne         | City/County Flood Plain Administrator                   |
| Don Dixon                 | Albuquerque Metropolitan Arroyo Flood Control Authority |
| Fred Aguirre              | City Engineer, COA                                      |
| Marcie Pincus             | Environmental Health, COA                               |
| Bill Wright               | President Volcano Cliffs Property Owners Association    |
| Paul M. Kienzle III, Esq. | Partner Scott & Kienzle, P.A. Law Firm                  |

Att. I. Letter from Susan M. Calongne, P.E. dated July 31, 2000

II. Letter from Barbara Mueller & Joe Archbold dated May 5, 2000



# City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 31, 2000

Bruce Levin, Mgr.  
Zinnia LLC  
P. O. Box 1135  
Albuquerque, New Mexico 87103

**RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision**

Dear Mr. Levin:

It has been brought to my attention by the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) that the grading for the septic system under construction on the above referenced Lot may be encroaching into the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA). Our records show that no Grading and Drainage plan has been provided for the development on this Lot. Therefore, a Grading and Drainage plan is required in order to demonstrate that this residence is protected from the FEMA floodplain.

The plan must include a complete analysis of the arroyo. Typically, no grading is allowed within the FEMA floodplain. The erosion setback must be addressed. Any structures located within the erosion setback must be protected down to the scour depth. A drainage easement is required for any portion of the Lot that is within the FEMA floodplain. Typically this easement is based on the floodplain limits from the FEMA maps, or on the energy grade line of the arroyo, therefore both of these limits must be plotted on the plan. The proposed easement limits must also be shown. This easement will be granted to AMAFCA.

The Grading and Drainage plan for this Lot must be submitted to my office and to AMAFCA. The Certificate of Occupancy for this Lot will not be issued until this plan has been approved by both agencies.

If you have any questions, please call me at 924-3982.

Sincerely,

Susan M. Calongne, P.E.  
City/County Floodplain Administrator

c: Don Dixon, Albuquerque Metropolitan Arroyo Flood Control Authority  
Larry Blair, Public Works Director, COA  
Fred Aguirre, City Engineer, COA  
Bob McCabe, Planning and Development Director, COA  
Marcie Pincus, Environmental Health, COA



May 5, 2000

To: Roger Green

Re: We hereby request sewer availability  
to Lot 2, BKK 11, U5 Volcano Cliffs as well  
as water availability for this lot, known as  
8019 Margold Dr. NW. Please send your  
reply to Zinnia LLC at 4904 Albert Lane NW, Alb. MN,  
Zinnia LLC.

by Barbara Mueller ph: 268-6508

by Joseph A. Barthold ph: 328-1331



# ***City of Albuquerque***

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

January 18, 2001

Jeff Mortensen, P.E.  
Jeff Mortensen & Associates, Inc.  
6010B Midway Park Boulevard, NE  
Albuquerque, NM 87109

E70/D15

**RE: Grading and Drainage Certification – Lot 2, Blk 11, Unit 5, Volcano Cliffs  
(E-10/~~E-10~~) (8019 Marigold NW))  
Engineer's Stamp dated 11/7/2000  
Engineering Certification dated 1/8/2001**

Dear Mr. Mortensen:

Based upon the information provided in your submittal dated January 9, 2001, the Engineering Certification for Certificate of Occupancy for the project referred to above can not be issued at this time.

The City can accept the Engineers Certification for the wall; However, approval from Environmental Health for the leach field, and a copy of the approved License Agreement from AMAFCA are required prior to issuance of the Certificate of Occupancy.

When the above outstanding issues for this project are completed and received by the City's Hydrology Division, we will take every measure to expedite this submittal, so that a permanent certificate of occupancy can be issued.

Thank you for your attention to this matter. If you have any questions, please call me at 924-3986.

Sincerely,

Bradley Bingham, P.E.  
Hydrology Division

xc: Teresa Martin, COA

File

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P. 1

HUG 02-2000 WED 12:35 PM UOH ENVIRONMENTAL HEALTH

FHA NO. 0051002011

1. 02



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246-8682 K

**City of Albuquerque**

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 31, 2000

Bruce Levin, Mgr.  
Zinnia LLC  
P. O. Box 1135  
Albuquerque, New Mexico 87103

E10/D15

RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision

Dear Mr. Levin:

It has been brought to my attention by the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) that the grading for the septic system under construction on the above referenced Lot may be encroaching into the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA). Our records show that no Grading and Drainage plan has been provided for the development on this Lot. Therefore, a Grading and Drainage plan is required in order to demonstrate that this residence is protected from the FEMA floodplain.

The plan must include a complete analysis of the arroyo. Typically, no grading is allowed within the FEMA floodplain. The erosion setback must be addressed. Any structures located within the erosion setback must be protected down to the scour depth. A drainage easement is required for any portion of the Lot that is within the FEMA floodplain. Typically this easement is based on the floodplain limits from the FEMA maps, or on the energy grade line of the arroyo, therefore both of these limits must be plotted on the plan. The proposed easement limits must also be shown. This easement will be granted to AMAFCA.

The Grading and Drainage plan for this Lot must be submitted to my office and to AMAFCA. The Certificate of Occupancy for this Lot will not be issued until this plan has been approved by both agencies.

If you have any questions, please call me at 924-3982.

Sincerely,

Susan M. Calongne, P.E.  
City/County Floodplain Administrator

- c: Don Dixon, Albuquerque Metropolitan Arroyo Flood Control Authority  
Larry Blair, Public Works Director, COA  
Fred Aguirre, City Engineer, COA  
Bob McCabe, Planning and Development Director, COA  
Marcie Pincus, Environmental Health, COA



# ***City of Albuquerque***

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

January 8, 2001

Jeff Mortensen, PE  
Jeff Mortensen & Associates, Inc  
6010-B Midway Park Blvd. NE  
Albuquerque, NM 87109

**Re: Lot 2, Block 11, Unit 5, Volcano Cliffs Grading and Drainage Plan**

**Engineer's Stamp dated 11-7-00 (~~E10/D36~~)**

*E10/D15*

Dear Mr. Mortensen,

Based upon the information provided in your submittal dated 11-7-00, the above referenced site is approved for Building Permit.

Prior to Certificate of Occupancy, an Engineer's Certification of the scour wall will be required.

If you have any questions, you can contact me at 924-3986.

Sincerely,

Bradley L. Bingham, PE  
Sr. Engineer, Hydrology

C: David Steele, Chief Building Official, CoA  
Mary Carnes, Environmental Health, CoA  
file





# ***City of Albuquerque***

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 31, 2000

Bruce Levin, Mgr.  
Zinnia LLC  
P. O. Box 1135  
Albuquerque, New Mexico 87103

**RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision**

Dear Mr. Levin:

It has been brought to my attention by the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) that the grading for the septic system under construction on the above referenced Lot may be encroaching into the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA). Our records show that no Grading and Drainage plan has been provided for the development on this Lot. Therefore, a Grading and Drainage plan is required in order to demonstrate that this residence is protected from the FEMA floodplain.

The plan must include a complete analysis of the arroyo. Typically, no grading is allowed within the FEMA floodplain. The erosion setback must be addressed. Any structures located within the erosion setback must be protected down to the scour depth. A drainage easement is required for any portion of the Lot that is within the FEMA floodplain. Typically this easement is based on the floodplain limits from the FEMA maps, or on the energy grade line of the arroyo, therefore both of these limits must be plotted on the plan. The proposed easement limits must also be shown. This easement will be granted to AMAFCA.

The Grading and Drainage plan for this Lot must be submitted to my office and to AMAFCA. The Certificate of Occupancy for this Lot will not be issued until this plan has been approved by both agencies.

If you have any questions, please call me at 924-3982.

Sincerely,

Susan M. Calongne, P.E.  
City/County Floodplain Administrator

c: Don Dixon, Albuquerque Metropolitan Arroyo Flood Control Authority  
Larry Blair, Public Works Director, COA  
Fred Aguirre, City Engineer, COA  
Bob McCabe, Planning and Development Director, COA  
Marcie Pincus, Environmental Health, COA





Mary L. Leonard

08/21/00 08:49 AM

To: Fred J. Aguirre/PWD/CABQ@COA

cc: Sarah B. Kotchian/EHD/CABQ@COA, Fabrizio F. Bertoletti/MAYOR/CABQ@COA, Gloria D. Saavedra/PWD/CABQ@COA, Larry Blair/PWD/CABQ@COA, Bob R. McCabe/PLN/CABQ@COA

Subject: Re: Volcano Cliffs



Hi Fred,

Below is some information that may be useful in your effort to gather information regarding regulatory requirements and development issues.

### **Septic Tank Issues & Regulations**

EHD would review an individual liquid waste permit application prior to a building permit approval for the Volcano Cliffs area. We recognize the NM Environmental Improvement Board's Liquid Waste Disposal Regulations (October 1997) and follow it in our permitting process. We also use the Uniform Plumbing Code (1997) as a reference for permitting.

(NOTE: The City and County have worked together with the Groundwater Protection Advisory Board to develop updated ordinances. The County Commission is expected to adopt a new ordinance this Fall. The NM Environment Department is also considering new updated regulations and we are in the process of evaluating their proposed changes. The City is currently gathering information about both set of the newly proposed regulations from the State and the County. Over the next couple of months, EHD staff will be evaluating the changes. Both the County and State proposed regulations being considered require more testing and oversight. At this time, EHD does not have a staffed program and would not be able to perform higher levels of oversight with its current staffing situation. Over the next few of months, we'll be summarizing the issues for our Director so that we can work on a Department/City strategy.)

Here are some points regarding what is required by the NM liquid waste regulations and some information as we understand it about Volcano Cliffs lots:

- The required distance between a well and a septic tank is 50 ft.; between a well and a leachfield the distance is 100 ft. This distance applies to both the County regulations and ours.
- The minimum lot size varies in the NM regulations depending on the date of record for the lot. The plat dates on the lots out in Volcano Cliffs go back to 1967. Given this date, and the fact that the well drilled to serve the lot "off-site" (a water supply source neither within the lot nor within 100 ft. of the property line of the lot), the minimum required lot size was 0.25 acre. The size of the lot where we issued the permit is 0.41 acre. The Bernalillo County Liquid Waste Ordinance (88-1), in effect until the new ordinance is adopted, does not appear to take the record date of a lot into account. For this reason, the County's current minimum lot size may be 0.50 acre with off-site water.

- In regard to arroyos, NM regulations require a 15 ft. setback, plus the depth of the channel, from the septic tank, and a 25 ft. setback, plus the depth of the channel, from the leachfield. The County's requirement is the same. The applicants for the lot in Volcano Cliffs have been advised that they need to resolve floodplain/drainage issue with PWD before we can go forward with finalizing the permit. *In the future, I think it would be advisable for drainage/floodplain/AMAFCA easement issues to be resolved in the process prior to our receiving a septic tank permit application. I suggest that PWD/AMAFCA provide us with a go ahead in writing (e-mail is fine) that indicates these issues have been identified and resolved. Where in the process does this take place now, and can we look at moving this to early in the process before the septic tank application?*
- Although a septic tank permit has issued for the property, there are still permit conditions/requirements that EHD considers incomplete. First, the drainage issues need to be resolved. Second, if the tanks have been installed in a location that does not adhere to the setback requirements and are problematic in regard to drainage, floodplain and/or easement issues, the tanks will have to be moved. Third, the leachfield hasn't been installed yet. Fourth, an EHD inspector must be onsite to approve the final tank location and oversee leachfield installation.

### **Drinking Water Supply Issues and Regulations**

Barbara Gastian and Tom Shoemaker (PWD/WUD) and the NM Environment Department Drinking Water Bureau staff have more expertise on these issues than I do, but here is a summary of what might be considered.

Private water supply systems are those that provide piped water for human consumption or domestic uses for less than 15 service connections or those that do not regularly serve an average of 25 individuals at least 60 days during the year. These types of systems have no regulatory reporting requirements under the NM water supply regulations. The State Environment Department has the lead on the drinking water supply oversight in New Mexico.

Once a system expands to a level that serves more than 15 service connections or more than an average of 25 individuals at least 60 days a year, it is considered under NM water supply regulations to be a community water supply. This designation brings with it reporting and operational requirements, and as I understand it, complying with EPA drinking water standards is a requirement.

The location of the Volcano Cliffs well combined with the liquid waste regulations which require the distance between a well and a septic tank of 50 ft. and a distance between a well and a leachfield of 100 ft. may be a limiting factor for some of the lots in regard to installing septic tanks or other individual liquid waste systems on those properties.

The number of people the well serves and/or the number of service connections will be the factor that determines the level of testing and reporting required by the NM drinking water regulations.

Mary Lou Leonard



**Gloria D. Saavedra**

08/16/00 09:48 AM

To: David N. Suffling/LEGAL/CABQ@COA, Roger A. Green/PWD/CABQ@COA, Joel C. Wooldridge/PLN/CABQ@COA, Mary L. Leonard/EHD/CABQ@COA, Richard H. Dourte/PWD/CABQ@COA, Larry Blair/PWD/CABQ@COA, Fabrizio F. Bertolotti/MAYOR/CABQ@COA

cc: Felicia M. Giron/PWD/CABQ@COA, Fred J. Aguirre/PWD/CABQ@COA



# *City of Albuquerque*

August 29, 2000

Bruce Levin, Mgr.  
Zinnia LLC  
P. O. Box 1135  
Albuquerque, New Mexico 87103

**RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision**

Dear Mr. Levin:

This is in response to your letter of August 9, 2000 to Mr. Bob McCabe and Mr. Larry Blair. The City's request for a drainage analysis is not an irregular or unfounded requirement. The City's request is premised on and required by City Ordinance. Pursuant to the City's Flood Hazard and Drainage Control Ordinance as well as the Flood Hazard Mitigation Regulations of the Federal Emergency Management Agency (FEMA), such an analysis is required to demonstrate that the proposed development will be protected against flooding and that the proposed development will not harm downstream properties.

Attached is a plot of Lot 2, Block 11, Unit 5 Volcano Cliffs Subdivision. The plot is taken from the City's Geographic Information System (GIS) showing the existing FEMA floodplain in blue. The floodplain limits were provided to the City by FEMA in 1996 along with the Flood Insurance Rate Maps (FIRMs). I am including a copy of the FIRM panel for this site for your information. As you can see, and this will confirm the FEMA floodplain does encroach across the back of Lot 2.

When the Building Permit request for Lot 2 was submitted to the City, it was our understanding based on your representation, that an approved drainage report for this site had already been done. However, we do not have an approved drainage report for this area on file. Therefore, please provide a copy of the drainage report that addresses the impact of the floodplain on this development, or provide a new plan as indicated in my previous letter.

These requirements are not a pretext to prevent development in Volcano Cliffs. The City is committed to cooperate with you in obtaining your development approval. These requirements are mandated under a pre-existing ordinance and have surfaced due in part to your failing to disclose pertinent information at the appropriate time. Your recent request to use the City's rights-of-way for individual private utilities was not disclosed with the building permit application. City rights-of-way are intended for public use (e.g., streets, drainage, public utilities); therefore, your request is respectfully denied.




8019 Marigold Dr., NW, Volcano Cliffs  
August 29, 2000  
Page 2

Once we have received, reviewed and approved the drainage report, your submittal will be forwarded to the Environmental Health Department (EHD) for their review and approval.

If you have any questions, please call me at 924-3999.

Sincerely,



Fred J. Aguirre, City Engineer  
Public Works Department

Attachments

c: Mayor Jim Baca, COA  
Fabrizio Bertolotti, Deputy Chief Administrative Officer, COA  
Councillor Alan Armijo, COA  
Larry Blair, Director, Public Works Department, COA  
Bob McCabe, Director, Planning Department, COA  
~~Susan M. Calongne, City/County Floodplain Administrator, COA~~  
Don Dixon, Albuquerque Metropolitan Arroyo Flood Control Authority  
Mary Lou Leonard, Environmental Health Department, COA  
Paul M. Kienzle III, Esq., Partner Scott & Kienzle, P.A. Law Firm

**Zinnia L.L.C.**  
**PO Box 1135 Albuquerque NM 87103**

September 11, 2000

Mr. Fred J. Aguirre, City Engineer  
Public Works Department  
PO Box 1293  
Albuquerque NM 87103

Subject: Phone conversation September 1, 2000.

Re: 8019 Marigold NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision.

Dear Mr. Aguirre,

This letter is to confirm our phone conversation on Friday September 1, 2000 to clarify your letter to Bruce Levin, Zinnia LLC, dated August 29, 2000.

Your letter appeared to set forth different requirements than those in Susan M. Calongne's letter to Zinnia LLC dated July 31, 2000. However, you informed me your letter in no way attempted to supersede or modify Ms. Calongne's letter in any way but only to inform us that we need to comply with the requirements of her letter.

Should we receive no response from you within thirty (30) days, we will assume you are in agreement with the statements contained herein.

Sincerely



Barbara Mueller

cc. Susan M. Calongne City/County Flood Plain Administrator  
Don Dixon Albuquerque Metropolitan Arroyo Flood Control Authority.  
Bill Wright President Volcano Cliffs Property Owners Association  
Paul M. Kienzle III, VCPOA legal file, Scott & Kienzle, P.A.

The following checklist is intended to be used as a guide for building permit requirements in undeveloped areas (no city water and sewer service available) and platting is already in place. This checklist is not intended to replace the development process manual but is intended to be a quick reference of development requirements. Meeting the requirements of this checklist does not necessarily grant approval. Consideration must be given to the impact on the adjacent land so as not to preclude the development there on.

September 6, 2000

1. An approved drainage report per the DPM / Drainage Ordinance (§ 14-5-2-1 et. seq. R.O. Albuquerque 1994) and AMAFCA's Resolution 80-15 will be required for building permit approval. The major issues that will need to be addressed by the report are:
  - a. Street design for the abutting streets
  - b. Flood protection for the structure
  - c. Location of the septic and well system
  - d. Off-site flows for a fully developed watershed
  - e. Downstream capacity for a fully developed watershed
  - f. One paved all-weather access will be required to the proposed dwelling.
  - g. floodplain easements for mapped floodplains must be granted to the edge of the existing flood plain or to an elevation sufficient to contain the existing conditions energy grade line, which ever is greater.
2. Albuquerque Environmental Health Department will refer to New Mexico Liquid Waste Disposal Regulations (20 NMAC 7.3) when considering individual liquid waste system (septic tank) permit applications. Additional considerations in the permit process may include, but are not limited to, drainage issues, easements, and ground water protection issues. Permit review times will be dependent on staff availability and work priorities.
3. Structures and/or septic tanks on lots or within or in close proximity of an arroyo with a 100year developed flowrate of 20 cfs or more must meet the greater setback based on the following criteria:
  - a. fifteen ft. setback, plus the depth of the channel, from the septic tank and a 25ft. setback, plus the depth of the channel, from the leachfield, or
  - b. setback established by AMAFCA's Sediment & Erosion Design Guide by Resource Consultant and Engineers dated December 1993
4. A building permit request must comply with the Future Street Lines Ordinance ( § 6-5-3-1 et. seq. R.O. Albuquerque 1994), specifically; development is restricted within City Council approved future street line.
5. Water supplies will be regulated by the New Mexico Environment Department under the authority of New Mexico Drinking Water Regulations (20 NMAC 7.1).
6. The Escarpment Plan contains other policies pertinent to development in this area which include:
  - 9-1 Integrate on-site open space with public open space via trail connections
  - 9-2 Unfinished concrete block walls are not allowed



- 9-3 Six foot maximum height for fences and walls
- 9-5 Native and/or naturalized vegetation is required
- 10-1 Archaeological site mitigation and survey is required, treatment to be prescribed by the Planning Department
- 11-7 Utility projects are to be combined in the least sensitive areas, and done with minimum disturbance
- 12-1 Structure heights limited to 15 feet; or, 19 feet with a variance if needed to screen rooftop equipment...
- 12-3 Exterior surfaces (including roofs) must use approved colors (Appendix E of Escarpment Plan)
- 12-4 No mirror or reflective glass allowed
- 15-1 Align utilities in corridors to minimize number of disturbed areas
- 15-2 Streetscape improvements include landscaping of medians and roadway edges according to plant species list (Appendix D of Escarpment Plan)
- 15-3 Street lighting - height maximum of 28' 0" down-lighting fixtures required
- 15-4 Avoid construction of new overhead utilities
- 15-5 Scars caused by trenching and grading for underground utilities shall be mitigated



**Mary L. Leonard**  
08/31/00 09:49 AM

To: Gloria D. Saavedra/PWD/CABQ@COA, Fred J. Aguirre/PWD/CABQ@COA

cc: Marcia A. Pincus/EHD/CABQ@COA

Subject: Re: Volcano Cliffs Checklist



Gloria & Fred,

Here are EHD/ESD comments on the checklist.

1) The first paragraph indicates that the checklist is a guide for building permit requirements in "undeveloped areas" and the checklist includes the Escarpment Plan "in this area". Is the checklist truly for all undeveloped areas, or is this checklist specific to Volcano Cliffs? Will building permit applicants from Quaker Heights of the Valley have to comply with the Escarpment Plan?

2) The first paragraph indicates the checklist is applicable when "no platting is required." Would it be more appropriate to state when "platting is already in place."?

3) Number 2. of checklist, last sentence: remove comma after the word "Permit".

4) Number 3. of checklist.

Are the setback requirements for septic tank and leach fields only, or do these setback requirements also apply to building structures, etc.?

Also, item c. is not yet complete.

5) Number 6. of checklist. See first comment regarding Escarpment Plan.

Thanks, MLL



**Gloria D. Saavedra**  
08/30/00 11:56 AM

To: Fabrizio F. Bertolotti/MAYOR/CABQ@COA, Larry Blair/PWD/CABQ@COA, Bob R. McCabe/PLN/CABQ@COA, Mary L. Leonard/EHD/CABQ@COA, Joel C. Wooldridge/PLN/CABQ@COA, Roger A. Green/PWD/CABQ@COA, Richard H. Dourte/PWD/CABQ@COA, J.P. Kelly@USA.net

cc: Felicia M. Giron/PWD/CABQ@COA, Margaret D. Garcia/PLN/CABQ@COA, Fred J. Aguirre/PWD/CABQ@COA

Subject: Volcano Cliffs Checklist

Please review and comment ASAP. According to Barbara Mueller from Volcano Cliffs Property Owners Association, they are in the process of requesting more building permits for the Volcano Cliffs area. The document is in both Word Perfect and WORD.

Thank you,  
Fred Aguirre



Checklis.wpd CHECKLIS.doc

# MEMO

## Item # 18

August 17, 2000

To: Board of Directors

Fr: Donald S. Dixon, PE, Drainage Engineer



Re: **Volcano Cliffs Development Status Report**

John Kelly and I have attended three meetings with other public officials in recent weeks concerning the Volcano Cliffs issue. There are two distinct concerns; the existing home (95% complete) and future construction.

Our concern with the septic tank possibly in the FEMA floodplain caused the City/County Floodplain Administrator to write the attached letter to the developer which, in turn, drew the attached response. We are continuing discussions with the City Engineer and the Floodplain Administrator concerning our next step. The City also has issues regarding private utilities in the public R/W and utility easements through portions of the Petroglyph National Park.

With regards to future construction in the Volcano Cliff Subdivision we have informed the City that our draft project schedule includes a study of the Boca Negra watershed to determine the adequacy of existing facilities from Atrisco (Unser) to the Mariposa Detention Basin. This will provide all parties concerned with a necessary drainage management tool for downstream conditions but it will be short of a DMP level analysis. A subdivision level Grading and Drainage Plan would still be required for further construction. Fred Aguirre, the City Engineer, believes he currently has the necessary regulatory authority to insist on individual grading and drainage plans for future construction if a subdivision G & D Plan is not forthcoming. This will aid in managing development but will not prevent it.

For informational purposes, Boca Negra hydrographs at Unser from storms last August have been attached.





# ***City of Albuquerque***

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 31, 2000

Bruce Levin, Mgr.  
Zinnia LLC  
P. O. Box 1135  
Albuquerque, New Mexico 87103

**RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision**

Dear Mr. Levin:

It has been brought to my attention by the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) that the grading for the septic system under construction on the above referenced Lot may be encroaching into the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA). Our records show that no Grading and Drainage plan has been provided for the development on this Lot. Therefore, a Grading and Drainage plan is required in order to demonstrate that this residence is protected from the FEMA floodplain.

The plan must include a complete analysis of the arroyo. Typically, no grading is allowed within the FEMA floodplain. The erosion setback must be addressed. Any structures located within the erosion setback must be protected down to the scour depth. A drainage easement is required for any portion of the Lot that is within the FEMA floodplain. Typically this easement is based on the floodplain limits from the FEMA maps, or on the energy grade line of the arroyo, therefore both of these limits must be plotted on the plan. The proposed easement limits must also be shown. This easement will be granted to AMAFCA.

The Grading and Drainage plan for this Lot must be submitted to my office and to AMAFCA. The Certificate of Occupancy for this Lot will not be issued until this plan has been approved by both agencies.

If you have any questions, please call me at 924-3982.

Sincerely,

Susan M. Calongne, P.E.  
City/County Floodplain Administrator

c: Don Dixon, Albuquerque Metropolitan Arroyo Flood Control Authority  
Larry Blair, Public Works Director, COA  
Fred Aguirre, City Engineer, COA  
Bob McCabe, Planning and Development Director, COA  
Marcie Pincus, Environmental Health, COA

**Zinnia L.L.C.**  
PO Box 1135 Albuquerque NM 87103

August 9, 2000

Bob McCabe, Planning and Development Director  
Larry Blair, Public Works Director  
City of Albuquerque  
PO Box 1293  
Albuquerque, NM 87103

RE: 8019 Marigold Drive NW, Lot 2, Block 11, Unit 5, Volcano Cliffs Subdivision.  
Letter from Susan M. Calongne, dated July 31, 2000.

Dear Sirs,

Just as the lay out of Volcano Cliffs Units 2, 5 & 24 was extremely well thought out in concept and execution, so also, was the plan for the positioning of the house and septic system on Lot 2, Block 11, Unit 5 Volcano Cliffs Subdivision now known as 8019 Marigold NW.

Prior to submitting our application for a building permit we inquired and were told by Mr. Kevin Broderick, Senior Engineer, Development and Building Service Center, Public Works Department, that we did not need a drainage and grading plan for this project. Now that the house is complete we have received the attached letter from Susan M. Calongne P.E City/County Floodplain Administrator. This request for a complete analysis of the arroyo with a grading and drainage plan is unfounded, most unusual and at this point in the approval process totally irregular.

Ms. Calongne's letter states that we MAY BE encroaching on a flood plain. Before we consider Ms. Calongne's request, it must be certain that we are encroaching on a flood plain. It is not our obligation to determine this. You must provide us with proof of a definite encroachment so that we can act accordingly. Otherwise you are just guessing which is surely arbitrary and capricious and further evidence of an illegal taking in violation of the Fifth Amendment.

The city in granting a building and sewer permit would not have done so if there had been the slightest hint of such an encroachment and rightly concluded there was not. A casual glance at the Federal Emergency Management Agency (FEMA) Map, the plat map and the physical lay out of the property shows our septic tank and lines are well outside the FEMA Floodplain Boundary and the 25' drainage easement shown on the plat map. Ms. Calongne's letter also states "a drainage easement is required for any portion of the Lot that is within the FEMA floodplain". Such an easement was granted in the original plat D3-175 dated Sept 13, 1967. This drainage easement was clearly shown on the cover page of the blueprints that were submitted with the application for the building permit.

The only conceivable reason for Ms. Calongne to generate a letter on such a pretext is the city's attempt to slow down and keep any development from taking place on top of the escarpment. This letter coupled with the city's refusal to grant access to the city's sewer system (see attachment II: Letter dated May 5, 2000) and the city's refusal to grant a license to cross two streets with water lines from a well on Lot 20, Block 8, Unit 5, Volcano Cliffs Subdivision, amounts to obstructionism for any building on the escarpment and constitutes a breach of the property owners' civil rights and an illegal taking by the City.

As you, Mr. McCabe, said at our meeting on June 26, "People believe it is all city open space on top of the escarpment. When they find out it is not they will be very upset." I'm sure this is also the reason Mr. Roger Green said at a meeting with Mr. Fred Aguirre on May the 5<sup>th</sup> 2000, when asked why the city might not grant Zinnia L.L.C permission to hook into the city sewer "Why if we did that it would only promote development and we do not want to promote development on top of the escarpment". To paraphrase Mayor Baca at a combined meeting of yourselves and a delegation from the Volcano Cliffs

# Zinnia L.L.C.

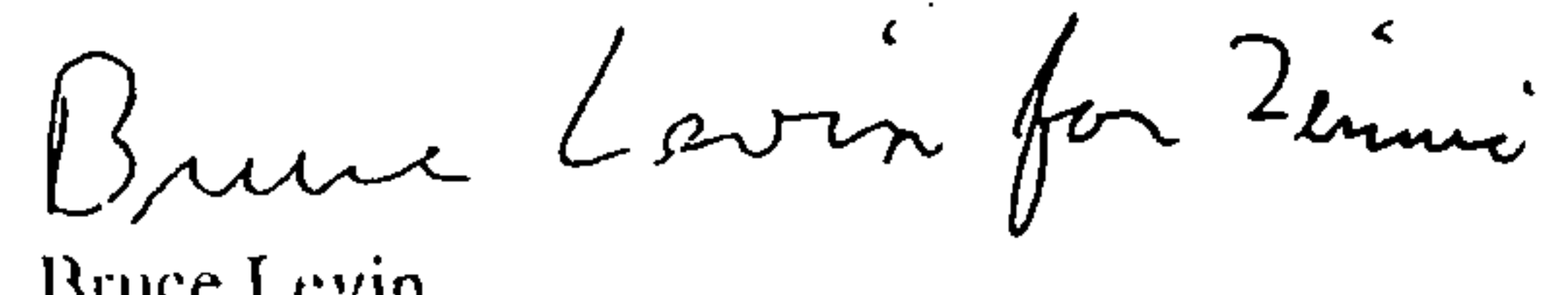
PO Box 1135 Albuquerque NM 87103

Property Owners Association, in referring to his desire to keep all the land on top of the escarpment undeveloped, "If I had \$120 million dollars right now we could end this conversation".

I am sure there are reasons why the city of Albuquerque does not want to see any development on the escarpment. There are proper methods for the city to acquire and create open space. A conspiracy by the city of putting undue restrictions and delays on the owners' attempts to use their property in a legal and lawful manner should not be one of them.

Your prompt issuance of a license to cross the street to bring water to the property is requested. Your prompt direction to the Environmental Health Department to proceed in working with Zinnia LLC to correctly install and inspect the septic system is requested and your prompt inspection and issuance of an occupancy agreement is requested. A reasonable time frame for such actions should be no more than five working days. Any further delay on the city's part can only be construed by the property owners as obstructionism and an unlawful taking of their property by the city.

Sincerely

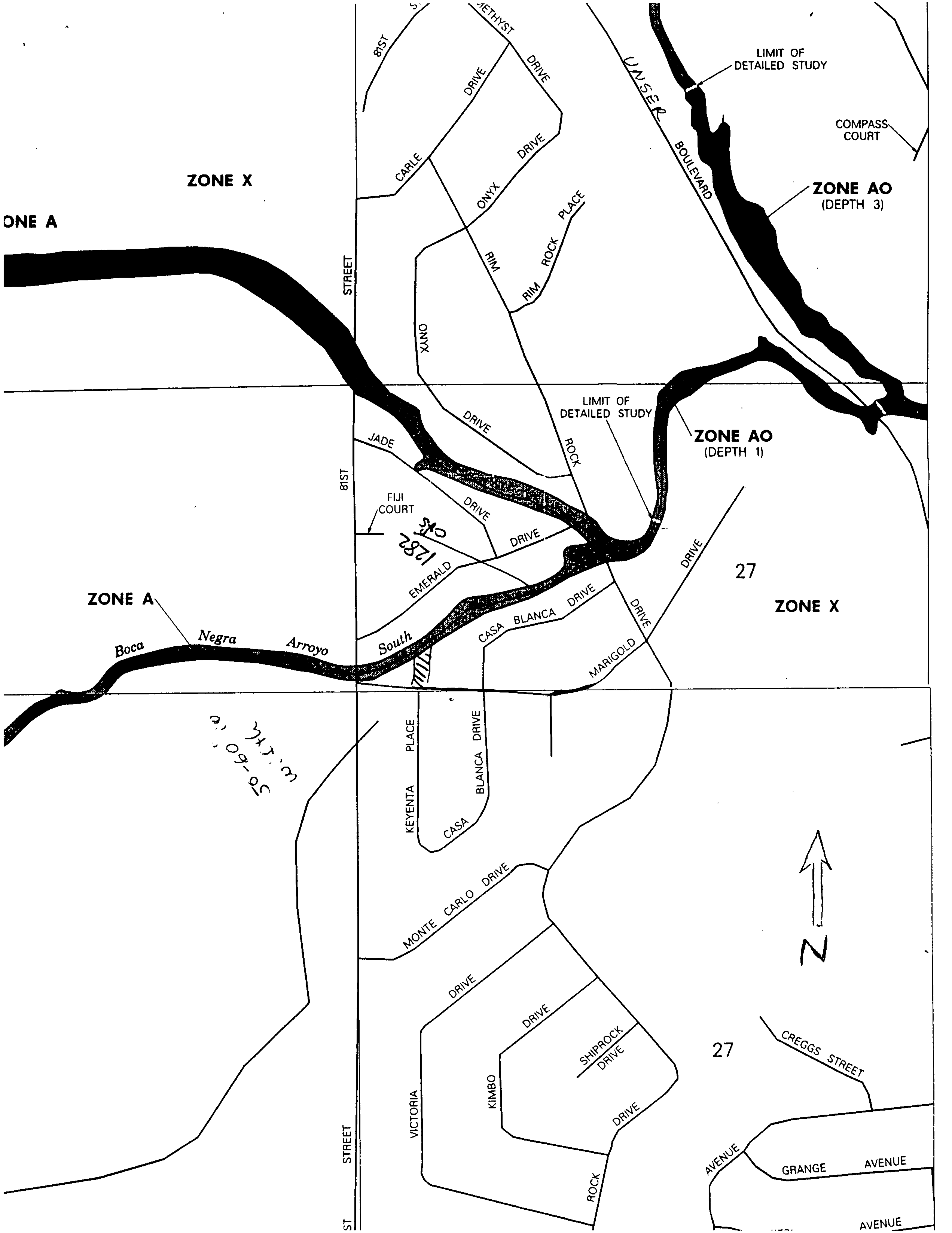


Bruce Levin

|                           |   |
|---------------------------|---|
| cc. Mayor Baca            | Mayor City of Albuquerque NM                            |
| Alan Armijo               | Councilor City of Albuquerque                           |
| Susan M. Calongne         | City/County Flood Plain Administrator                   |
| Don Dixon                 | Albuquerque Metropolitan Arroyo Flood Control Authority |
| Fred Aguirre              | City Engineer, COA                                      |
| Marcie Pincus             | Environmental Health, COA                               |
| Bill Wright               | President Volcano Cliffs Property Owners Association    |
| Paul M. Kienzle III, Esq. | Partner Scott & Kienzle, P.A. Law Firm                  |

Att. I. Letter from Susan M. Calongne, P.E. dated July 31, 2000  
II. Letter from Barbara Mueller & Joe Archbold dated May 5, 2000





# Boca Negra Arroyo 8-99

