CITY OF ALBUQUERQUE

September 6, 2012

Craig Hoover, P.E.
Bohannan Houston Inc.
7500 Jefferson NE CY 1
Albuquerque, NM 87107

Re: Tuscany Village Rough Grading Plan
Engineer's Stamp Dated 7-27-12 (E22/D022)

Dear Mr. Hoover;

Based upon the information provided in your submittal received 7-27-12, the above referenced plan is approved for Grading Permit based on the following condition:

- Grading on the adjacent property should be coordinated according to the attached "Settlement Agreement and Release" and "Grading and Improvement Agreement" (Exhibit 4) singed on April 1st, 2011 by John E. Mechenbier and Dr. William Galbreth , D.D.S.

PO Box 1293

This project requires a National Pollutant Discharge Elimination System (NPDES) permit for storm water discharge for disturbing one acre or more and a Topsoil Disturbance Permit for disturbing ¾ of an acre or more.

Albuquerque

Albuquerque's MS4 Permit became effective March 1st, 2012. Grading and Drainage Plans and Drainage Reports will have to comply with the requirements of the new permit (http://www.cabq.gov/planning/landcoord/Hydrology.html).

NM 87103

If you have any questions, you can contact me at 924-3695.

www.cabq.gov

Sincerely,

Shahab Biazar, P.E.
Senior Engineer, Planning Dept.
Development and Building Services

C: e-mail

RECEIVED
JUL 27 2012
HYDROLOGY SECTION

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "SAR") is made and entered into, effective on the date in ~~January~~ April, 2011 that the last Party has executed this SAR (the "Effective Date"), for good and sufficient consideration, by and between JOHN E. MECHENBIER, MECHENBIER CONSTRUCTION INC., and AMERICUS, LLC (collectively "Mechenbier") and WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC, and DR. WILLIAM GALBRETH, D.D.S. (collectively "Galbreth") (herein from time to time Mechenbier and Galbreth are individually referred to as a "Party" and collectively referred to as the "Parties").

Background:

A. Mechenbier and Galbreth own adjoining parcels of vacant land in the north Albuquerque Acres area, Bernalillo County, State of New Mexico. The adjoining properties share a common legal property boundary. A series of approximately five power poles and power transmission lines cross the parties' adjoining parties. As a result, the adjoining properties and related power poles and transmission lines, disputes arose between Mechenbier and Galbreth. Galbreth on September 16, 2009 sued Mechenbier in *Galbreth v. Mechenbier*, Second Judicial District Court for the State of New Mexico, Cause No. CV-2009-10967 (the "Lawsuit"), for claims related to the movement of the power poles, and for other claim. On November 02, 2009, Mechenbier answered the complaint and asserted a number of counterclaims against Galbreth also arising out of the adjoining properties and other matters. As of the effective date of this SAR, Galbreth's claims and Mechenbier's counterclaims remain pending before the Second Judicial District Court, State of New Mexico.

B. The Parties have negotiated and reached a settlement agreement. The terms of the Parties' agreements are set out in this SAR.

Accordingly, the Parties hereby agree as follows:

1. **Sale of Land.** Mechenbier shall sell to Galbreth and Galbreth shall buy the approximately 109,571 square foot tract of land more particularly depicted on Exhibit A to the Real Estate Purchase Agreement hereinto attached as Exhibit 1. The purchased land is currently the subject of a bulk land plat and upon final plating will be known as Tract N-7-A.

(a) The sale price shall be Seven Hundred and Thirty Thousand Dollars ($730,000).

(b) The terms and conditions of the sale of land shall be governed by the Real Estate Purchase Agreement hereto attached to this SAR as Exhibit 1. All matters concerning the sale of the land shall be governed by the said Real Estate Purchase Agreement which is herein incorporated by reference.

2. **PNM Power Pole Escrow Agreement.** The parties shall share in the cost of PNM relocating and consolidating the fifth set of six power poles more fully identified as the "poles" on Exhibit 2 hereto. The fifth set of paired power poles shall be consolidated to a single or double power pole as required by PNM and placed in a straight target line with the previously consolidated and relocated poles. The moved paired set of poles shall be consolidated and relocated to substantially the same location where they are currently located. Upon written demand from either party, the parties agree to execute within sixty (60) days any necessary contract, work order or other paperwork necessary for PNM to relocate and consolidate the fifth set of paired poles.

(a) The parties have agreed to place money in escrow for this relocation and consolidation of the fifth set of paired power poles. The terms of the parties' escrow agreement and the sharing of cost for the movement of the poles shall be on the terms

and conditions set forth in the PNM Power Pole Escrow Agreement attached hereto as Exhibit 3. All matters concerning the disbursement of the funds deposited in escrow shall be governed by the said PNM Power Pole Escrow Agreement which is herein incorporated by reference.

3. **Grading and Improvement Agreement.** In order to develop the new tract, it will be necessary for Galbreth to transfer approximately 55,000 cubic yards of fill dirt from the south and east side of the AMAFCA Dam within the flood impound limits to be used as the fill necessary to build a three-to-one retaining slope on the southern and eastern sides of Galbreth's property. The terms and conditions of this movement of dirt shall be governed and controlled by the Grading and Improvement Agreement attached hereto as Exhibit 4. All matters concerning the sale of the land shall be governed by the said Grading and Improvement Agreement which is herein incorporated by reference.

4. **Release of All Claims.** Each party does hereby dismiss, release, and/or discharge all claims, counterclaims, causes of action, and demands, that either party has, ever had or may hereafter have on account of or by reason of any and every matter involving or arising out any act or omission described in the Lawsuit (including the counterclaims made in the Lawsuit) or that could have been described in the Lawsuit (or raised as a counterclaim). It is the intent of the parties entering into this Agreement to fully and effectively dismiss and release any and all claims that either party may have, or all other persons or entities claiming by, through, or under either party, for any and all damage, loss or injury arising out of or resulting from the acts, omissions and transactions described in the Lawsuit and the counterclaims filed in the Lawsuit. Galbreth and Mechenbier shall dismiss, with prejudice, all claims and counterclaims, known and unknown, in the matter known as *Galbreth v. Mechenbier*, Second Judicial District Court, CV 2009 10967. Each party to bear their own fees and costs.

5. **Covenants Regarding Future Development.** Galbreth and Mechenbier each covenant and agree not to obstruct, oppose, or otherwise interfere, directly or indirectly, in any capacity, with the other parties' future development plans for his adjoining property, including without limitation objecting at public hearings, and/or opposing the other parties' proposed site development plans. This covenant and agreement not to obstruct, oppose, or otherwise interfere shall run with the purchased land and be recorded as a deed restriction on the purchased land. Galbreth acknowledges Mechenbier's intent to vacate and acquire the former Tramway right-of-way and to re-zone Tracts 17 and 18 of High Desert for use in developing retail/office space similar to the existing uses in the area and consistent with C-1 zoning. Galbreth will not obstruct, oppose, or otherwise interfere with such plan.

6. **Limited Indemnity.** Galbreth shall indemnify, hold harmless, and defend Mechenbier from all claims for injury relating to or arising from Galbreth's performance of work on Mechenbier's property. Additionally, Galbreth shall name Mechenbier as an additional insured on an appropriate liability policy covering all such work.

7. **Arbitration Agreement.** Any controversy or claim arising out of or relating to this Agreement, or the claimed breach thereof, shall be settled by arbitration in Albuquerque, New Mexico, and judgment upon the award rendered in such arbitration may be entered and enforced by any court having competent jurisdiction thereof. Arbitration shall be brought upon written notice of one party to the other of a demand for arbitration, including a recitation of the claim or dispute for which arbitration is sought (the "Demand Notice"). Bruce Hall or, if he is unavailable, a single arbitrator appointed by the chief judge of the 2nd Judicial District, State of New Mexico shall be the arbitrator ("Arbitrator"). The arbitration shall be conducted in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-1 et seq.

(2001) and the Arbitrator shall have all of the authority conferred by the Act including the authority to award equitable remedies. The Arbitrator shall have jurisdiction over the subject matter of the issues arising under this SAR and the agreements to be executed by the parties, attached as exhibits hereto, and jurisdiction over the parties for these purposes. The parties hereby irrevocably consent to arbitration of all issues arising out of the terms, enforceability, construction or interpretation of this SAR or any such agreements.

In addition to other remedies, the Arbitrator is authorized to award either party a sum to compensate the party for the time and expense of the arbitration if they determine that arbitration was demanded without reasonable cause. In such event, the Arbitrator may also assess the costs of the arbitration proceeding against the party that demanded arbitration. In all other cases, the costs of the arbitration proceeding shall be assessed against the party against whom the arbitration award is determined, or against both parties if the determination is against both. In the event of arbitration regarding the performance, breach or construction of this Agreement, the prevailing party shall be entitled to the recovery of reasonable attorneys' fees and costs or court incurred in such arbitration or litigation. The parties shall be entitled to discovery in arbitration consistent with the Federal Rules of Civil Procedure.

8. **Authority to Execute.** The signatories represent that they have full authority to execute this SAR, and to bind all persons claiming by, through, under, for, or on behalf of them.

9. **Entire Agreement.** The Parties acknowledge and represent that this SAR and the exhibits attached hereto and the agreements referred to therein constitute the entire agreement of the Parties and that the terms hereof are contractual and not mere recitals. Neither Party has made representations to nor relied on any representations by any of the other Parties. All prior discussions and negotiations are merged herein.

10. **Controlling Law.** This SAR shall be construed and interpreted in accordance with the laws of the State of New Mexico. In the event that it becomes necessary for any Party to enforce the terms and conditions of this Agreement, the prevailing party shall recover their reasonable attorney's fees and costs from the losing party. In the event of any conflict or ambiguity between the terms of this Agreement and any exhibit attached hereto, the terms of the exhibit shall supersede and control over the terms of this Agreement.

11. **Binding Effect.** This SAR is binding on the Parties and their heirs, successors, and assigns, and any parent, subsidiary and affiliated companies of the Parties.

12. **Savings Clause.** In the event any term or provision of this SAR is found or determined to be void, unenforceable or contrary to public policy under any applicable statute or rule of law, such term or provision shall be deemed severed from this SAR, and all other provisions of this SAR shall remain in full force and effect.

13. **Counterparts and E-Signatures and Faxed Signatures.** This SAR may be executed in counterparts. A signature that is set out on a page that is scanned and transmitted electronically, or faxed, shall be afforded the same legal effect as an original signature.

14. **Non-Disparagement.** No Party will disparage any other Party or person released herein relative to any subject matter that is the subject of this SAR and the exhibits attached hereto and the release contained therein.

15. **Confidentiality.** The terms hereof are confidential and shall not be disclosed except as set forth herein or as required to enforce their terms or pursuant to an order of court of competent jurisdiction or governmental agency. This shall not prohibit disclosure for tax preparation purposes or to the IRS, nor shall it prohibit disclosure of the deed restriction described in Section 6 herein.

16. **Notice.** Any notice given hereunder to Mechenbier shall be deemed effective as of the time and date mailed or faxed to *Clifford K Atkinson and/or Justin D. Rodriguez, c/o Atkinson, Thal & Baker, P.C., 201 Third Street NW, Suite 1850, Albuquerque, New Mexico 87102; telephone: (505) 764-8111; facsimile: (505) 764-8374.* Any notice given hereunder to Galbreth shall be deemed effective as of the time and date mailed or faxed to *David A. Freedman and/or Molly Schmidt-Nowara at Freedman Boyd Hollander Goldberg Ives and Duncan, P.A., 20 First Plaza NW, Suite 700, Albuquerque NM 87102; telephone: (505) 842-9960; facsimile: (505) 842-0761.*

17. **Conflict With SAR Exhibits.** In the event a conflict should exist between this SAR and the exhibits and attachments hereto, the terms of the exhibits and attachments shall control. Every effort shall be made to read the two in harmony, however, to the extent a conflict cannot be resolved, the terms and conditions of the exhibits and attachments hereto shall control.

18. **Term Sheet.** The July 7, 2010 "Final Mechenbier/Galbreth Term Sheet" hereto attached as Exhibit 5 to the SAR shall be superseded and nullified by the final execution of this SAR.

JOHN E. MECHENBIER

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by JOHN E. MECHENBIER on this 15 day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1-22-2013

MECHENBIER CONSTRUCTION INC.

By: John E. Mechenbier

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by John E Mechenbier as President on behalf of MECHENBIER CONSTRUCTION INC., a New Mexico corporation, on this 15 day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1-22-2013

AMERICUS, LLC

By: [redacted]

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by John E Meriwether as Managing Member on behalf of AMERICUS, LLC, a New Mexico limited liability company, on this 1st day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7/22/2013

WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC,

By: William E Galbreth
Member

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by William E Galbreth as Member on behalf of WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC, a New Mexico limited liability company, on this 1st day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7/22/2013

Exhibit 4

GRADING AND IMPROVEMENT AGREEMENT

THIS GRADING AND IMPROVEMENT AGREEMENT ("Agreement") is made this 1st day of April, 2011, by and among William E. Galbreth, and William E. Galbreth Land Development Co., LLC, whose address is 4830 Juan Tabo NE, Suite H, Albuquerque New Mexico 87111 (herein collectively "Galbreth") and AMERICUS, LLC, a New Mexico limited liability company, whose address is 8500 Washington NE, Suite A-5, Albuquerque, NM 87113 (herein "Owner").

RECITALS

WHEREAS, this Agreement is entered into pursuant to the terms of that certain Settlement Agreement and Release dated April 1, 2011 (herein "SAR"), by and between Buyer, William E. Galbreth, Seller and John Mechenbier and Mechenbier Construction, Inc; and

WHEREAS, Galbreth is the owner/developer of certain real property, which is described as Tract N-7-A Tanoan Properties, being a Replat of Tracts N-3, N-4 and N-7, Revision Plat of Tanoan Properties, as the same is shown and designated on the said plat filed for record in the Office of the County Clerk, Bernalillo County, New Mexico, as Document No. 2011032927 (herein "Galbreth's Land"); and

WHEREAS, Owner is the owner of certain real property which is described as Tract N-3-A Tanoan Properties, being a Replat of Tracts N-3, N-4 and N-7, Revision Plat of Tanoan Properties, as the same is shown and designated on the said plat filed for record in the Office of the County Clerk, Bernalillo County, New Mexico, as Document No. 2011032927 (herein "Owner's Land") and

WHEREAS, Galbreth will be improving and developing Galbreth's Land into a subdivision ("Subdivision") which will not include Owner's Land but which will necessitate Galbreth going onto the Owner's Land and Galbreth making certain improvements ("Improvements") to the Owner's Land; and

WHEREAS, in order to complete the construction of the Subdivision, it will be necessary that permanent structural fill be placed upon Owner's Land along the southern and eastern boundary of Galbreth's Land for the structural support of Galbreth's Land ("Improvements"); and

WHEREAS, for the orderly construction of the Subdivision and the Improvements to Owner's Land, it is necessary that the parties agree and cooperate with respect to the construction activities and that Galbreth obtain the right to construct the Improvements and a temporary construction and grading easement and agreement by the Owner to construct the Improvements in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, Galbreth and Owner hereby grant, confirm, covenant and agree as follows:

1. Owner hereby grants to Galbreth the right to construct the Improvement on Owner' Land which will consist of a three-to-one retaining slope along the southern and eastern boundaries of Galbreth's Land, as more fully described in the Construction Plan, described below. Owner understands and agrees that the Improvements will be permanently a part of Owner's Land. Owner and its successors and assigns will take no action that will impair or reduce the structural integrity of the Improvements.

2. Owner hereby grants to Galbreth, and its employees, agents, successors and assigns, for the benefit and for the use by Galbreth, a free and unobstructed, non-exclusive temporary construction and grading easement ("Easement") over the Owner's Land in order for Galbreth to complete the Subdivision all in accordance with the proposed grading and construction plan prepared by Bohannon Huston, Inc., dated April 2010, entitled Pino Dam Spillway Modifications ("Construction Plan") and this Agreement and the documents referred to herein. Galbreth, its agents, contractors and assigns may go onto the Owner's Land at any and all times until the Easement is terminated to: a) construct the Subdivision; b) grade the Galbreth Land and the Owner's Land, and c) construct the Improvements and place the fill soil on Owner's Land all as set forth in this Agreement and the Exhibits attached hereto. Galbreth understands, acknowledges and agrees that: i) any soil that is placed on Owner's Land that is not structural fill as required by the Construction Plan must be removed when construction of the subdivision and the Improvements is complete, unless there is an agreement in writing to the contrary signed by Owner and Galbreth; and ii) nothing contained herein shall be deemed as granting to Tract N-7-A the right to drain over, on or across Tract N-3-A at any time.

3. Galbreth shall perform all work on the Owner's Land in accordance with the Construction Plan approved by Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), the New Mexico State Engineer and the City of Albuquerque or any other governmental agency having jurisdiction thereof and by Owner, copies of which will be immediately provided to Owner as such Construction Plan becomes available. Owner understands, acknowledges and agrees that the work to be performed by Galbreth will impact Owner's Land and that such work may include, but not be limited to, the following: removal and disposal of the existing vegetation, import of soil from the flood impound limits of Tract N-5-A, mechanical soils compaction and the re-vegetation and landscaping of Owner's Land to the specifications required by Bohannan Huston, Inc. and all applicable governmental agencies. All soil samples, engineering studies, compaction studies and reports that are performed shall be accordance with the Construction Plan and the standard specifications for geotechnical engineering, and specifically in compliance with all AMAFCA and all other governmental agencies having jurisdiction thereof. Owner shall be simultaneously copied on all soil samples, engineering studies, and compaction studies. All tests, studies and engineering specifications shall be certified by Bohannan Huston, Inc., (at the sole cost and expense of Galbreth) and provided to Owner.

Prior to the commencement of any construction activity, Owner shall be provided with a copy of the final Construction Plan that has been approved by AMAFCA and the State Engineer. Galbreth shall not commence construction on Owner's Land until Galbreth has obtained Owner's written consent and approval of the final Construction Plan as it relates to activities on Owner's Land, and such approval shall not be unreasonably withheld or delayed. In the event that Owner has not disapproved the Construction Plan within five (5) days of the date the Construction Plan was delivered to Owner, Owner will be deemed to have approved the Construction Plan, and Galbreth may commence construction on the Owner's Land. If Owner disapproves the Construction Plan, it shall do so by written notice to Galbreth before the end of said five (5) day period, which notice shall specify the grounds upon which Owner disapprove the Construction Plan. In the event the Parties are not able to resolve Owner's disapproval, the dispute will be resolved by Arbitration, which must be completed within thirty (30) days.Upon completion of the Improvements on the Owner's Land all work performed shall be certified as to completion in accordance with the Construction Plan by Bohannan Huston, Inc., and Bohannan Huston, Inc., shall certify that the Owner's Land is in a condition that meets the drainage standards of the City of Albuquerque or any other governmental agency that has jurisdiction thereof. Galbreth represents and

2. Owner hereby grants to Galbreth, and its employees, agents, successors and assigns, for the benefit and for the use by Galbreth, a free and unobstructed, non-exclusive temporary construction and grading easement ("Easement") over the Owner's Land in order for Galbreth to complete the Subdivision all in accordance with the proposed grading and construction plan prepared by Bohannon Huston, Inc., dated April 2010, entitled Pino Dam Spillway Modifications ("Construction Plan") and this Agreement and the documents referred to herein. Galbreth, its agents, contractors and assigns may go onto the Owner's Land at any and all times until the Easement is terminated to: a) construct the Subdivision; b) grade the Galbreth Land and the Owner's Land, and c) construct the Improvements and place the fill soil on Owner's Land all as set forth in this Agreement and the Exhibits attached hereto. Galbreth understands, acknowledges and agrees that: i) any soil that is placed on Owner's Land that is not structural fill as required by the Construction Plan must be removed when construction of the subdivision and the Improvements is complete, unless there is an agreement in writing to the contrary signed by Owner and Galbreth; and ii) nothing contained herein shall be deemed as granting to Tract N-7-A the right to drain over, on or across Tract N-3-A at any time.

3. Galbreth shall perform all work on the Owner's Land in accordance with the Construction Plan approved by Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), the New Mexico State Engineer and the City of Albuquerque or any other governmental agency having jurisdiction thereof and by Owner, copies of which will be immediately provided to Owner as such Construction Plan becomes available. Owner understands, acknowledges and agrees that the work to be performed by Galbreth will impact Owner's Land and that such work may include, but not be limited to, the following: removal and disposal of the existing vegetation, import of soil from the flood impound limits of Tract N-5-A, mechanical soils compaction and the re-vegetation and landscaping of Owner's Land to the specifications required by Bohannan Huston, Inc. and all applicable governmental agencies. All soil samples, engineering studies, compaction studies and reports that are performed shall be accordance with the Construction Plan and the standard specifications for geotechnical engineering, and specifically in compliance with all AMAFCA and all other governmental agencies having jurisdiction thereof. Owner shall be simultaneously copied on all soil samples, engineering studies, and compaction studies. All tests, studies and engineering specifications shall be certified by Bohannan Huston, Inc., (at the sole cost and expense of Galbreth) and provided to Owner.

Prior to the commencement of any construction activity, Owner shall be provided with a copy of the final Construction Plan that has been approved by AMAFCA and the State Engineer. Galbreth shall not commence construction on Owner's Land until Galbreth has obtained Owner's written consent and approval of the final Construction Plan as it relates to activities on Owner's Land, and such approval shall not be unreasonably withheld or delayed. In the event that Owner has not disapproved the Construction Plan within five (5) days of the date the Construction Plan was delivered to Owner, Owner will be deemed to have approved the Construction Plan, and Galbreth may commence construction on the Owner's Land. If Owner disapproves the Construction Plan, it shall do so by written notice to Galbreth before the end of said five (5) day period, which notice shall specify the grounds upon which Owner disapprove the Construction Plan. In the event the Parties are not able to resolve Owner's disapproval, the dispute will be resolved by Arbitration, which must be completed within thirty (30) days.Upon completion of the Improvements on the Owner's Land all work performed shall be certified as to completion in accordance with the Construction Plan by Bohannan Huston, Inc., and Bohannan Huston, Inc., shall certify that the Owner's Land is in a condition that meets the drainage standards of the City of Albuquerque or any other governmental agency that has jurisdiction thereof. Galbreth represents and

warrants to Owner that all work performed on Owner's Land shall be in accordance with the terms and specifications of this Agreement and the Construction Plan

4. Galbreth shall defend, protect, indemnify and hold harmless Owner, from and against all claims, including any action or proceedings brought thereon, all costs, losses, expenses and liabilities (including reasonable attorneys' fees) arising from, or as a result of, the performance of the work to be performed as specified by this Agreement. Any and all indemnification provisions contained herein shall exclude indemnification for all matters prohibited from indemnification by NMSA Section 56-7-1.

5. All construction and earthmoving activity to be undertaken by Galbreth shall be performed in such a manner as determined in the sole discretion of Galbreth, however, such work will be done in a good and workman-like manner substantially in accordance with the Construction Plan and sound construction standards.

6. Galbreth and Owner, their successors and assigns shall each obtain and maintain liability insurance on their respective property in an amount usual and customary for such property.

7. The Easement granted by this Agreement is not intended nor will it create any prescriptive rights in the public to use the Easement conveyed and granted in this Agreement.

8. This Agreement and the covenants and conditions contained in this Agreement shall inure to the benefit of and be binding upon Owner and the Owner's Land, and Galbreth and Galbreth's Land, and their successors and assigns. The Easement, and the benefits, burdens and obligations in this Agreement will create servitudes upon the Owner's Land and benefits for Galbreth's Land, and it shall run with the Owner's Land and Galbreth Land's until terminated as set forth in paragraph 11. The Improvements will survive the termination of the Easement.

9. The laws of the State of New Mexico will govern this Easement Agreement.

10. The Parties have agreed to terms for Arbitration and Dispute Resolution as set forth in the SAR which Arbitration and Dispute Resolution terms are incorporated herein by reference, and shall control the resolution of all issues pertaining to this Agreement.

11. The grant of the Easement as set forth in this Agreement shall terminate at the conclusion of the thirty-sixth month after the approval of AMAFCA and the State Engineer of the work described in this Agreement but in any event, this Easement shall terminate on the sixth anniversary of the date of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement on the day and year as first set out above.

AMERICUS, LLC, a New Mexico limited liability company

By: _____
Its: Managing Member

Date: April 1, 2011

William E. Galbreth

William E. Galbreth

Date: 4-1-11

WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC

By: William E. Galbreth
William E. Galbreth

Date: 4-1-11

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on April 1, 2011, by John Mechenbier, Managing Partner of Americus, LLC, a New Mexico limited liability company, on behalf of said company.

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7-22-2013

Bertha E Baca
Notary Public

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the 1st day of April, 2011, by William E. Galbreth.

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7-22-2013

Bertha E Baca
Notary Public

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on April 1, 2011, by William E. Galbreth, Managing Member of William E. Galbreth Land Development Co., LLC, a New Mexico limited liability company, on behalf of said company.

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7-22-2013

Bertha E Baca
Notary Public

Awaiting property owner approval

DRAINAGE AND TRANSPORTATION INFORMATION SHEET

(REV 02/2012)

PROJECT TITLE: TIERRA VILLAGE ZONE MAP: E-22 / D022

DRB#: _____ EPC#: _____ WORK ORDER#: _____

LEGAL DESCRIPTION: _____

CITY ADDRESS: _____

ENGINEERING FIRM: BHT CONTACT: CRAIG HOOVER

ADDRESS: 7500 JEFFERSON PHONE: 883-1800

CITY, STATE: ALB. NM ZIP CODE: 87109

EMAIL: choover@bhtcon

OWNER: drb galbreth@yahoo.com CONTACT: _____

ADDRESS: _____ PHONE: _____

CITY, STATE: _____ ZIP CODE: _____

ARCHITECT: _____ CONTACT: _____

ADDRESS: _____ PHONE: _____

CITY, STATE: _____ ZIP CODE: _____

EMAIL: _____

SURVEYOR: _____ CONTACT: _____

ADDRESS: _____ PHONE: _____

CITY, STATE: _____ ZIP CODE: _____

CONTRACTOR: _____ CONTACT: _____

ADDRESS: _____ PHONE: _____

CITY, STATE: _____ ZIP CODE: _____

TYPE OF SUBMITTAL:

_____ DRAINAGE REPORT
_____ DRAINAGE PLAN 1st SUBMITTAL
__X__ DRAINAGE PLAN RESUBMITTAL
_____ CONCEPTUAL G & D PLAN
_____ GRADING PLAN
_____ EROSION CONTROL PLAN
_____ ENGINEER'S CERT (HYDROLOGY)
_____ CLOMR/LOMR
_____ TRAFFIC CIRCULATION LAYOUT
_____ ENGINEER'S CERT (TCL)
_____ ENGINEER'S CERT (DRB SITE PLAN)
_____ OTHER (SPECIFY)

CHECK TYPE OF APPROVAL SOUGHT:

_____ SIA/FINANCIAL GUARANTEE RELEASE
_____ PRELIMINARY PLAT APPROVAL
_____ S. DEV. PLAN FOR SUB'D APPROVAL
_____ S. DEV. FOR BLDG. PERMIT APPROVAL
_____ SECTOR PLAN APPROVAL
_____ FINAL PLAT APPROVAL
_____ FOUNDATION PERMIT APPROVAL
_____ BUILDING PERMIT APPROVAL
_____ CERTIFICATE OF OCCUPANCY (PERM)
__X__ CERTIFICATE OF OCCUPANCY (TEMP)
_____ GRADING PERMIT APPROVAL
_____ PAVING PERMIT APPROVAL
_____ WORK ORDER APPROVAL
_____ GRADING CERTIFICATION
_____ OTHER (SPECIFY) SO-19

RECEIVED
JUL 27 2012
HYDROLOGY SECTION

WAS A PRE-DESIGN CONFERENCE ATTENDED:

_____ YES
__X__ NO
_____ COPY PROVIDED

DATE SUBMITTED: 7/27/12 BY: _____

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location, and scope to the proposed development defines the degree of drainage detail. One or more of the following levels of submittal may be required based on the following:

1. **Conceptual Grading and Drainage Plan**: Required for approval of Site Development Plans greater than five (5) acres and Sector Plans.
2. **Drainage Plans**: Required for building permits, grading permits, paving permits and site plans less than five (5) acres.
3. **Drainage Report**: Required for subdivision containing more than ten (10) lots or constituting five (5) acres or more.

CITY OF ALBUQUERQUE

August 29, 2012

Craig Hoover, P.E.
Bohannan Houston Inc.
7500 Jefferson NE CY 1
Albuquerque, NM 87107

Re: Tuscany Village Rough Grading Plan
Engineer's Stamp Dated 7-27-12 (E22/D022)

Dear Mr. Hoover;

Based upon the information provided in your submittal received 7-27-12, the above referenced plan cannot be approved for Grading Permit until the written approval is received from the adjacent property owner.

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

Sincerely,

Shahab Biazar, P.E.
Senior Engineer, Planning Dept.
Development and Building Services

C: e-mail

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

Bohannan Huston

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

July 27, 2012

Mr. Curtis Cherne, P.E.
City Hydrologist, Section Manager
City of Albuquerque
600 Second Street NW, 2nd Floor West
Albuquerque, NM 87102

Re: Tuscany Village Rough Grading Plan – Response to City Comments

Dear Mr. Cherne:

In response to your comments contained in your letter to me dated July 12, 2012 we offer the following responses:

- Property lines have been shown and the tracts have been labeled more clearly on the grading plan. A copy of the revised grading plan (short job) is attached.
- A copy of the agreement between Dr. Galbreth and the property owner of Lot N-3A is enclosed. Our grading plan is in accordance with the grading provisions of this agreement (Section 3. Grading and Improvement Agreement)
- A copy of the portions of the Tanoan plat (pertinent to the drainage easements) is attached.
- Grading extents have been extended as noted.
- A cross section showing the portion of the spillway where the material needs to be removed has been added. The spillway elevation is 5982.75 per the original design plans. The actual spillway control section occurs downstream of the area where material needs to be removed. At the control section there is a buried gabion structure which has been labeled on the drawing for reference. No changes are proposed to either the gabion structure or the grading in the vicinity of the gabion structure.
- The reseeding note has been modified to state that gravel mulch shall be used on slopes steeper than 3:1.

This should address all of your comments. If you have any additional comments or questions please call me at (505) 823-1000.

Sincerely,

Craig Hoover, P.E.
Senior Vice President
Manager Water Resources Group

CWH/sd
Enclosures

cc: Kurt Wagener, P.E., AMAFCA (w/Encl.)
Dr. William E. Galbreth (w/Encl.)

RECEIVED
JUL 27 2012
HYDROLOGY SECTION

Cherne, Curtis

From: Cherne, Curtis
Sent: Thursday, August 09, 2012 8:23 AM
To: 'Alandren Etlantus'
Cc: 'drbgalbreth@yahoo.com'
Subject: RE: Pino Grading

Elandren,
Per the last e-mail, there were three property owners affected, so I would need something else. The agreement also states that written approval of the construction plans is required from Meckenbier. That has not been received.
Please refer to previous e-mail.

Curtis

From: Alandren Etlantus [mailto:aetlantus@bhinc.com]
Sent: Friday, August 03, 2012 11:09 AM
To: Cherne, Curtis
Cc: Craig Hoover
Subject: Pino Grading

Hi Curtis.

Here is a copy of Exhibit 4 to the Settlement Agreement and Release relating to the Pino Grading that Dr. Galbreth is requesting a permit for.

Please let me know if you need anything else.

Thank you,

Alandren Etlantus, P.E.
Project Manager
Water Resources

Bohannan Huston
Courtyard I
7500 Jefferson St. NE
Albuquerque, NM 87109-4335
www.bhinc.com
voice: 505.823.1000 **facsimile:** 505.798-7988 **toll free:** 800.877.5332

DISCLAIMER: This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. Any unauthorized review, use, disclosure or dissemination is strictly prohibited. If you received this e-mail in error, please notify the sender by reply e-mail and delete this e-mail immediately

SCOTT A. VERHINES, P.E.
STATE ENGINEER

DAM SAFETY BUREAU
CONCHA ORTIZ Y PINO BLDG
P.O. BOX 25102
SANTA FE, NEW MEXICO 87504
(505) 827-6122
(505) 476-0220 FAX

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
Santa Fe

September 5, 2013

Mr. Jerry Lovato, PE
Executive Engineer
Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect Ave. NE
Albuquerque, NM 87107

RE: Inspection of Pino Dam, Bernalillo County, OSE File No. D-419

Dear Mr. Lovato,

On June 21, 2013 the Office of the State Engineer (OSE) inspected Pino Dam. The dam has been given a condition rating of Satisfactory based on field inspection and review of documentation. The enclosed inspection memorandum lists required actions.

The OSE is in receipt of the Emergency Action Plan for AMAFCA dams which, when accepted for filing, will cover Pino Dam. The document will be reviewed as soon as possible but the dam breach and inundation analysis to support evacuation mapping will have to be provided complete the review.

Modifications to the reservoir pool area were observed during the inspection of the dam. The OSE has learned that those activities were carried out by others and may be on hold at this time. Please note that modifications to an existing dam facility must be reviewed and permitted by the OSE under 19.25.12.19 NMAC. If you become aware of plans to modify the Pino Dam and its reservoir pool please inform the OSE and we will discuss potential permitting requirements with those involved.

I am available to discuss the above and can be reached at (505) 383-4134.

Sincerely,

Charles N. Thompson

Charles N. Thompson, P.E.
Chief, Dam Safety Bureau

cnt:

Enclosures: Inspection Memorandum, Inspection Checklist.

email: Kurt Wagener, PE, AMAFCA
Curtis Cherne, PE, CFM, Principal Engineer, City of Albuquerque (ccherne@cabq.gov)
Richard Rose, PhD, PE, WRAP Director

MEMORANDUM
OFFICE OF THE STATE ENGINEER
Dam Safety Bureau

DATE: August 30, 2013

TO: File D-419

FROM: Charles N. Thompson, P.E., Chief, Dam Safety Bureau

SUBJECT: Inspection of Pino Dam, Bernalillo County, OSE #D-419

On June 21, 2013, I inspected Pino Dam. Kurt Wagener and Herman Gabaldon of the Albuquerque Metropolitan Arroyo Flood Control Authority participated in the inspection. Observations made during the inspection are indicated on the attached Inspection Checklist. Required actions for the dam owner are listed below.

Required Actions

1. Continue to implement proactive rodent abatement measures and collapse and backfill rodent burrows with suitable embankment material.
2. Continue to control and remove woody vegetation in accordance with procedures found in the Operation and Maintenance (O&M) Manual for the dam.
3. Monitor erosion on the downstream face of the dam annually and take appropriate corrective action per the O&M Manual.
4. Prepare and submit a breach analysis, inundation mapping and evacuation maps to complete the Emergency Action Plan for the dam.
5. Inform the OSE of any proposed activities to modify the dam, the spillway, the reservoir pool or make any other changes to the dam.

Additional information from the OSE and the Federal Emergency Management Agency to assist dam owners is available on the OSE website at:
www.ose.state.nm.us/water_info_dam_safety_info.html .

Compliance with Rules and Regulations

Operation and Maintenance Manual and Emergency Action Plan
The Operation and Maintenance (O&M) Manual for Pino Dam was accepted for filing in December 2012. A draft Emergency Action Plan (EAP) has been submitted to cover AMAFCA facilities and it is awaiting review by the OSE. A breach analysis to support inundation and evacuation mapping for Pino Dam has been received some time ago and comments were provided by the OSE at that time. The OSE last commented on breach analysis and inundation mapping for the dam in September 2010. Section 19.25.12.21 NMAC establishes O&M Manual and EAP requirements for existing dams.

Spillway Capacity
A Hydrologic analysis was performed for the dam and was accepted by the OSE in June 2009. Pino Dam is a High Hazard dam and the spillway design flood is runoff from the Probable Maximum Precipitation event. The overall capacity of the spillway has been verified based on

the approved hydrologic analysis and calculations on file. There have been requests to modify the spillway in the past. There are a number of constructed features and landscape in the spillway that will affect the performance of the spillway in an extreme storm event. The effects of these features must be considered in spillway modeling and breach analysis calculations that are developed for inundation mapping for the EAP.

Alterations

A significant amount of grading has taken place in right side of the reservoir pool area. The OSE has learned that this work was apparently initiated to construct residential housing. State Regulations governing dams require that modifications to an existing dam must receive approval from the State Engineer. These modifications include operations within the reservoir pool that are outside of normal work covered in the Operations and Maintenance Manual. Any proposed activities within the dam pool must be coordinated with the Office of the State Engineer. The level of detail required for a permit application will be dictated by the extent of the proposed modifications.

Design and Construction Documentation

There are design reports, as-let construction drawings and construction specifications on file with the OSE for this dam. It is outside the scope of this inspection report to perform a detailed review of the design documents for compliance with the OSE requirements outlined in the current rules and regulations for dams. The as-let drawings on file with the OSE appear to represent the as constructed condition. Therefore, it is assumed that the information on file with the OSE Dam Safety Bureau sufficiently documents the critical analysis parameters used in the design and construction of Pino Dam.

Inspection Findings

Overall Dam Condition

Based on the field inspection and a cursory review of available documentation Pino Dam is in Satisfactory condition. Satisfactory condition is defined as follows: "No existing or potential dam safety deficiencies are recognized. Acceptable performance is expected under all loading conditions in accordance with state engineer's rules and regulations for dams or tolerable risk guidelines."

Hazard Potential Classification

The hazard potential classification for Pino Dam is high. The classification is appropriate.

Woody Vegetation and Erosion Control

Woody vegetation is present in some form on most of the dam faces. This vegetation must be monitored and controlled in accord with procedures found in the O&M Manual. Vegetation such as Russian Olive should be removed immediately in accord with accepted practices.

Erosion has been a problem at Pino Dam in the past with particular issues on the downstream face. Rilling was observed at a number of locations on the dam and erosion must be monitored and corrective action should be taken at the appropriate time.

There are a few locations where residents have been accessing the dam and trails have formed as a result. These trails should be monitored to assure that erosion does not become a problem.

Monitoring Data

A survey of settlement monuments was performed in late 2012 and the results are on file with the OSE. The owner represents that there is no cause for action based on that survey.

Conduit inspection

The outlet conduit of Pino Dam was inspected by video means in 2011 and the results are on file with the OSE.

Charles N. Thompson, P.E.
Dam Safety Bureau Chief

CNT

New Mexico Office of the State Engineer
Dam Safety Bureau
Inspection Checklist

County: Bernalillo	**Dam Name:** Pino Dam	**OSE No.:**D-419	**Fed ID No.:** NM00419
Inspection Performed By: Charles Thompson	**Inspection Date:** 6/21/2013	**Last Inspection Date:** 1/16/2007	
Owner Name: Albuquerque Metropolitan Arroyo Flood Control Authority	**Owner Address:** 2600 Prospect Ave. NE Albuquerque, NM 87107	**Owner Contact:** Kurt Wagener **Owner Phone No.:** 505-884-2215	
Purpose of Dam: Flood Control	**Hazard Class:** High	**Hazard Class Appropriate:** Yes☒ No☐	
Dam Location: West of Tramway Blvd.; North of Academy Blvd.	**Latitude:** 35.15667	**Longitude:** -106.50284	
Weather: Clear, Warm	**Attendees:** Kurt Wagener, AMAFCA;		

1. General Conditions	Satisfactory	Needs Attention	N/A	Remarks:
a. Access for O & M	☒	☐	☐	
b. Unauthorized access restricted	☒	☐	☐	
c. No unauthorized alterations	☐	☒	☐	Earthwork in reservoir pool may require permitting by OSE.

2. Upstream Slope	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion control	☒	☐	☐	
b. Woody vegetation control	☐	☒	☐	Localized woody veg. should be monitored for removal or control.
c. Rodent control	☒	☐	☐	
d. Distortion or cracking	☒	☐	☐	
e. Upstream wave protection	☐	☐	☒	

3. Dam Crest	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion control	☒	☐	☐	
b. Woody vegetation control	☐	☒	☐	Monitor woody vegetation at edges and control per O&M manual procedures
c. Rodent control	☒	☐	☐	
d. Distortion or cracking	☒	☐	☐	

4. Downstream Slope	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion control	☐	☒	☐	Monitor rill erosion and correct as needed.
b. Woody vegetation control	☐	☒	☐	Localized woody veg. should be monitored for removal or control.
c. Rodent control	☐	☒	☐	Monitor and control rodent activity.
d. Distortion or cracking	☒	☐	☐	
e. Seepage control	☐	☐	☒	

5. Downstream Area	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion control	☒	☐	☐	
b. Woody vegetation control	☒	☐	☐	
c. Rodent control	☐	☒	☐	Monitor and control rodents to prevent migration to downstream dam face.
d. Distortion or cracking	☒	☐	☐	
e. Seepage or boils	☐	☐	☒	
f. Drains or Wells	☐	☐	☒	Est. gpm

Dam Name: Pino Dam **Inspection Date:** 06/21/13 **File No.** D-419

6. Abutment Contacts	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion, cracks, or slides	☒	☐	☐	
b. Woody vegetation	☒	☐	☐	
c. Distortion or cracking	☒	☐	☐	
d. Seepage	☐	☐	☒	
e. Drains or Wells	☐	☐	☒	Est. gpm

7. Reservoir	Satisfactory	Needs Attention	N/A	Remarks:
a. Developed/Encroachment	☐	☒	☐	Earthwork in reservoir area for residential development—consultation with OSE required.
b. Banks and slopes stable	☒	☐	☐	
c. Obstruction or debris	☒	☐	☐	Please continue to control and remove debris that is temporarily located in the pool area.
d. Sediment level	= approx. 1 to 2 feet at outlet			
e. Water level	=			Reservoir empty

8. Intake Structure	Type of Structure: Concrete tower with ported risers			
	Satisfactory	Needs Attention	N/A	Remarks:
a. Concrete condition	☒	☐	☐	
b. Reinforcement encasement	☒	☐	☐	
c. Coating adequacy	☒	☐	☐	
d. Leakage	☒	☐	☐	
e. Trash rack condition	☒	☐	☐	
f. Inlet unobstructed	☒	☐	☐	
g. Gates operative	☐	☐	☒	
h. Woody vegetation	☒	☐	☐	
Number of intake ports	33	Number of ports open:		33

9. Gates & Valves	Satisfactory	Needs Attention	N/A	Remarks:
a. Gates Operative	☐	☐	☒	
b. Gate Condition	☐	☐	☒	
c. Leakage	☐	☐	☒	Est. gpm
d. Access control	☐	☐	☒	

10. Outlet Conduit	Type of Conduit: 36-inch RCP			Estimated Discharge: None
	Interior inspection: Yes ☒ Date: July 1, 2011			No☐
	Satisfactory	Needs Attention	N/A	Remarks:
a. Overall Condition	☒	☐	☐	See 2011 conduit inspection on file
b. Condition of surfaces	☐	☐	☐	See 2011 conduit inspection on file
c. Reinforcement encasement	☐	☐	☐	See 2011 conduit inspection on file
d. Clear of obstructions	☐	☐	☐	See 2011 conduit inspection on file
e. Joint Condition	☐	☐	☐	See 2011 conduit inspection on file
f. Leakage	☐	☐	☒	
g. Alignment	☐	☐	☐	See 2011 conduit inspection on file

11. Outlet Energy Dissipator	Satisfactory	Needs Attention	N/A	Remarks:
a. Concrete condition	☒	☐	☐	
b. Reinforcement encasement	☒	☐	☐	
c. Joint Condition	☒	☐	☐	
d. Riprap condition	☒	☐	☐	
e. Clear of obstructions	☒	☐	☐	
f. Woody vegetation control	☒	☐	☐	

Dam Name: Pino Dam **Inspection Date:** 06/21/13 **File No.** D-419

12. Outfall & Outlet Channel	Satisfactory	Needs Attention	N/A	Remarks:
a. Erosion	☒	☐	☐	
b. Obstructions or debris	☒	☐	☐	
c. Erosion protection	☒	☐	☐	
Woody vegetation control	☒	☐	☐	

13. Spillway	Satisfactory	Needs Attention	N/A	Remarks:
a. Clear of obstructions	☒	☐	☐	
b. Condition of entrance	☒	☐	☐	Affects of landscape and other features need to be considered in any future spillway modification designs.
c. Condition of control section	☒	☐	☐	"
d. Condition spillway floor	☒	☐	☐	"
e. Condition of walls or slopes	☐	☐	☐	
f. Condition of joints	☐	☐	☒	
g. Energy dissipation	☐	☐	☒	
h. Condition of exit channel	☒	☐	☐	
i. Seepage control	☐	☐	☒	
j. Erosion control	☐	☐	☒	
k. Rodent control	☒	☐	☐	
l. Woody vegetation control	☐	☒	☐	
m. Capacity	☒	☐	☐	SDF: Probable Maximum storm. Capacity has been verified by analysis on file.

14. Instrumentation	Satisfactory	Needs Attention	N/A	Remarks:
a. Structure instrumented	☒	☐	☐	
b. Monitoring performed	☒	☐	☐	2012 survey on file.
c. Piezometers	☐	☐	☒	
d. Settlement monuments	☒	☐	☐	
e. Other	☐	☐	☒	

Overall Remarks:	Erosion rilling continues and will have to be monitored and action taken as needed. Trails used by residents will require monitoring over time to make sure that they do not contribute to erosion. Earthwork modifications in reservoir pool area require coordination with the OSE Dam Safety Bureau. .

Date: 8/30/13

Signature: Charles N. Thompson

Cherne, Curtis

From: Cherne, Curtis
Sent: Monday, July 22, 2013 11:43 AM
To: 'Thompson, Charles, OSE'
Cc: 'Chaudhary, Sushil K, OSE'; Wolfe, Bryan K.
Subject: RE:

Chuck,
Good Morning.

Background,
In March 0f 2012, Lynn Mazur of AMAFCA contacted me regarding grading in the dam pool. On March 29, 2012, the City Engineer wrote a letter to William Galbreth ordering the property owner to cease grading operations until a Grading Permit and Floodplain Development Permit were approved.
Jerry Lovato, P.E. of AMAFCA had approved a plan for Rough Grading on May 20, 2011.

After a number of meetings and grading plan submittals, Hydrology approved the "Tuscany Village Rough Grading Plan", Bohannan Huston, Inc. stamp date 7-27-12 on September 6, 2012. Bohannan Huston Inc. (Craig Hoover, P.E.) submitted a Technical Memorandum stamp date June 20, 2012 stating that "...more material is being removed than filled within the limits of the floodplain..."

The "superpad" was graded in advance of a planned residential subdivision. Hydrology has not seen any recent development plans for this subdivision. The drainage file, E22D022, is available for review.

If you have any questions or would like to set a meeting to discuss, please contact me at 924-3986.

Curtis Cherne, P.E., CFM
Principal Engineer
Planning Dept, COA

From: Thompson, Charles, OSE [mailto:Charles.Thompson@state.nm.us]
Sent: Monday, July 15, 2013 11:27 AM
To: Cherne, Curtis
Cc: Chaudhary, Sushil K, OSE
Subject:

Good Morning Curtis,
During a recent inspection of Pino Dam I noticed that there has been some grading within the pool area of the dam (photo enclosed). Kurt W. from AMAFCA informed me that there was a development project that had done some work in there and then stopped.

Can you please give me some background on that particular project and its status? Pino Dam is regulated by the Office of the State Engineer and a modification within the dam storage pool area will require a permit from OSE to modify or alter. Our office can inform the person who is planning the project of his/her requirements under NMAC 19.25.12.

Thanks, and I hope things are going well for you.
CT

Charles N. Thompson, PE
Chief, Dam Safety Bureau
Office of the State Engineer
505-383-4134 Office
505-827-6068 Fax

505-660-3313 Cell

Mailing:
P.O. Box 25102
Santa Fe, New Mexico 87504
Physical:
5550 San Antonio Dr. NE
Albuquerque, NM
www.ose.state.nm.us/water_info_dam_safety.html

Tim Eichenberg, Chairman
Danny Hernandez, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Ronald D. Brown, Assistant Secretary-Treasurer
Daniel F. Lyon, Director

Jerry M. Lovato, P.E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone: (505) 884-2215 Fax: (505) 884-0214
Website: www.amafca.org

February 19, 2013

Ms. Genny Donart, P.E.
Isaacson & Arfman, P.A.
128 Monroe St. NE
Albuquerque, NM 87108

Via E-mail

Re: The Foothills Drainage Master Plan & CLOMR for Pino Arroyo, ZAP E-22
Draft January 16, 2013

Dear Ms. Donart:

As a follow-up to our meeting on February 19 between you, Fred Arfman, John Mechenbier, John Davidson, AMAFCA Executive Engineer, Jerry Lovato, and me, the parties agreed that certain items must be addressed before I can approve the referenced report. I also will not present the Turnkey Agreement to the AMAFCA Board of Directors until the items have been resolved or alternate solutions have been agreed to. The items discussed were:

1. Isaacson & Arfman (I&A) will prepare a preliminary grading plan showing the interim condition grading between Tracts N-3-A, John Mechenbier, and Tract N-7-A, William Galbreth. We must assure that the tie slopes for the improved Pino Channel will work between the two properties.
2. Mr. Mechenbier will contact Dr. Galbreth to provide the 100-year hydrologic model prepared by Dr. Galbreth's engineer, Bohannan Huston, Inc. (BHI), per his agreement with Dr. Galbreth. If Mr. Mechenbier's attorney agrees, he will provide a copy of the agreement with Dr. Galbreth to AMAFCA. Jerry Lovato will determine if the agreement will satisfy the Board's concern about the owners' projects working together.
3. If I&A cannot get the revised 100-year model, I&A will evaluate the cost between preparing a new model themselves versus designing the channel for the current FEMA-approved flow rate, which is substantially greater. The Interactive Facilities Map (under Useful Information) on AMAFCA's website shows the major drainage facilities and diversions into the Pino Dam. It may be necessary to do some research on the High Desert Subdivision's drainage system to delineate the drainage basin.
4. AMAFCA will approve the Conditional Letter of Map Revision (CLOMR) using the agreed-upon 100-year flow rate before it is sent to FEMA. The FEMA floodplain revision will cover Tramway Boulevard, both tracts and the Pino Dam pool.

Other important issues were discussed, namely, the potential of the Pino Dam spillway failure in the Probable Maximum Precipitation (PMP) storm event. Although Mr. Mechenbier's project does not directly affect the dynamics of the spillway, any alteration to the dam pool may be perceived as contributing to the instability of the spillway. Future development will be closely evaluated to assure that compensatory PMP volume is provided for fill placed within the Pino Dam pool.

I did review the report and offer the following comments:

1. Will the entire report be submitted to FEMA? (yes) It is not clear what is the drainage report and what is the CLOMR.
2. It is not clear on the annotated FIRMs how the revised floodplain will tie into the existing floodplain.
3. The CLOMR cannot be just for the channelized Pino Arroyo. FEMA will want to see the headwater effects of the box culvert at Tramway and the backwater effects of the Pino Dam. Therefore, HEC-RAS cross-sections will need to extend upstream of Tramway for a short distance, and the flow will need to be routed through the dam. The floodplain will tie to existing floodplain downstream of the dam.
4. Sections C and D of the Riverine Structures Form will need to be completed.
5. Mention that AMAFCA maintains the dam and has informally agreed to maintain the channel. FEMA may request a copy of the Turnkey Agreement. I would let them make that request.

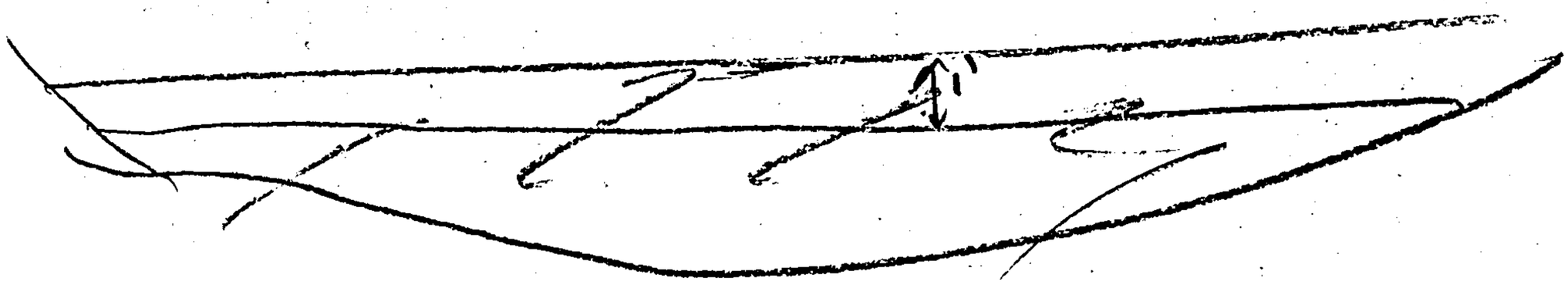
If you have any questions, please call me at 884-2215.

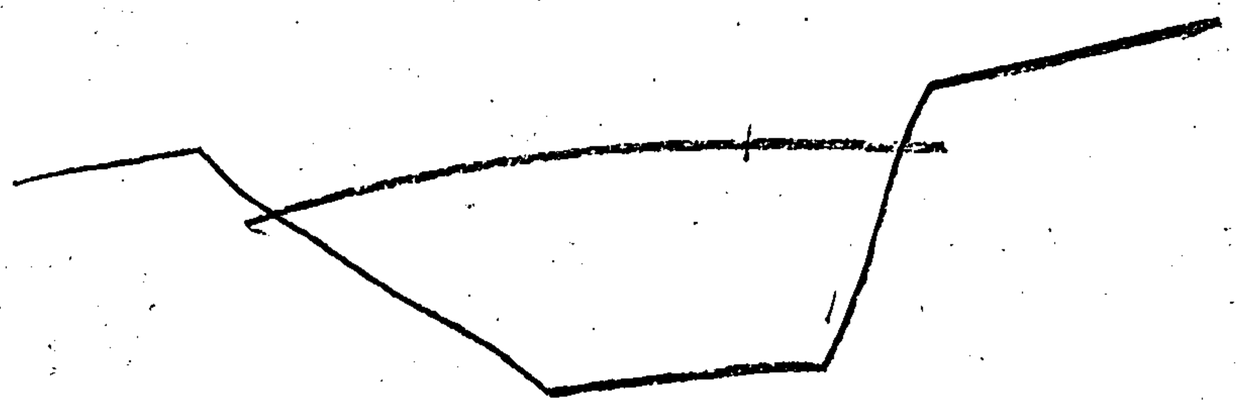
Sincerely,
AMAFCA

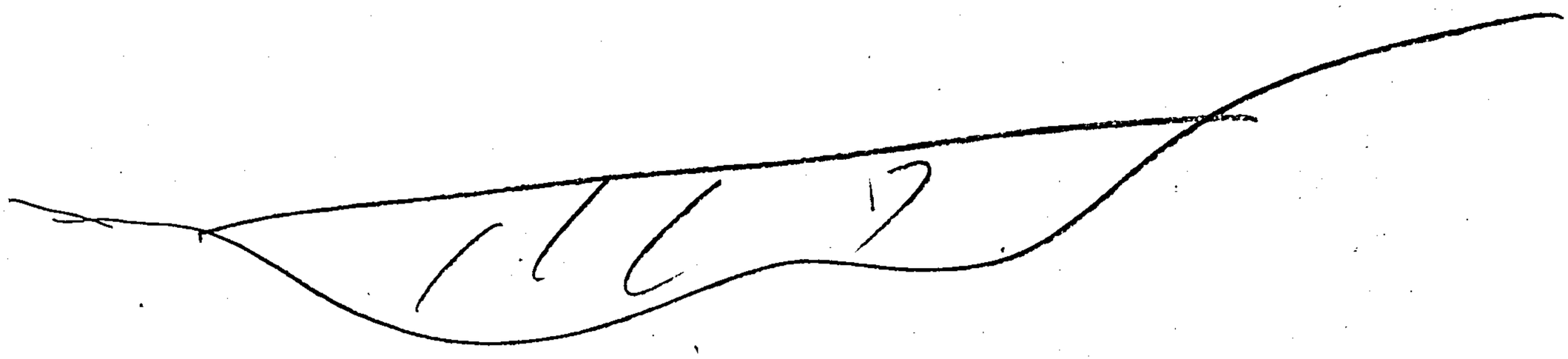
Lynn M. Mazur

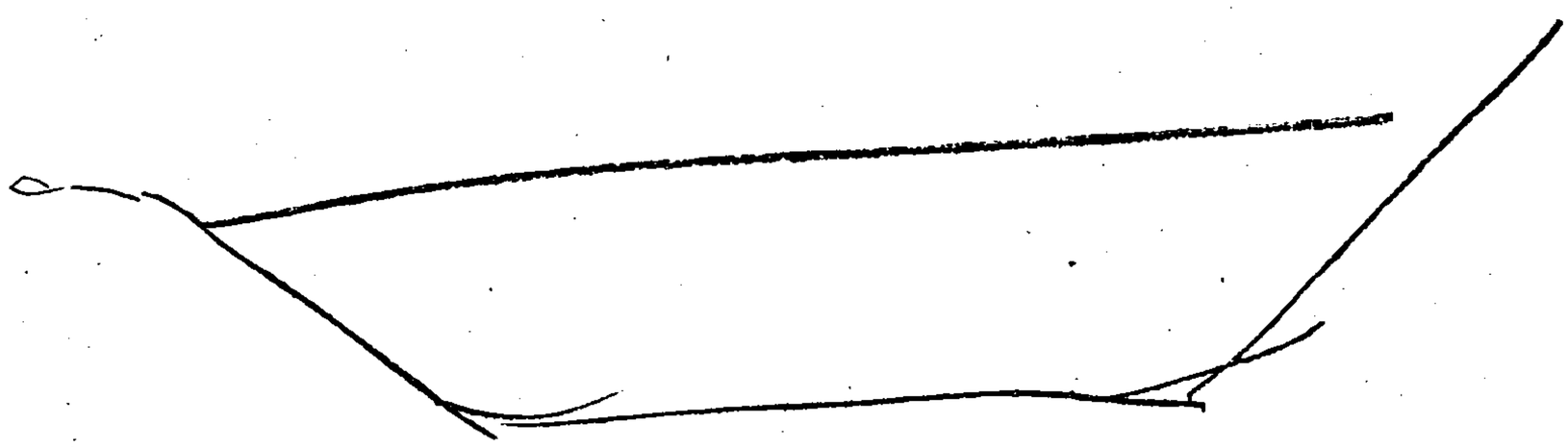
Lynn M. Mazur, P.E., C.F.M.
Development Review Engineer

C: Curtis Cherne, City Hydrology







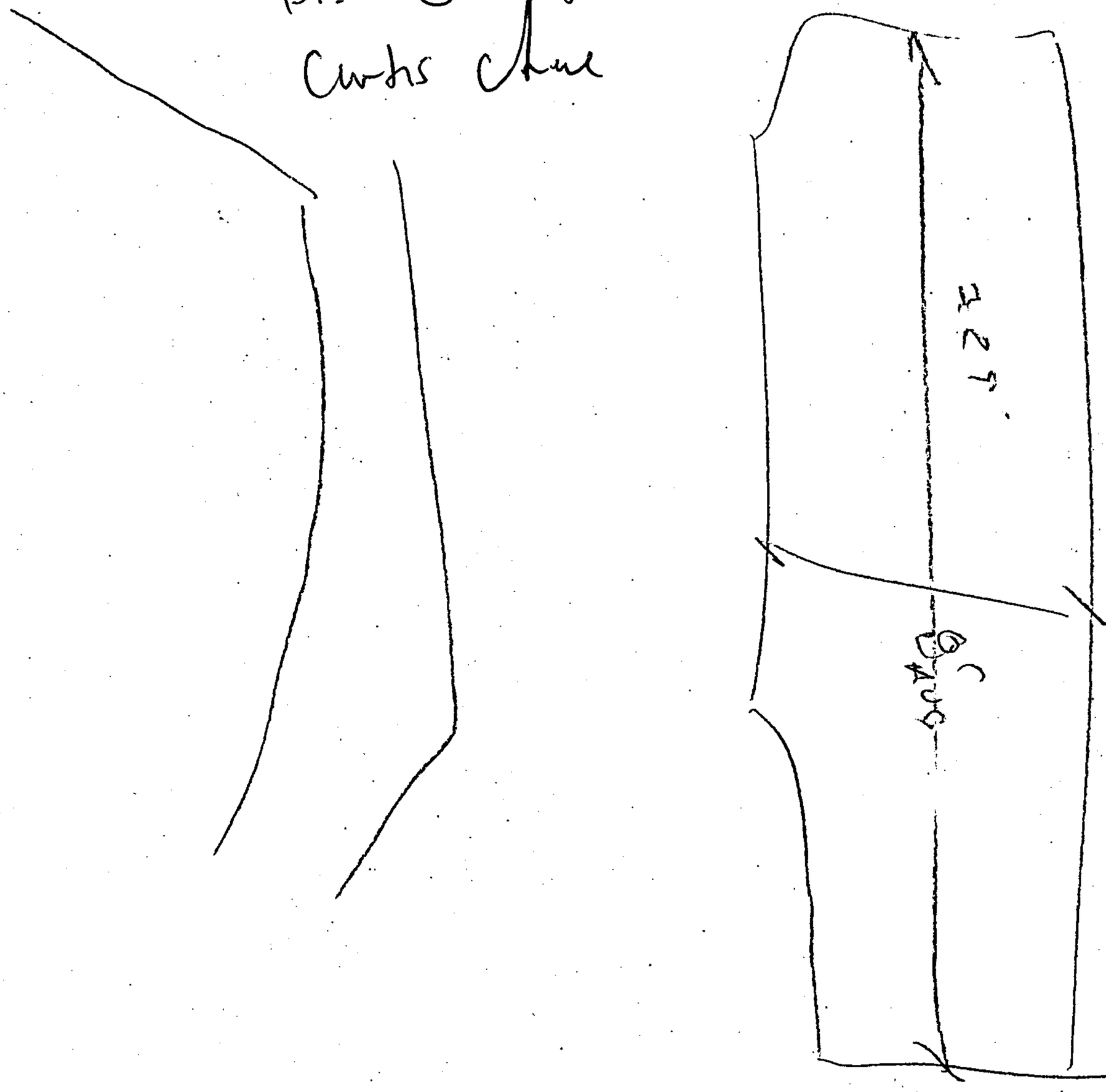


4-19-12

Submit Grading plan for all grade work

Mtg w/

Jerry Lovato
Craig Hoover
Larry Sais
Dr. Galbreth
Curtis Chase



DRAINAGE AND TRANSPORTATION INFORMATION SHEET
(Rev. 12/2005)

PROJECT TITLE: Pino Dam Rough Grading — ZONE MAP/DRG. FILE: E22 / D022.
DRB#: _____ EPC: _____ — WORK ORDER: _____

LEGAL DESCRIPTION: Tract N-4 and N-7 of Tanoan Properties

CITY ADDRESS: _____

ENGINEERING FIRM: Bohannan Huston, Inc — CONTACT: Alandren Etlantus, P.E.
ADDRESS: 7500 Jefferson ST NE — PHONE: 505-823-1000
CITY, STATE: Albuquerque, NM — ZIP CODE: 87109

OWNER: William Galbreth — CONTACT: _____
ADDRESS: 4830 Juan Tabo NE — PHONE: 505-298-8103
CITY, STATE: Albuquerque, NM — ZIP CODE: 87111

ARCHITECT: _____ — CONTACT: _____
ADDRESS: _____ — PHONE: _____
CITY, STATE: _____ — ZIP CODE: _____

SURVEYOR: _____ — CONTACT: _____
ADDRESS: _____ — PHONE: _____
CITY, STATE: _____ — ZIP CODE: _____

CONTRACTOR: Larry Saiz — CONTACT: _____
ADDRESS: Saiz Trucking & Earthmoving — PHONE: 505-450-7232
CITY, STATE: Albuquerque, NM — ZIP CODE: 87111

TYPE OF SUBMITTAL:
- ☐ DRAINAGE ANALYSIS REPORT
- ☑ DRAINAGE PLAN 1st SUBMITTAL
- ☐ DRAINAGE PLAN RESUBMITTAL
- ☐ CONCEPTUAL G & D PLAN
- ☐ GRADING PLAN
- ☐ EROSION CONTROL PLAN
- ☐ ENGINEER'S CERT (HYDROLOGY)
- ☐ CLOMR/LOMR
- ☐ TRAFFIC CIRCULATION LAYOUT
- ☐ ENGINEER CERT (TCL)
- ☐ ENGINEER CERT (DRB SITE PLAN)
- ☐ OTHER (SPECIFY)

CHECK TYPE OF APPROVAL SOUGHT:
- ☐ SIA/FINANCIAL GUARANTEE RELEASE
- ☐ PRELIMINARY PLAT APPROVAL
- ☐ S. DEV. PLAN FOR SUB'D APPROVAL
- ☐ S. DEV. FOR BLDG. PERMIT APPROVAL
- ☐ SECTOR PLAN APPROVAL
- ☐ FINAL PLAT APPROVAL
- ☐ FOUNDATION PERMIT APPROVAL
- ☑ BUILDING PERMIT APPROVAL
- ☐ CERTIFICATE OF OCCUPANCY (PERM)
- ☐ CERTIFICATE OF OCCUPANCY (TEMP)
- ☒ GRADING PERMIT APPROVAL
- ☐ PAVING PERMIT APPROVAL
- ☐ WORK ORDER APPROVAL
- ☑ OTHER (SPECIFY): Flood Plain - Permit

RECEIVED
APR 06 2012
HYDROLOGY SECTION

WAS A PRE-DESIGN CONFERENCE ATTENDED:
- ☐ YES
- ☒ NO
- ☐ COPY PROVIDED

SUBMITTED BY: _____ DATE: April 5, 2012

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location and scope to the proposed development define the degree of drainage detail. One or more of the following levels of submittal may be required based on the following:

1. **Conceptual Grading and Drainage Plan:** Required for approval of Site Development Plans greater than five (5) acres and Sector Plans.
2. **Drainage Plans:** Required for building permits, grading permits, paving permits and site plans less than five (5) acres.
3. **Drainage Report:** Required for subdivision containing more than ten (10) lots or constituting five (5) acres or more.

CITY OF ALBUQUERQUE

April 17, 2012

Alandren Etlantus, P.E.
Bohannan Houston Inc.
7500 Jefferson NE CY 1
Albuquerque, NM 87107

Re: Pino Dam Rough Grading
Grading Plan
Engineer's Stamp Dated 5-19-11 (E22/D022)

Dear Ms. Etlantus;

Based upon the information provided in your submittal received 04-6-12, the above referenced plan cannot be approved for Grading Permit until the following comments are addressed:

- Preliminary plat approval from the Development Review Board is required.
- This plan proposes grading on adjacent properties. Provide a written approval from adjacent property owners.
- Provide property lines.
- Provide a written letter of approval from AMAFCA.
- Grading has occurred in a flood plain without an approved Flood Plain Permit. Stop all grading at this time. Removal of any fill brought onto this site may need to be removed if procedures for infill were not followed.

If you have any questions, you can contact me at 924-3986 or Rudy Rael at 924-3977.

Sincerely,

Curtis Cherne, P.E.
Principal Engineer, Planning Dept.
Development and Building Services

RER/CAC
C: file

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

Bohannan Huston

Engineering
Spatial Data
Advanced Technologies

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335
www.bhinc.com
voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

RECEIVED
JUN 20 2012

CLIENT/COURIER TRANSMITTAL

To: Curtis A. Charne, PE
City Hydrologist, Section Manager
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87103

Requested by: Craig / srd

Date: June 20, 2012

Time Due:
- ☐ **This A.M.**
- ☒ **This P.M.**
- ☐ **Rush** _____
- ☐ **By Tomorrow**

Phone: (505) 924-3986
Job No.: 060297.022.01 WRABQ

Job Name: Tuscany Village PH 2

DELIVERY VIA

- ☒ **Courier** ☐ **Federal Express**
- ☐ **Mail** ☐ **UPS**
- ☐ **Other**

PICK UP

Item: ____

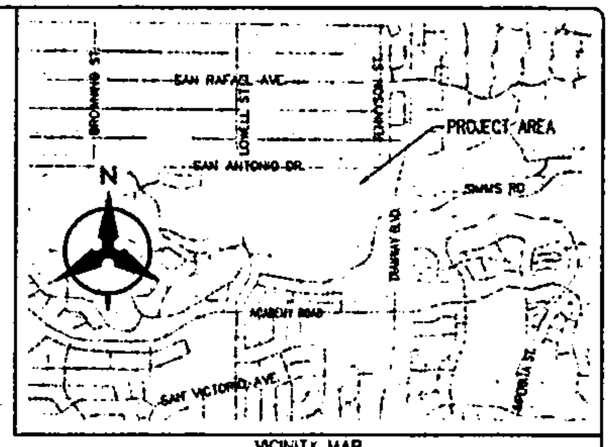
ITEM NO.	QUANTITY	DESCRIPTION
1	2	Memorandums
2	1	Rough Grading plan set

COMMENTS / INSTRUCTIONS

REC'D BY:_____ **DATE:**_____ **TIME:**_____

TUSCANY VILLAGE

CONSTRUCTION PLANS FOR
TUSCANY VILLAGE ROUGH GRADING
ALBUQUERQUE, NEW MEXICO



VICINITY MAP

INDEX

SHEET NUMBER	DESCRIPTION
1	TITLE SHEET
2	SURVEY CONTROL SHEET
3	GENERAL NOTES SHEET
4	GRADING PLAN (PHASE 1)

APPROVED FOR WORK IN AMAFCA EASEMENT:

JERRY M. LOVATO P.E.
EXECUTIVE ENGINEER

6/22/2012
DATE

ALBUQUERQUE METROPOLITAN ARROYO
FLOOD CONTROL AUTHORITY

Bohannan ▲ Huston

Courtyard I 7500 Jefferson St. NE Albuquerque, NM 87109-4335
ENGINEERING ▲ SPATIAL DATA ▲ ADVANCED TECHNOLOGIES

Zone Atlas No.	Sheet	Of
E-22-Z	1	4

BHI JOB NO. 050297

P:\050297\Mf\Design\Grading\plans\050297_Title.dwg
Wed, 20 Jun 2012 - 1:46:42pm, Plotted by: ELLISON
File Last Updated: Tue, 12 Jun 2012, 2:34pm Last Save By: jlaun

CITY OF ALBUQUERQUE

July 12, 2012

Craig Hoover, P.E.
Bohannan Houston Inc.
7500 Jefferson NE CY 1
Albuquerque, NM 87107

Re: Tuscany Village Rough Grading Plan
Engineer's Stamp Dated 6-20-12 (E22/D022)

Dear Mr. Hoover;

Based upon the information provided in your submittal received 7-2-12, the above referenced plan cannot be approved for Grading Permit until the following comments are addressed:

- Provide property lines on the grading plan.
- The engineer for the owner of Lot N3A went on record at DRB to inform Hydrology that this project has encroached onto his property in excess of an agreement (Grading and Improvement Agreement?). If proposed grades extend into Lot N3A, approval from the owner of Lot N3A is required.
- Provide easement information.
- Grading plan extents should extend north to San Antonio Dr.
- Provide a detail of the spillway area and BHI 2007 survey as referenced on this plan. Where is the dam spillway and what is its elevation?
- Reseeding notes do not provide an erosion control for slopes between 2:1 and 3:1. An engineered means of erosion control is required for slopes steeper than 3:1.
- Since Phase 2 was provided for information only, it was not reviewed and comments in this letter apply to Phase 1 only.

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

Grading Approval
Pino Arroyo EXISTING
298-8103
BHI
Galbach

Sincerely,

Curtis Cherne, P.E.
Principal Engineer, Planning Dept.
Development and Building Services

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

Plno Dam Grading
Rec'd 4-19-12

DR. WILLIAM GALBRETH, D.D.S.

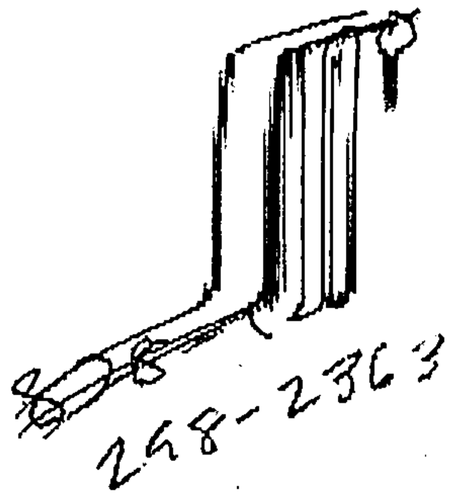
STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by DR. WILLIAM GALBRETH, on this 1st day of ~~January~~ April, 2011.

Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/22/2013



February 6, 2012

Dr. William E. Galbreth
4830 Juan Tabo Blvd. NE
Albuquerque, NM 87111

Re: Pino Dam – Rough Grading: Access Permission

Dear Dr. Galbreth:

With this letter I do hereby grant you and your contractor(s) permission to access my property, Tract N-5 of Tanoan Properties, and to place fill material on the property in accordance with the Construction Plans for Pino Dam Rough Grading as approved by AMAFCA 5/20/2011. I also grant permission for you to remove material from the south end of the tract and relocate it to the north end. Records of the volume of material moved from the south end to the north end shall be kept by you or your contractor and provided to me for my information.

Sincerely,

Ronald Brown, Pres

Ronald Brown for B & A Development Corp, Owner

Cc: Larry Saiz
Craig Hoover, Bohannan Huston, Inc.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "SAR") is made and entered into, effective on the date in ~~January~~ April, 2011 that the last Party has executed this SAR (the "Effective Date"), for good and sufficient consideration, by and between JOHN E. MECHENBIER, MECHENBIER CONSTRUCTION INC., and AMERICUS, LLC (collectively "Mechenbier") and WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC, and DR. WILLIAM GALBRETH, D.D.S. (collectively "Galbreth") (herein from time to time Mechenbier and Galbreth are individually referred to as a "Party" and collectively referred to as the "Parties").

Background:

A. Mechenbier and Galbreth own adjoining parcels of vacant land in the north Albuquerque Acres area, Bernalillo County, State of New Mexico. The adjoining properties share a common legal property boundary. A series of approximately five power poles and power transmission lines cross the parties' adjoining parties. As a result, the adjoining properties and related power poles and transmission lines, disputes arose between Mechenbier and Galbreth. Galbreth on September 16, 2009 sued Mechenbier in *Galbreth v. Mechenbier*, Second Judicial District Court for the State of New Mexico, Cause No. CV-2009-10967 (the "Lawsuit"), for claims related to the movement of the power poles, and for other claim. On November 02, 2009, Mechenbier answered the complaint and asserted a number of counterclaims against Galbreth also arising out of the adjoining properties and other matters. As of the effective date of this SAR, Galbreth's claims and Mechenbier's counterclaims remain pending before the Second Judicial District Court, State of New Mexico.

B. The Parties have negotiated and reached a settlement agreement. The terms of the Parties' agreements are set out in this SAR.

Accordingly, the Parties hereby agree as follows:

1. **Sale of Land.** Mechenbier shall sell to Galbreth and Galbreth shall buy the approximately 109,571 square foot tract of land more particularly depicted on Exhibit A to the Real Estate Purchase Agreement hereinto attached as Exhibit 1. The purchased land is currently the subject of a bulk land plat and upon final plating will be known as Tract N-7-A.

(a) The sale price shall be Seven Hundred and Thirty Thousand Dollars ($730,000).

(b) The terms and conditions of the sale of land shall be governed by the Real Estate Purchase Agreement hereto attached to this SAR as Exhibit 1. All matters concerning the sale of the land shall be governed by the said Real Estate Purchase Agreement which is herein incorporated by reference.

2. **PNM Power Pole Escrow Agreement.** The parties shall share in the cost of PNM relocating and consolidating the fifth set of six power poles more fully identified as the "poles" on Exhibit 2 hereto. The fifth set of paired power poles shall be consolidated to a single or double power pole as required by PNM and placed in a straight target line with the previously consolidated and relocated poles. The moved paired set of poles shall be consolidated and relocated to substantially the same location where they are currently located. Upon written demand from either party, the parties agree to execute within sixty (60) days any necessary contract, work order or other paperwork necessary for PNM to relocate and consolidate the fifth set of paired poles.

(a) The parties have agreed to place money in escrow for this relocation and consolidation of the fifth set of paired power poles. The terms of the parties' escrow agreement and the sharing of cost for the movement of the poles shall be on the terms

and conditions set forth in the PNM Power Pole Escrow Agreement attached hereto as Exhibit 3. All matters concerning the disbursement of the funds deposited in escrow shall be governed by the said PNM Power Pole Escrow Agreement which is herein incorporated by reference.

3. **Grading and Improvement Agreement.** In order to develop the new tract, it will be necessary for Galbreth to transfer approximately 55,000 cubic yards of fill dirt from the south and east side of the AMAFCA Dam within the flood impound limits to be used as the fill necessary to build a three-to-one retaining slope on the southern and eastern sides of Galbreth's property. The terms and conditions of this movement of dirt shall be governed and controlled by the Grading and Improvement Agreement attached hereto as Exhibit 4. All matters concerning the sale of the land shall be governed by the said Grading and Improvement Agreement which is herein incorporated by reference.

4. **Release of All Claims.** Each party does hereby dismiss, release, and/or discharge all claims, counterclaims, causes of action, and demands, that either party has, ever had or may hereafter have on account of or by reason of any and every matter involving or arising out any act or omission described in the Lawsuit (including the counterclaims made in the Lawsuit) or that could have been described in the Lawsuit (or raised as a counterclaim). It is the intent of the parties entering into this Agreement to fully and effectively dismiss and release any and all claims that either party may have, or all other persons or entities claiming by, through, or under either party, for any and all damage, loss or injury arising out of or resulting from the acts, omissions and transactions described in the Lawsuit and the counterclaims filed in the Lawsuit. Galbreth and Mechenbier shall dismiss, with prejudice, all claims and counterclaims, known and unknown, in the matter known as *Galbreth v. Mechenbier*, Second Judicial District Court, CV 2009 10967. Each party to bear their own fees and costs.

5. **Covenants Regarding Future Development.** Galbreth and Mechenbier each covenant and agree not to obstruct, oppose, or otherwise interfere, directly or indirectly, in any capacity, with the other parties' future development plans for his adjoining property, including without limitation objecting at public hearings, and/or opposing the other parties' proposed site development plans. This covenant and agreement not to obstruct, oppose, or otherwise interfere shall run with the purchased land and be recorded as a deed restriction on the purchased land. Galbreth acknowledges Mechenbier's intent to vacate and acquire the former Tramway right-of-way and to re-zone Tracts 17 and 18 of High Desert for use in developing retail/office space similar to the existing uses in the area and consistent with C-1 zoning. Galbreth will not obstruct, oppose, or otherwise interfere with such plan.

6. **Limited Indemnity.** Galbreth shall indemnify, hold harmless, and defend Mechenbier from all claims for injury relating to or arising from Galbreth's performance of work on Mechenbier's property. Additionally, Galbreth shall name Mechenbier as an additional insured on an appropriate liability policy covering all such work.

7. **Arbitration Agreement.** Any controversy or claim arising out of or relating to this Agreement, or the claimed breach thereof, shall be settled by arbitration in Albuquerque, New Mexico, and judgment upon the award rendered in such arbitration may be entered and enforced by any court having competent jurisdiction thereof. Arbitration shall be brought upon written notice of one party to the other of a demand for arbitration, including a recitation of the claim or dispute for which arbitration is sought (the "Demand Notice"). Bruce Hall or, if he is unavailable, a single arbitrator appointed by the chief judge of the 2nd Judicial District, State of New Mexico shall be the arbitrator ("Arbitrator"). The arbitration shall be conducted in accordance with the New Mexico Uniform Arbitration Act, NMSA 1978, § 44-7A-1 et seq.

(2001) and the Arbitrator shall have all of the authority conferred by the Act including the authority to award equitable remedies. The Arbitrator shall have jurisdiction over the subject matter of the issues arising under this SAR and the agreements to be executed by the parties, attached as exhibits hereto, and jurisdiction over the parties for these purposes. The parties hereby irrevocably consent to arbitration of all issues arising out of the terms, enforceability, construction or interpretation of this SAR or any such agreements.

In addition to other remedies, the Arbitrator is authorized to award either party a sum to compensate the party for the time and expense of the arbitration if they determine that arbitration was demanded without reasonable cause. In such event, the Arbitrator may also assess the costs of the arbitration proceeding against the party that demanded arbitration. In all other cases, the costs of the arbitration proceeding shall be assessed against the party against whom the arbitration award is determined, or against both parties if the determination is against both. In the event of arbitration regarding the performance, breach or construction of this Agreement, the prevailing party shall be entitled to the recovery of reasonable attorneys' fees and costs or court incurred in such arbitration or litigation. The parties shall be entitled to discovery in arbitration consistent with the Federal Rules of Civil Procedure.

8. **Authority to Execute.** The signatories represent that they have full authority to execute this SAR, and to bind all persons claiming by, through, under, for, or on behalf of them.

9. **Entire Agreement.** The Parties acknowledge and represent that this SAR and the exhibits attached hereto and the agreements referred to therein constitute the entire agreement of the Parties and that the terms hereof are contractual and not mere recitals. Neither Party has made representations to nor relied on any representations by any of the other Parties. All prior discussions and negotiations are merged herein.

10. **Controlling Law.** This SAR shall be construed and interpreted in accordance with the laws of the State of New Mexico. In the event that it becomes necessary for any Party to enforce the terms and conditions of this Agreement, the prevailing party shall recover their reasonable attorney's fees and costs from the losing party. In the event of any conflict or ambiguity between the terms of this Agreement and any exhibit attached hereto, the terms of the exhibit shall supersede and control over the terms of this Agreement.

11. **Binding Effect.** This SAR is binding on the Parties and their heirs, successors, and assigns, and any parent, subsidiary and affiliated companies of the Parties.

12. **Savings Clause.** In the event any term or provision of this SAR is found or determined to be void, unenforceable or contrary to public policy under any applicable statute or rule of law, such term or provision shall be deemed severed from this SAR, and all other provisions of this SAR shall remain in full force and effect.

13. **Counterparts and E-Signatures and Faxed Signatures.** This SAR may be executed in counterparts. A signature that is set out on a page that is scanned and transmitted electronically, or faxed, shall be afforded the same legal effect as an original signature.

14. **Non-Disparagement.** No Party will disparage any other Party or person released herein relative to any subject matter that is the subject of this SAR and the exhibits attached hereto and the release contained therein.

15. **Confidentiality.** The terms hereof are confidential and shall not be disclosed except as set forth herein or as required to enforce their terms or pursuant to an order of court of competent jurisdiction or governmental agency. This shall not prohibit disclosure for tax preparation purposes or to the IRS, nor shall it prohibit disclosure of the deed restriction described in Section 6 herein.

16. **Notice.** Any notice given hereunder to Mechenbier shall be deemed effective as of the time and date mailed or faxed to *Clifford K Atkinson and/or Justin D. Rodriguez, c/o Atkinson, Thal & Baker, P.C., 201 Third Street NW, Suite 1850, Albuquerque, New Mexico 87102; telephone: (505) 764-8111; facsimile: (505) 764-8374.* Any notice given hereunder to Galbreth shall be deemed effective as of the time and date mailed or faxed to *David A. Freedman and/or Molly Schmidt-Nowara at Freedman Boyd Hollander Goldberg Ives and Duncan, P.A., 20 First Plaza NW, Suite 700, Albuquerque NM 87102; telephone: (505) 842-9960; facsimile: (505) 842-0761.*

17. **Conflict With SAR Exhibits.** In the event a conflict should exist between this SAR and the exhibits and attachments hereto, the terms of the exhibits and attachments shall control. Every effort shall be made to read the two in harmony, however, to the extent a conflict cannot be resolved, the terms and conditions of the exhibits and attachments hereto shall control.

18. **Term Sheet.** The July 7, 2010 "Final Mechenbier/Galbreth Term Sheet" hereto attached as Exhibit 5 to the SAR shall be superseded and nullified by the final execution of this SAR.

JOHN E. MECHENBIER

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by JOHN E. MECHENBIER on this 15 day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1-22-2013

MECHENBIER CONSTRUCTION INC.

By: John E. Mechenbier

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by John E Mechenbier as President on behalf of MECHENBIER CONSTRUCTION INC., a New Mexico corporation, on this 15 day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1-22-2013

AMERICUS, LLC

By: [redacted]

STATE OF New MEXICO)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by John E Mechenbier as Managing Member on behalf of AMERICUS, LLC, a New Mexico limited liability company, on this 1st day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7/22/2013

WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC,

By: William E Galbreth
Member

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by William E Galbreth as Member on behalf of WILLIAM E. GALBRETH LAND DEVELOPMENT CO., LLC, a New Mexico limited liability company, on this 1st day of ~~January~~ April, 2011.

Bertha E Baca
Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 7-22-2013

DR. WILLIAM GALBRETH, D.D.S.

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

The foregoing instrument was signed and acknowledged before me by DR. WILLIAM GALBRETH, on this 1st day of ~~January~~ April, 2011.

Notary Public

My Commission Expires:

OFFICIAL SEAL
Bertha E. Baca
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/22/2013

emergency elevation?
Spillway

DRAINAGE AND TRANSPORTATION INFORMATION SHEET

(REV 02/2012)

PROJECT TITLE: Tuscany Village Ph 2 ZONE MAP: E22/D022
DRB#: _____ EPC#: _____ WORK ORDER#: _____

LEGAL DESCRIPTION: _____
CITY ADDRESS: _____

ENGINEERING FIRM: Bohannan Huston CONTACT: Craig Hoover
ADDRESS: 7500 Jefferson St. NE PHONE: 823-1000
CITY, STATE: ABQ 87109 ZIP CODE:
EMAIL: choover@bhinc.com

OWNER: Dr. Galbreth CONTACT: _____
ADDRESS: _____ PHONE: _____
CITY, STATE: _____ ZIP CODE: _____

ARCHITECT: _____ CONTACT: _____
ADDRESS: _____ PHONE: _____
CITY, STATE: _____ ZIP CODE: _____
EMAIL: _____

SURVEYOR: _____ CONTACT: _____
ADDRESS: _____ PHONE: _____
CITY, STATE: _____ ZIP CODE: _____

CONTRACTOR: _____ CONTACT: _____
ADDRESS: _____ PHONE: _____
CITY, STATE: _____ ZIP CODE: _____

TYPE OF SUBMITTAL:
_____ DRAINAGE REPORT
_____ DRAINAGE PLAN 1st SUBMITTAL
_____ DRAINAGE PLAN RESUBMITTAL
_____ CONCEPTUAL G & D PLAN
__X__ GRADING PLAN
_____ EROSION CONTROL PLAN
_____ ENGINEER'S CERT (HYDROLOGY)
_____ CLOMR/LOMR
_____ TRAFFIC CIRCULATION LAYOUT
_____ ENGINEER'S CERT (TCL)
_____ ENGINEER'S CERT (DRB SITE PLAN)
_____ OTHER (SPECIFY)

CHECK TYPE OF APPROVAL SOUGHT:
_____ SIA/FINANCIAL GUARANTEE RELEASE
_____ PRELIMINARY PLAT APPROVAL
_____ S. DEV. PLAN FOR SUB'D APPROVAL
_____ S. DEV. FOR BLDG. PERMIT APPROVAL
_____ SECTOR PLAN APPROVAL
_____ FINAL PLAT APPROVAL
_____ FOUNDATION PERMIT APPROVAL
_____ BUILDING PERMIT APPROVAL
_____ CERTIFICATE OF OCCUPANCY (PERM)
_____ CERTIFICATE OF OCCUPANCY (TEMP)
__X__ GRADING PERMIT APPROVAL
_____ PAVING PERMIT APPROVAL
_____ WORK ORDER APPROVAL
_____ GRADING CERTIFICATION
_____ OTHER (SPECIFY) SO-19

WAS A PRE-DESIGN CONFERENCE ATTENDED:
__X__ YES
_____ NO
_____ COPY PROVIDED

Rec 7-2

DATE SUBMITTED: 6-20-12 BY: CC / Craig Hoover

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location, and scope to the proposed development defines the degree of drainage detail. One or more of the following levels of submittal may be required based on the following:

1. **Conceptual Grading and Drainage Plan**: Required for approval of Site Development Plans greater than five (5) acres and Sector Plans.
2. **Drainage Plans**: Required for building permits, grading permits, paving permits and site plans less than five (5) acres.
3. **Drainage Report**: Required for subdivision containing more than ten (10) lots or constituting five (5) acres or more.

Bohannan Huston

Engineering
Spatial Data
Advanced Technologies

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

CLIENT/COURIER TRANSMITTAL

To: Curtis A. Charne, PE
City Hydrologist, Section Manager
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87103

Requested by: Craig / srd

Date: June 22, 2012

Time Due:
- ☐ This A.M.
- ☐ This P.M.
- ☒ Rush A.S.A.P.
- ☐ By Tomorrow

Phone: (505) 924-3986
Job No.: 060297.022.01 WRABQ

Job Name: Tuscany Village PH 2

DELIVERY VIA

- ☒ Courier ☐ Federal Express
- ☐ Mail ☐ UPS
- ☐ Other

PICK UP

Item: _____

ITEM NO.	QUANTITY	DESCRIPTION
1	1	Rough Grading plan set

COMMENTS / INSTRUCTIONS

RECEIVED
JUN 22 2012
HYDROLOGY SECTION

I gave the runner a DTIS and told him they needs to fill it out.
cc 6-22-12

REC'D BY:_____ **DATE:**_____ **TIME:**_____

Bohannan Huston

Engineering
Spatial Data
Advanced Technologies

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335
www.bhinc.com
voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

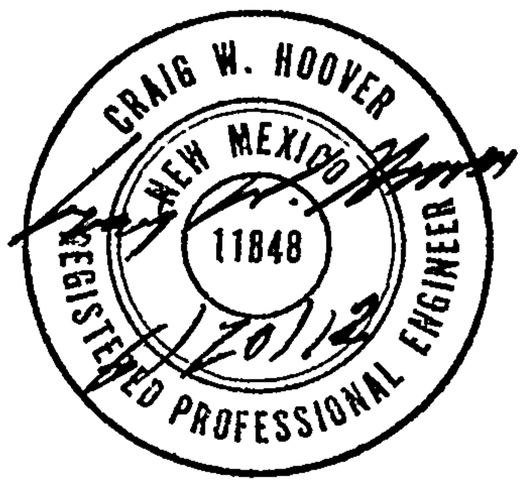
MEMORANDUM

DATE: JUNE 20, 2012

TO: CURTIS CHERNE, P.E.
CITY OF ALBUQUERQUE

KURT WAGENER, P.E.
AMAFCA

FROM: CRAIG HOOVER, P.E.
BOHANNAN HUSTON, INC.



SUBJECT: TUSCANY VILLAGE – PHASE 1 GRADING PLAN: BASIS OF DESIGN MEMO

This technical memorandum is submitted for review and approval by the City of Albuquerque (City) and the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA). The purpose of this technical memorandum is to present project information for proposed Tuscany Village grading within the 100-year floodplain and dam pool of Pino Dam, located in northeast Albuquerque, New Mexico, in support of obtaining required floodplain and grading permits. This memorandum presents an analysis and assessment of the impacts of the proposed grading on the dam function and 100-year floodplain behind the dam.

The Tuscany Village development is located in northeast Albuquerque, immediately south of San Antonio Drive and west of Tramway Boulevard. The underlying property owner of Tracts N-5 and N-7 (see Construction Plans for Tuscany Village Rough Grading, sheet 2 of 4 enclosed) desires to place fill on these tracts to create future building pad(s). These tracts are encumbered with a number of drainage easements, within the Pino Dam flood pool. Property rights and easement language allow modifications within these tracts provided the Pino Dam and its function are not adversely impacted. The attached Tuscany Village rough grading plan set proposes the removal of excess material from the existing dam pool to be used as a portion of the fill material with the remainder of the fill material coming from off site.

In accordance with Federal Emergency Management Agency (FEMA) requirements, impacts to existing 100-year floodplains must be addressed as part of any project affecting a floodplain. To remain in compliance with FEMA requirements, the City requires an approved Floodplain Permit. To obtain this permit the developer must demonstrate the impact on the existing site floodplain. The existing floodplain for this site consists of a Zone AE floodplain with a base flood elevation (BFE) of 5973 feet (ft). Bohannan Huston, Inc. has completed storage volume analysis to determine the impact of the proposed grading on the BFE. Based on the proposed grading plan (see sheet 4 of 4 attached) the total cut within the limits of the existing floodplain is approximately 52,555 cubic yards (cy) while the proposed fill is 45,740 cy for a net increase in the storage volume of 6,815 cy or 4.2 acre-feet. Per the plan, more material is being removed than filled within the limits of the floodplain producing a lower BFE of 5972 ft (rounded from 5972.25 to the nearest foot per FEMA criteria). See Appendix A for earthwork and volume calculations.

$$6815\ yd^3 \left| \frac{27\ ft^3}{yd^3} \right. = 184005\ ft^7 \left| \frac{}{43560} \right. = 4.2\ ac\text{-}ft$$

Recommendation

The proposed grading for Tuscany Village within the dam pool and Tracts N-5 and N-7 does not adversely impact the function of the dam. Existing outfalls to the dam are maintained, existing dead storage is maintained, and the BFE is actually decreased as result of the proposed grading. This is an interim grading condition and no infrastructure will be constructed until further approvals are required. As such, AMAFCA and the City should approve the necessary floodplain and grading permits to allow the earthwork operations (as shown on the attached construction plan set) to be completed.

APPENDIX A

Earthwork and Dam Pool Volume/100-Year Floodplain Elevation Calculations

EARTHWORK CALCULATIONS PHASE 1			
Design Surface	Existing Surface	Volume (CY)	
		Cut	Fill
5942 North Embankment	Xtopo-Final-all	1831	0
5942 South West Embankment	Xtopo-Final-all	32718	0
5942 South Embankment	Xtopo-Final-all	6834	0
Phase 1 Grading	Xtopo-Final-all	11171	45739
	Total	**52554**	**45739**
	Net (Cut-Fill) (CY)		**6815**
	Net (Cut-Fill) (AC-FT)		**4.22**

Triangle Volume Report

Report Created: 5/30/2012
Time: 7:59am

Mode: Entire Surface
Input Grid Factor: 1.000000

Original Surface: **Xtopo-Final-all**
Description: Final xtopo for all surfaces
Preference: Default
Type: Existing
Design Surface: **5942 North Embankment**
Description:
Preference: Default
Type: Design
Cut Factor: 1.0000
Fill Factor: 1.0000

Cut:	49451.4271 cu ft
Fill:	6.2544 cu ft
Net:	49445.1726 cu ft

Cut:	1831.5343 cu yd
Fill:	0.2316 cu yd
Net:	1831.3027 cu yd

Original Surface: **Xtopo-Final-all**
Description: Final xtopo for all surfaces
Preference: Default
Type: Existing
Design Surface: **5942 South West Embankment**
Description:
Preference: Default
Type: Design
Cut Factor: 1.0000
Fill Factor: 1.0000

Cut:	883403.7754 cu ft
Fill:	3.9970 cu ft
Net:	883399.7785 cu ft

Cut:	32718.6583 cu yd
Fill:	0.1480 cu yd
Net:	32718.5103 cu yd

Original Surface: **Xtopo-Final-all**
Description: Final xtopo for all surfaces

Preference:	Default
Type:	Existing
Design Surface:	**5942 South Embankment**
Description:	
Preference:	Default
Type:	Design
Cut Factor:	1.0000
Fill Factor:	1.0000

Cut:	184543.9772 cu ft
Fill:	19.4096 cu ft
Net:	184524.5676 cu ft

Cut:	6834.9621 cu yd
Fill:	0.7189 cu yd
Net:	6834.2432 cu yd

Original Surface:	**Xtopo-Final-all**
Description:	Final xtopo for all surfaces
Preference:	Default
Type:	Existing
Design Surface:	**PHASE_1_GRADING**
Description:	PHASE_1_GRADING
Preference:	Default
Type:	Design
Cut Factor:	1.0000
Fill Factor:	1.0000

Cut:	301639.5735 cu ft
Fill:	1234968.5539 cu ft
Net:	-933328.9805 cu ft

Cut:	11171.8361 cu yd
Fill:	45739.5761 cu yd
Net:	-34567.7400 cu yd

Storage Curve

;Name Existing
;Method From DTM
;Max Elev 5975.0000 ft
;Min Elev 5942.7500 ft
;Volume 509.4387 ac-ft
;UNITS: ft, ac-ft
5942.7500 32.1332
5943.0000 33.7030
5943.5000 36.9377
5944.0000 40.3181
5944.5000 43.7853
5945.0000 47.3552
5945.5000 51.0243
5946.0000 54.9338
5946.5000 58.9509
5947.0000 63.0958
5947.5000 67.3538
5948.0000 71.7237
5948.5000 76.2036
5949.0000 80.7959
5949.5000 85.5020
5950.0000 90.3216
5950.5000 95.2579
5951.0000 100.3318
5951.5000 105.6061
5952.0000 110.9744
5952.5000 119.5660
5953.0000 125.5869
5953.5000 131.7934
5954.0000 138.1771
5954.5000 144.7413
5955.0000 151.4873
5955.5000 158.3981
5956.0000 165.4688
5956.5000 172.7262
5957.0000 180.1122
5957.5000 187.6144
5958.0000 195.2236
5958.5000 202.9321
5959.0000 210.7363
5959.5000 218.6346
5960.0000 226.6272
5960.5000 234.7151
5961.0000 242.8990
5961.5000 251.1894
5962.0000 259.5719
5962.5000 268.0795
5963.0000 276.6994
5963.5000 285.4420
5964.0000 294.3058
5964.5000 303.2585
5965.0000 312.2960
5965.5000 321.4165
5966.0000 330.6181
5966.5000 339.9017
5967.0000 349.2656
5967.5000 358.7079
5968.0000 368.2277
5968.5000 377.8247
5969.0000 387.4980
5969.5000 397.2472
5970.0000 407.0723
5970.5000 416.9727
5971.0000 426.9482
5971.5000 436.9990
5972.0000 447.1239
5972.5000 457.3240
5973.0000 467.5970 -- BFE = 5973.0
5973.5000 477.9435
5974.0000 488.3651
5974.5000 498.8635
5975.0000 509.4387

Storage Curve

;Name Phase 1
;Method From DTM
;Max Elev 5975.0000 ft
;Min Elev 5942.7500 ft
;Volume 521.7659 ac-ft
;UNITS: ft, ac-ft
5942.7500 32.1874
5943.0000 34.0423
5943.5000 38.5708
5944.0000 43.2078
5944.5000 47.9590
5945.0000 52.8163
5945.5000 57.7890
5946.0000 55.4225
5946.5000 68.2793
5947.0000 73.6920
5947.5000 79.2151
5948.0000 84.8354
5948.5000 90.5657
5949.0000 96.3954
5949.5000 102.3315
5950.0000 108.3627
5950.5000 114.4926
5951.0000 120.7665
5951.5000 127.0996
5952.0000 133.5255
5952.5000 140.0750
5953.0000 146.7174
5953.5000 153.4676
5954.0000 160.3030
5954.5000 167.2290
5955.0000 174.2397
5955.5000 181.3401
5956.0000 188.5254
5956.5000 195.8056
5957.0000 203.1720
5957.5000 210.6273
5958.0000 218.1644
5958.5000 225.7844
5959.0000 233.4844
5959.5000 241.2664
5960.0000 249.1271
5960.5000 257.0696
5961.0000 265.0968
5961.5000 273.2061
5962.0000 281.3987
5962.5000 289.6794
5963.0000 298.0390
5963.5000 306.5145
5964.0000 315.0770
5964.5000 323.7218
5965.0000 332.4431
5965.5000 341.2406
5966.0000 350.1125
5966.5000 359.0587
5967.0000 368.0774
5967.5000 377.1676
5968.0000 386.3268
5968.5000 395.5557
5969.0000 404.8521
5969.5000 414.2167
5970.0000 423.6492
5970.5000 433.1494
5971.0000 442.7170
5971.5000 452.3527
5972.0000 462.0559 → BFE = 5972 @ 25' (New BFE Based on Phase 1 Grading)
5972.5000 471.8275
5973.0000 481.6684
5973.5000 491.5828
5974.0000 501.5710
5974.5000 511.6329
5975.0000 521.7659

Bohannan Huston

Engineering
Spatial Data
Advanced Technologies

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335
www.bhinc.com
voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

MEMORANDUM

DATE: JUNE 20, 2012

TO: CURTIS CHERNE, P.E.
CITY OF ALBUQUERQUE

KURT WAGENER, P.E.
AMAFCA

FROM: CRAIG HOOVER, P.E.
BOHANNAN HUSTON, INC.



SUBJECT: TUSCANY VILLAGE – PHASE 2 GRADING PLAN: BASIS OF DESIGN MEMO

The Tuscany Village development is located in northeast Albuquerque, immediately south of San Antonio Drive and west of Tramway Boulevard. The underlying property owner of Tracts N-5 and N-7 desires to place fill on these tracts to create future building pad(s). These tracts are encumbered with a number of drainage easements, within the Pino Dam flood pool and emergency spillway. Property rights and easement language allow modifications within these tracts provided the Pino Dam and its function are not adversely impacted. This memo is to establish the proposed final grading for the Tuscany Village development.

To facilitate approvals and expedite earthwork operations, grading for Tuscany Village located in northeast Albuquerque adjacent to and within the Pino Dam pool has been divided into two phases. The Phase 1 basis of design memo is dated June 20, 2012 and was prepared and submitted for review and approval by the City of Albuquerque (City) and the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA). Phase 2 Grading, the subject of this memo is provided for informational purposes and no approvals for Phase 2 Grading are being sought at this time. Imminent grading will be limited to Phase 1 pending approval by the City and AMAFCA.

The attached grading plan, sheet 7 of the Pino Dam Spillway Modifications Construction Plan set, shows the extents of the Phase 2 grading. Sheet 7 also shows existing site topography assuming the Phase 1 grading has already been completed. The grading shown on the attached sheet 7 constitutes the completion of the grading for Tuscany Village both within and external to the Pino Dam pool and spillway

In accordance with Federal Emergency Management Agency (FEMA) requirements, impacts to existing 100-year floodplains must be addressed as part of any project affecting a floodplain. To remain in compliance with FEMA requirements, the City requires an approved Floodplain Permit. To obtain this permit the developer must demonstrate the impact on the existing site floodplain. The existing floodplain for this site consists of a Zone AE floodplain representing the 100-year water surface in the storage pool, with a base flood elevation (BFE) of 5973 feet (ft). As noted in the Basis of Design memo for Phase 1, the BFE will be lowered to 5972 ft as a result of the Phase 1 Grading. As part of this memo Bohannan Huston, Inc. has completed storage volume analysis to determine the impact on the BFE from the proposed Phase 2 Grading. Based on the proposed grading plan (sheet 7, attached) the total cut within the floodplain limits is approximately 1,700 cubic yards (cy) while the proposed fill is 111,900 cy. Per the plan, more material is being filled than removed within the floodplain limits. This results in a net increase in the BFE to 5975 ft. The flood pool inundation limits which are set at the crest of the emergency spillway remain at 5982.75 ft unchanged by the proposed Phase 2 Grading. See Appendix A for earthwork and volume calculations.

APPENDIX A

Earthwork and Dam Pool Volume/100-Year Floodplain Elevation Calculations

Triangle Volume Report

Report Created: 5/29/2012
Time: 5:20pm

Mode: Entire Surface
Input Grid Factor: 1.000000

Original Surface: **Phase_1_Complete_Grading**
Description: Phase 1 Compete Grading
Preference: Default
Type: Design
Design Surface: **Phase_2_Complete_Grading**
Description: Phase 2 complete Grading
Preference: Default
Type: Design
Cut Factor: 1.0000
Fill Factor: 1.0000

Cut:	46351.4139 cu ft
Fill:	3021512.4223 cu ft
Net:	-2975161.0084 cu ft

Cut:	1716.7190 cu yd
Fill:	111907.8675 cu yd
Net:	-110191.1485 cu yd

Storage Curve

;Name Phase 2
;Method From DTM
;Max Elev 5975.0000 ft
;Min Elev 5942.7500 ft
;Volume 475.8933 ac-ft
;UNITS: ft, ac-ft
5942.7500 29.1271
5943.0000 30.8054
5943.5000 34.9664
5944.0000 39.2169
5944.5000 43.5630
5945.0000 47.9968
5945.5000 52.5287
5946.0000 56.3960
5946.5000 62.0874
5947.0000 67.0074
5947.5000 72.0234
5948.0000 77.1210
5948.5000 82.3120
5949.0000 87.5861
5949.5000 92.9478
5950.0000 98.3900
5950.5000 103.9187
5951.0000 109.5815
5951.5000 115.2942
5952.0000 121.0917
5952.5000 127.0044
5953.0000 133.0022
5953.5000 139.1009
5954.0000 145.2773
5954.5000 151.5370
5955.0000 157.8743
5955.5000 164.2948
5956.0000 170.7941
5956.5000 177.3824
5957.0000 184.0515
5957.5000 190.8045
5958.0000 197.6345
5958.5000 204.5428
5959.0000 211.5264
5959.5000 218.5881
5960.0000 225.7242
5960.5000 232.9385
5961.0000 240.2319
5961.5000 247.6082
5962.0000 255.0623
5962.5000 262.6013
5963.0000 270.2161
5963.5000 277.9436
5964.0000 285.7549
5964.5000 293.6459
5965.0000 301.6107
5965.5000 309.6489
5966.0000 317.7593
5966.5000 325.9426
5967.0000 334.1984
5967.5000 342.5286
5968.0000 350.9297
5968.5000 359.4020
5969.0000 367.9437
5969.5000 376.5553
5970.0000 385.2364
5970.5000 393.9871
5971.0000 402.8070
5971.5000 411.6971
5972.0000 420.6569
5972.5000 429.6872
5973.0000 438.7866
5973.5000 447.9564
5974.0000 457.1974
5974.5000 466.5108 → BFE = 5975.0 (New BFE Based on Pivotal + Phase 2 Grading)
5975.0000 475.8933

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

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

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total	

Postmark Here

Sent T

Americus LLC
7736 Jacobo Drive NE
Albuquerque, NM 87109

Street, or PO

City, S

PS Form

See Reverse for Instructions

THAT / THEY must not

ertified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

nportant Reminders:

- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

MPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 *(Reverse)* PSN 7530-02-000-9047

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Americus LLC
7736 Jacobo Drive NE
Albuquerque, NM 87109

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7009 3410 0000 2317 1941

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

City of Albuquerque
Planning Department/DBS
P.O. Box 1293
Albuquerque, NM 87103

CITY OF ALBUQUERQUE

Planning Deptartment
Development & Building Services

Planning Department

Americus LLC
7736 Jacobo Drive NE
Albuquerque, NM 87109

CERTIFIED MAIL™

7009 3410 0000 2317 1941

P O Box 1293 Albuquerque New Mexico 87103

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CITY OF ALBUQUERQUE

March 29, 2012

Americus LLC
7736 Jacobo drive NE
Albuquerque, NM 87109

William Galbreth Land Development Co. LLC
4830 Juan Tabo blvd
Albuquerque, NM 87111

Ameriwest Corporation
C/o Tanoan Communities East
PO Box 94748
Albuquerque, NM 87199

Re: Grading and earth moving within the area of Lots N3, N5 and N7A Tanoan Properties Subdivision

Dear Sir or Madam:

It has come to my attention that grading and earth moving are currently taking place within some or all of the lots referenced above. This violates § 14-5-2-12(A)(3) of the City's Drainage Ordinance which states:

> "Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the City Engineer, shall be required for projects involving more than 500 cubic yards of material or one acre or more in area…."

Additionally, this area appears to be within an Albuquerque Metropolitan Arroyo Flood Control Agency's (AMAFCA) drainage easement and a Federal Emergency Management Agency (FEMA) recognized flood plain.

This earthwork does not have the proper City and AMAFCA approvals. Accordingly, it must cease immediately. If you do not comply with this letter, we will seek civil remedies and possibly criminal penalties under Albuquerque City Ordinance §§ 14-5-2-99 and 1-1-99—providing for up to a $500 fine for each day of violation and 90 days in jail. Additionally, the responsible party(s) may be required to regrade this site back to the previously existing conditions.

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

If you have any questions, please feel free to call Mr. Cherne at 924-3986 or myself at 924-3999.

Sincerely,

Richard Dourte

Richard Dourte, PE
City Engineer
Planning Department

Cc: Deborah Stover, Planning Director
Matt Conrad, Associate Planning Director
Curtis Cherne, PE, City Hydrologist
Kevin Curran, Esq, City Attorney
Blake Whitcomb, Esq, Assistant City Attorney
Jerry Lovato, PE, AMAFCA Executive Engineer
Lynn, Mazur, PE, AMAFCA Engineer
Larry Saiz, Saiz Trucking and Earth Moving, Inc.

7004 2317 1934 0004 0743

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

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

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Tc	

Postmark Here

Ser

Stri
or I

City

Larry Saiz
Saiz Trucking & Earth Moving, Inc.
10601 Central NE
Albuquerque, NM 87102

PS

nstructions

ertified Mail Provides:

A mailing receipt

A unique identifier for your mailpiece

A record of delivery kept by the Postal Service for two years

nportant Reminders:

Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.

Certified Mail is *not* available for any class of international mail.

NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.

For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.

For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.

If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

MPORTANT: Save this receipt and present it when making an inquiry.

S Form 3800, August 2006 *(Reverse)* PSN 7530-02-000-9047

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Larry Saiz
Saiz Trucking & Earth Moving, Inc.
10601 Central NE
Albuquerque, NM 87102

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7009 3410 0000 2317 1934

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

City of Albuquerque
Planning Department/DBS
P.O. Box 1293
Albuquerque, NM 87103

CITY OF ALBUQUERQUE

Planning Deptartment
Development & Building Services

Planning Department

Larry Saiz
Saiz Trucking and Earth Moving, Inc.
10601 Central NE
Albuquerque, NM 87102

7009 3410 0000 0134 1794

CERTIFIED MAIL™

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

P O Box 1293 Albuquerque New Mexico 87103

CITY OF ALBUQUERQUE

March 29, 2012

Americus LLC
7736 Jacobo drive NE
Albuquerque, NM 87109

William Galbreth Land Development Co. LLC
4830 Juan Tabo blvd
Albuquerque, NM 87111

Ameriwest Corporation
C/o Tanoan Communities East
PO Box 94748
Albuquerque, NM 87199

Re: Grading and earth moving within the area of Lots N3, N5 and N7A Tanoan Properties Subdivision

Dear Sir or Madam:

It has come to my attention that grading and earth moving are currently taking place within some or all of the lots referenced above. This violates § 14-5-2-12(A)(3) of the City's Drainage Ordinance which states:

> "Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the City Engineer, shall be required for projects involving more than 500 cubic yards of material or one acre or more in area…."

Additionally, this area appears to be within an Albuquerque Metropolitan Arroyo Flood Control Agency's (AMAFCA) drainage easement and a Federal Emergency Management Agency (FEMA) recognized flood plain.

This earthwork does not have the proper City and AMAFCA approvals. Accordingly, it must cease immediately. If you do not comply with this letter, we will seek civil remedies and possibly criminal penalties under Albuquerque City Ordinance §§ 14-5-2-99 and 1-1-99 providing for up to a $500 fine for each day of violation and 90 days in jail. Additionally, the responsible party(s) may be required to regrade this site back to the previously existing conditions.

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

If you have any questions, please feel free to call Mr. Cherne at 924-3986 or myself at 924-3999.

Sincerely,

Richard Dourte

Richard Dourte, PE
City Engineer
Planning Department

Cc: Deborah Stover, Planning Director
Matt Conrad, Associate Planning Director
Curtis Cherne, PE, City Hydrologist
Kevin Curran, Esq, City Attorney
Blake Whitcomb, Esq, Assistant City Attorney
Jerry Lovato, PE, AMAFCA Executive Engineer
Lynn, Mazur, PE, AMAFCA Engineer
Larry Saiz, Saiz Trucking and Earth Moving, Inc.

EXHIBIT 6

7009 3410 0001 2317 1965

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

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

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total P	

Postmark Here

Sent To

William Galbreth Land Development Co. LLC

Street, A or PO B

4830 Juan Tabo Blvd.

City, Sta

Albuquerque, NM 87111

PS Form 3800, August 2006 — See Reverse for Instructions

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail®.
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS® postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery".*
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 *(Reverse)* PSN 7530-02-000-9047

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

William Galbreth Land
Development Co. LLC
4830 Juan Tabo Blvd.
Albuquerque, NM 87111

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7009 3410 0000 2317 1965

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

City of Albuquerque
Planning Department/DBS
P.O. Box 1293
Albuquerque, NM 87103

CITY OF ALBUQUERQUE

Planning Deptartment
Development & Building Services

Planning Department

William Galbreth Land Development Co. LLC
4830 Juan Tabo Blvd.
Albuquerque, NM 87111

7009 3410 0000 2317 1965

CERTIFIED MAIL™

P O Box 1293 Albuquerque New Mexico 87103

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CITY OF ALBUQUERQUE

March 29, 2012

Americus LLC
7736 Jacobo drive NE
Albuquerque, NM 87109

William Galbreth Land Development Co. LLC
4830 Juan Tabo blvd
Albuquerque, NM 87111

Ameriwest Corporation
C/o Tanoan Communities East
PO Box 94748
Albuquerque, NM 87199

Re: Grading and earth moving within the area of Lots N3, N5 and N7A Tanoan Properties Subdivision

Dear Sir or Madam:

It has come to my attention that grading and earth moving are currently taking place within some or all of the lots referenced above. This violates § 14-5-2-12(A)(3) of the City's Drainage Ordinance which states:

> "Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the City Engineer, shall be required for projects involving more than 500 cubic yards of material or one acre or more in area…."

Additionally, this area appears to be within an Albuquerque Metropolitan Arroyo Flood Control Agency's (AMAFCA) drainage easement and a Federal Emergency Management Agency (FEMA) recognized flood plain.

This earthwork does not have the proper City and AMAFCA approvals. Accordingly, it must cease immediately. If you do not comply with this letter, we will seek civil remedies and possibly criminal penalties under Albuquerque City Ordinance §§ 14-5-2-99 and 1-1-99—providing for up to a $500 fine for each day of violation and 90 days in jail. Additionally, the responsible party(s) may be required to regrade this site back to the previously existing conditions.

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

If you have any questions, please feel free to call Mr. Cherne at 924-3986 or myself at 924-3999.

Sincerely,

Richard Dourte, PE
City Engineer
Planning Department

Cc: Deborah Stover, Planning Director
Matt Conrad, Associate Planning Director
Curtis Cherne, PE, City Hydrologist
Kevin Curran, Esq, City Attorney
Blake Whitcomb, Esq, Assistant City Attorney
Jerry Lovato, PE, AMAFCA Executive Engineer
Lynn, Mazur, PE, AMAFCA Engineer
Larry Saiz, Saiz Trucking and Earth Moving, Inc.

7009 3410 0000 0743 4007 0317 1958

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

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

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark Here

Ameriwest Corporation
C/O Tanoan Communities East
P.O. Box 94748
Albuquerque, NM 87199

PS Form 3800, August 2006

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail® or Priority Mail
- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. Fo valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof o delivery. To obtain Return Receipt service, please complete and attach a Retur Receipt (PS Form 3811) to the article and add applicable postage to cover th fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver fo a duplicate return receipt, a USPS® postmark on your Certified Mail receipt i required.
- For an additional fee, delivery may be restricted to the addressee o addressee's authorized agent. Advise the clerk or mark the mailpiece with th endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the art cle at the post office for postmarking. If a postmark on the Certified Ma receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

PS Form 3800, August 2006 *(Reverse)* PSN 7530-02-000-9047

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ameriwest Corporation
C/O Tanoan Communities East
P.O. Box 94748
Albuquerque, NM 87199

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service lab

7009 3410 0000 2317 1958

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

City of Albuquerque
Planning Department/DBS
P.O. Box 1293
Albuquerque, NM 87103

CITY OF ALBUQUERQUE

Planning Deptartment
Development & Building Services

Planning Department

Ameriwest Corporation
C/O Tanoan Communities East
P.O. Box 94748
Albuquerque, NM 87199

7009 3410 0000 2317 1958

CERTIFIED MAIL™

P O Box 1293 Albuquerque New Mexico 87103

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

CITY OF ALBUQUERQUE

March 29, 2012

Americus LLC
7736 Jacobo drive NE
Albuquerque, NM 87109

William Galbreth Land Development Co. LLC
4830 Juan Tabo blvd
Albuquerque, NM 87111

Ameriwest Corporation
C/o Tanoan Communities East
PO Box 94748
Albuquerque, NM 87199

Re: Grading and earth moving within the area of Lots N3, N5 and N7A Tanoan Properties Subdivision

Dear Sir or Madam:

It has come to my attention that grading and earth moving are currently taking place within some or all of the lots referenced above. This violates § 14-5-2-12(A)(3) of the City's Drainage Ordinance which states:

> "Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one acre or more shall conform to drainage control, flood control and erosion control policies and to standards, criteria and procedures established by the City Engineer with respect to drainage, flood control and erosion control. A grading permit, issued by the City Engineer, shall be required for projects involving more than 500 cubic yards of material or one acre or more in area…."

Additionally, this area appears to be within an Albuquerque Metropolitan Arroyo Flood Control Agency's (AMAFCA) drainage easement and a Federal Emergency Management Agency (FEMA) recognized flood plain.

This earthwork does not have the proper City and AMAFCA approvals. Accordingly, it must cease immediately. If you do not comply with this letter, we will seek civil remedies and possibly criminal penalties under Albuquerque City Ordinance §§ 14-5-2-99 and 1-1-99—providing for up to a $500 fine for each day of violation and 90 days in jail. Additionally, the responsible party(s) may be required to regrade this site back to the previously existing conditions.

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

If you have any questions, please feel free to call Mr. Cherne at 924-3986 or myself at 924-3999.

Sincerely,

Richard Dourte, PE
City Engineer
Planning Department

Cc: Deborah Stover, Planning Director
Matt Conrad, Associate Planning Director
Curtis Cherne, PE, City Hydrologist
Kevin Curran, Esq, City Attorney
Blake Whitcomb, Esq, Assistant City Attorney
Jerry Lovato, PE, AMAFCA Executive Engineer
Lynn, Mazur, PE, AMAFCA Engineer
Larry Saiz, Saiz Trucking and Earth Moving, Inc.

E22/D022C

Cherne, Curtis

From: Cherne, Curtis

Sent: Thursday, August 02, 2012 11:53 AM

To: 'choover@bhinc.com'; 'drbgalbreth@yahoo.com'

Cc: 'Wagener, Kurt'

Subject: pino dam grading

I've reviewed the plan, it looks good. However, since it proposes grading on other people's property, their approval is required. I have asked Elandren for a copy of Exhibit 4 to the settlement agreement as that may help with the approvals.
Owners affected:
Tract N3A-Americus (in agreement but need to verify extents)
Tract N5- Ameriwest C\O tanoan (not in agreement)
Tract N6B- B & A Development Corp (not in agreement)

The plan can be approved if the above parties concur in writing/e-mail with the grading plan stamp date 7-27-12.

Curtis

This plan is waiting
on written Approval
from Mecklenburg.
He apparently does not
want to give it.

cc 8-24-17

CITY OF ALBUQUERQUE
PLANNING DEPARTMENT

HYDROLOGY DEVELOPMENT SECTION
DEVELOPMENT REVIEW BOARD MEMO

DRB PROJECT NO: 1008435 **AGENDA ITEM NO: 1**

SUBJECT: **ENGINEERING COMMENTS:**

Vacation of Public Park Site Easement — Hydrology has no objection.
previously approved

Bulk Land Variance — Hydrology was expecting a revised plat with ROW dedication.
AMAFCA will sign the plat.
plat approved - no objection

Signed plat

RESOLUTION/COMMENTS:

Free Sign up to Speak — Can Fax when id come in

support to receive compaction reports and there is fill placed

encroach additional work has been done Since we wrote letter. might have to ~~rotate~~ patch it up a notch

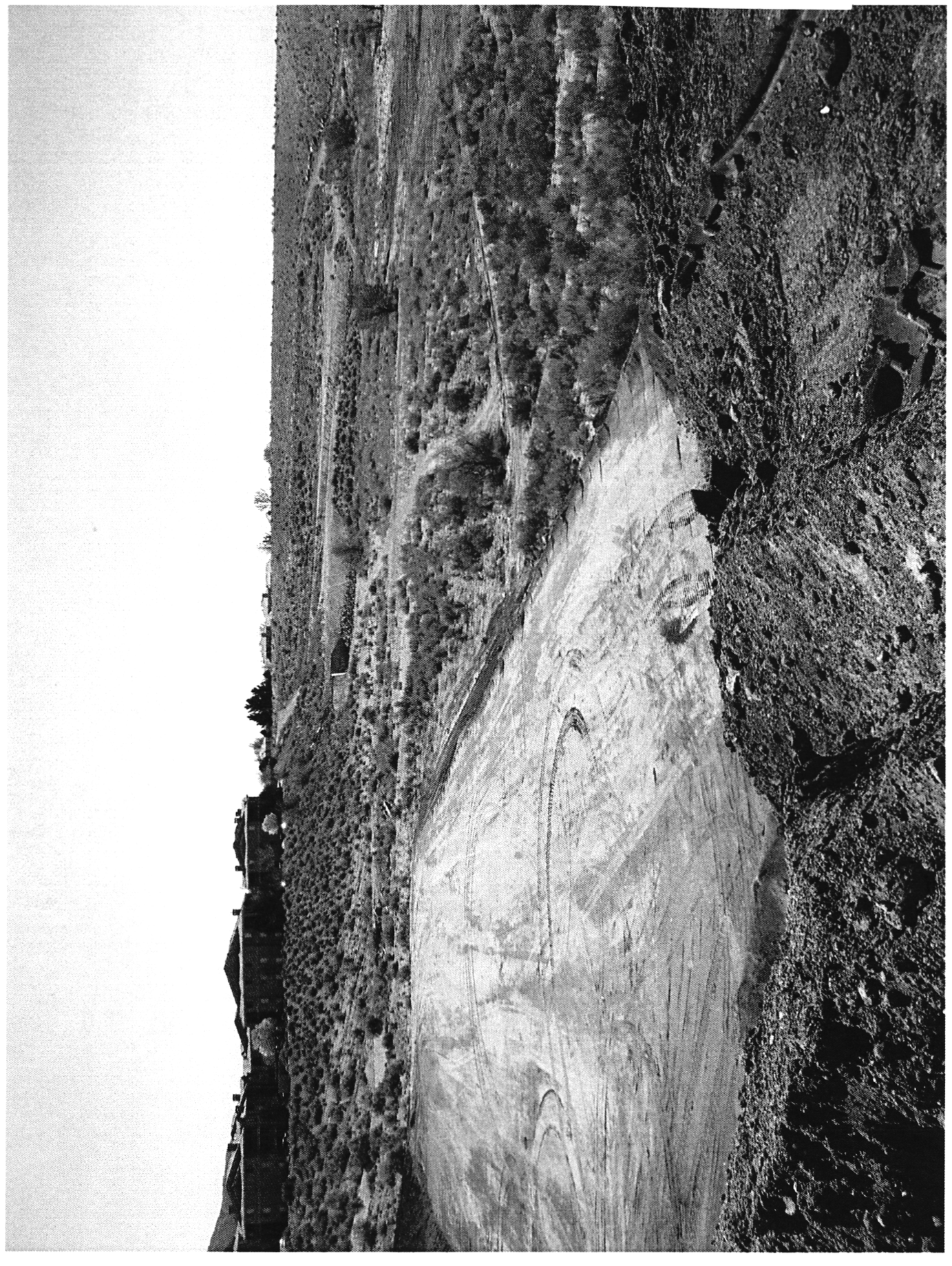
work encroaching onto neighbor's property

1. neighbor - Lamar write letter

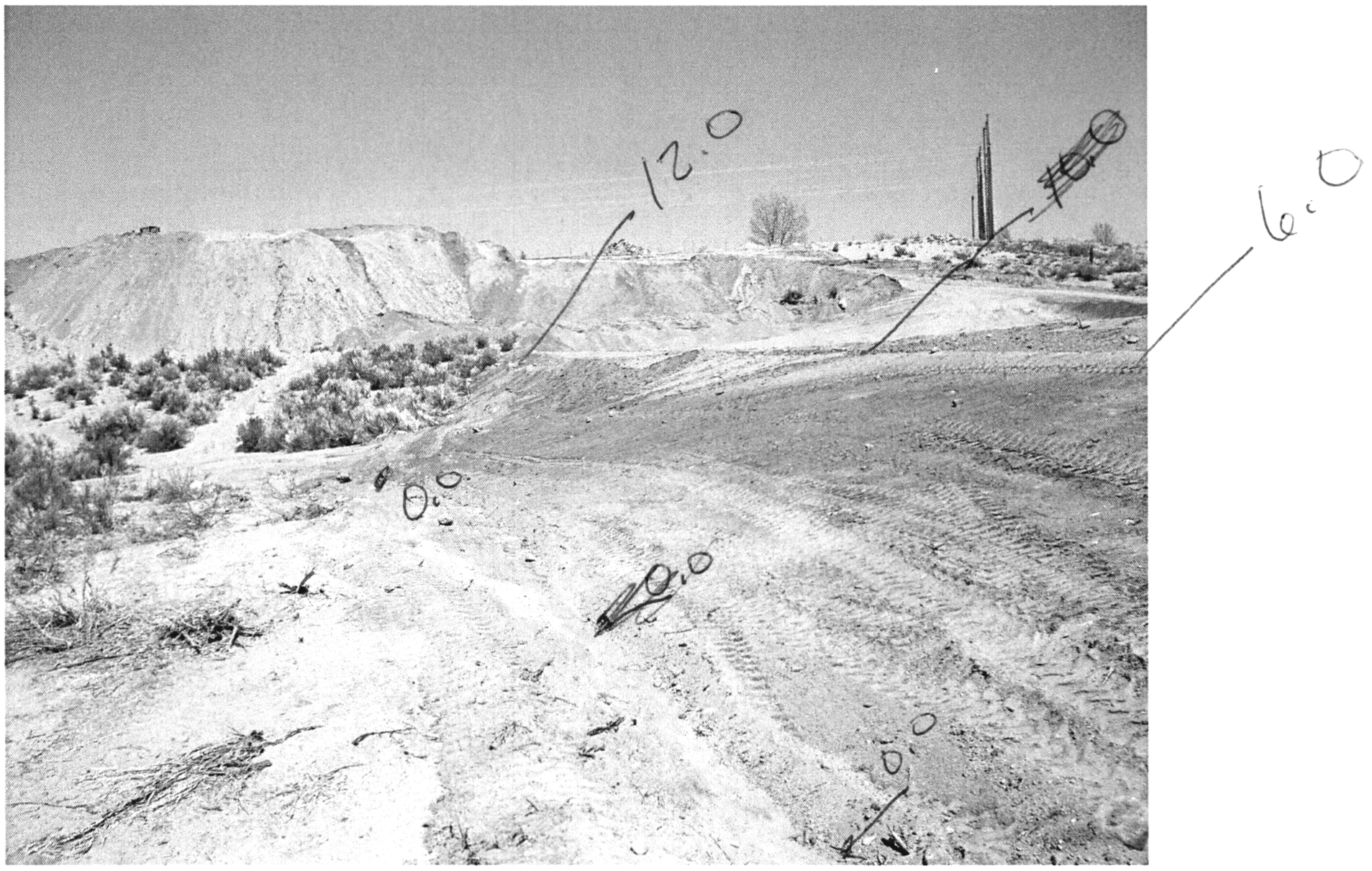
SIGNED:
Curtis Cherne
Hydrology Section
City Engineer Designee
AMAFCA Designee
924-3986

DATE: 6-20-12


11909 SANTA MONICA AVE NE
12004 SANTA MONICA DR NE
12200 SANTA MONICA AVE NE
11800 SANTA MONICA AVE NE
12110 SANTA MONICA
12304 SANTA MONICA AVE NE
12501 SANTA MONICA DR NE
12209 SANTA MONICA
1804 DEL REY NE
SANTA MONICA NE
11709 SAN ANTONIO NE
11805 SAN ANTONIO NE
11901 SAN ANTONIO
12309 SAN ANTONIO NE
12301 SAN ANTONIO NE
11801 SAN ANTONIO DR NE
12001 SAN ANTONIO DR NE
12109 SAN ANTONIO DR NE
12411 SAN ANTONIO DR NE
2148 BLACK WILLOW DR NE
1711 QUAIL RUN CT NE
1712 QUAIL RUN CT NE
1709 QUAIL RUN CT NE
1707 QUAIL RUN CT NE
C1
C2A1
C2A2
12004 ARBINGER LN NE
11812 ZINFANDEL LN NE
11808 ZINFANDEL LN NE
11800 ZINFANDEL LN NE
11804 ZINFANDEL LN NE
5B2
AO
N2
N3A
AE
OS1
6808 PINO ARROYO CT NE
12909 SAND CHERRY PL NE
12901 SAND CHERRY PL NE
12904 SAND CHERRY PL
12908 SAND CHERRY PL NE
4C1A1/EASEMENT
5A3A
N6A
11900 TRADITION LN NE
11621 PAGANICA WAY NE
11634 LOWELL ST NE
11616 LOWELL ST NE
11605 BACCARAT NE
11817 BACCARAT LN NE
11816 BACCARAT NE
11800 BACCARAT LN NE
N6B
C3
L5B
L6B
5A3B1
12041 CARIBOU AVE NE
12046 CARIBOU AVE NE
M1A2A
M1A2B
M1A1
12231 ACADEMY RD NE
12201 ACADEMY RD NE
12045 GAZELLE PL NE
6405 TRAMWAY BLVD NE
A/TRAMWAY SUBSTATION
M1A4
M1A3
12241 ACADEMY NE
12251 ACADEMY RD NE
12027 ROCKSBERG ST NE
12512 WOODMARK LN NE
12600 ACADEMY RD NE
6201 BEACONTREE NE
12230 ACADEMY RD NE
12004 ROCKSBERG CT NE
6624 HIGH RIDGE PL NE
6620 HIGH RIDGE PL NE
6628 HIGH RIDGE PL NE
6623 HIGH RIDGE PL NE
4B1/EASEMENT
ACADEMY
TRAMWAY



From access road near top of stockpile looking south.



From southwest corner of pad, looking north. Pad is 7 to 11 feet tall and is compacted.



From Pad, looking north.

****

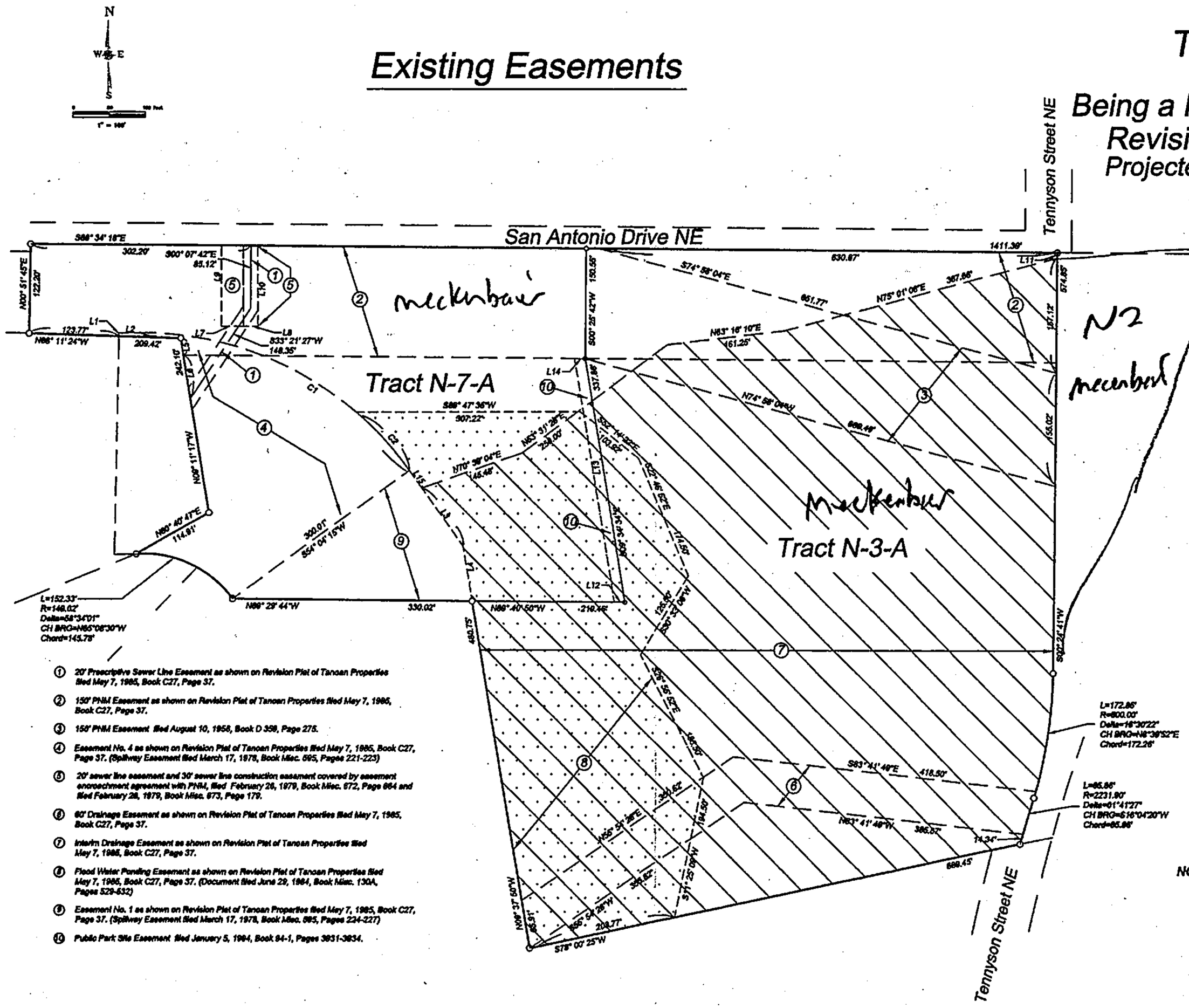
Easements identified by dashed lines



****

Bulk Land Plat
Tracts N-3-A & N-7-A
Tanoan Properties
Being a Replat of Tracts N-3, N-4 & N-7
Revision Plat of Tanoan Properties
Projected Section 27, T11N, R4E, NMPM
Elena Gallegos Grant
City of Albuquerque
Bernalillo County, New Mexico
November 2010

Existing Easements



Curve Table					
Curve No.	Length	Radius	Delta	Chord Direction	Chord Length
C1	430.61	449.02	54° 56' 46"	N63° 02' 53"W	414.29
C2	108.43	449.02	13° 50' 11"	N42° 29' 36"W	108.17

Line Table		
Line No.	Length	Direction
L1	4.04	N01° 07' 34"E
L2	30.00	N89° 16' 16"E
L3	97.87	N35° 34' 33"W
L4	76.05	S08° 46' 07"E
L5	23.41	N09° 11' 17"W
L6	60.15	N09° 11' 17"W
L7	30.00	S89° 34' 18"E
L8	20.00	S89° 34' 18"E
L9	110.00	S00° 07' 42"E
L10	110.00	S00° 07' 42"E
L11	7.22	N00° 24' 41"E
L12	14.82	S89° 40' 50"E
L13	337.86	S08° 34' 34"E
L14	14.82	S89° 40' 50"E
L15	29.83	N35° 34' 33"W

① 20' Prescriptive Sewer Line Easement as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37.

② 150' PNM Easement as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37.

③ 150' PNM Easement filed August 10, 1956, Book D 358, Page 275.

④ Easement No. 4 as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37. (Spillway Easement filed March 17, 1978, Book Misc. 595, Pages 221-223)

⑤ 20' sewer line easement and 30' sewer line construction easement covered by easement encroachment agreement with PNM, filed February 26, 1979, Book Misc. 672, Page 664 and filed February 28, 1979, Book Misc. 673, Page 179.

⑥ 60' Drainage Easement as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37.

⑦ Interim Drainage Easement as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37.

⑧ Flood Water Ponding Easement as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37. (Document filed June 29, 1984, Book Misc. 130A, Pages 529-532)

⑨ Easement No. 1 as shown on Revision Plat of Tanoan Properties filed May 7, 1985, Book C27, Page 37. (Spillway Easement filed March 17, 1978, Book Misc. 595, Pages 224-227)

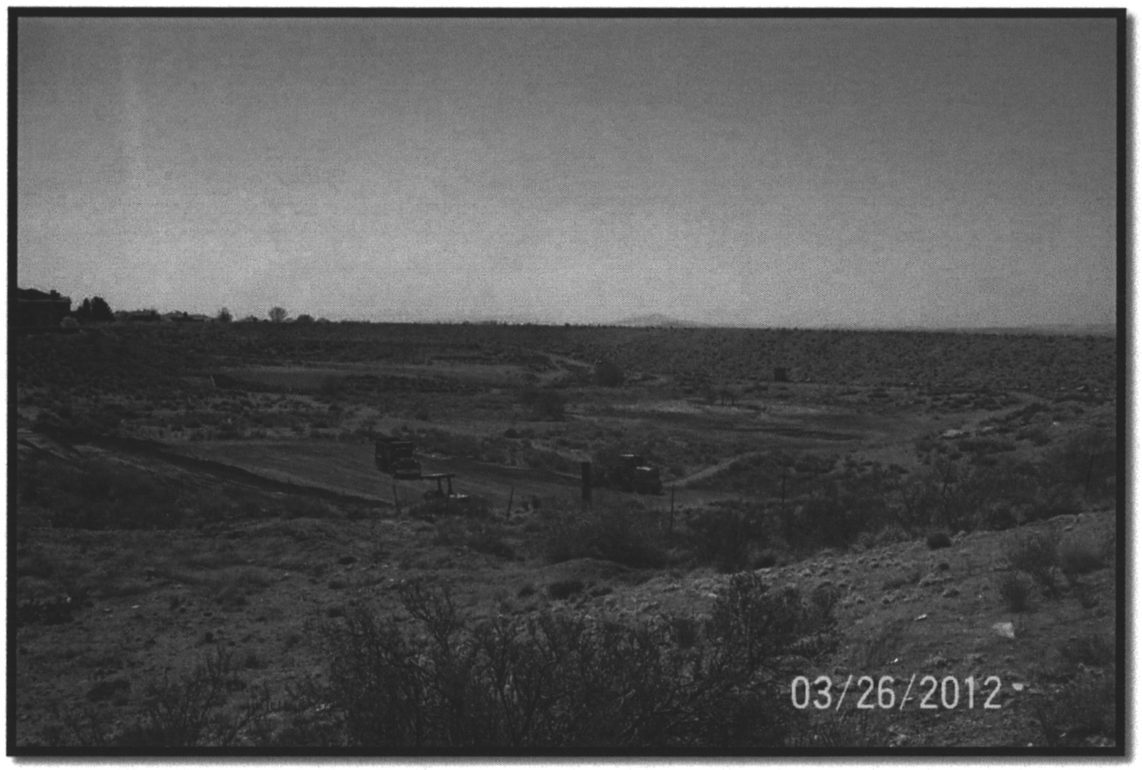
⑩ Public Park Site Easement filed January 5, 1984, Book 84-1, Pages 3831-3834.

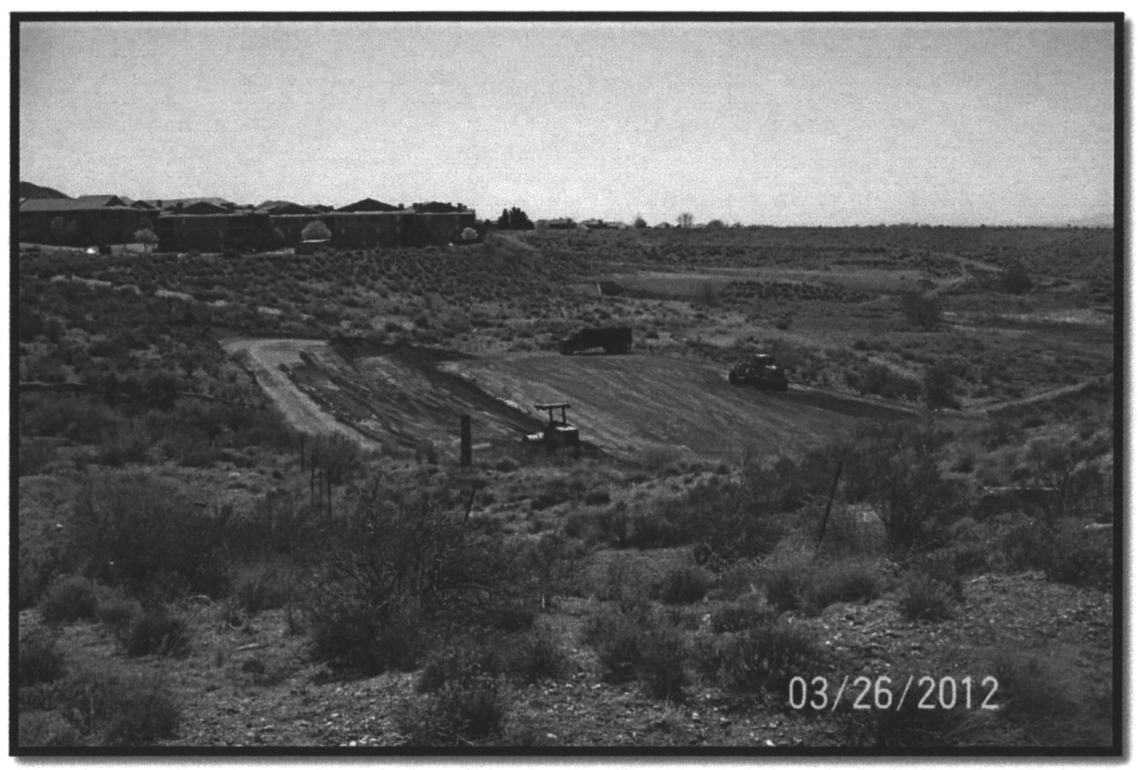
NOTE: SEE SHEET 2 FOR NOTICE OF SUBDIVISION PLAT CONDITIONS

DOC# 2011032927
04/06/2011 02:07 PM Page: 3 of 4
PLAT R:$22.00 B: 2011C P: 0031 M. Toulouse Oliver, Bernalillo Co.

Forstbauer Surveying, L.L.C.
4116 Lomas Boulevard NE
Albuquerque, New Mexico 87110
(505) 268-2112 Fax 268-2032

Terraced fill and grading, dirt being hauled from on top









FYI

From: Mazur, Lynn [mailto:lmazur@amafca.org]
Sent: Monday, March 26, 2012 5:08 PM
To: Cherne, Curtis
Subject: FW: Pino ponding easement

Curtis,

Attached is info on the grading operation going on in and around the Pino Dam at the southwest corner of Tramway and San Antonio Drive. AMAFCA easements are numbered 4, 7, 8, and 9 on the plat. Dirt is being removed from the emergency spillway area at the top of the dam and being brought down to an area north of the existing apartments. Looks like they are doing more than just stockpiling the dirt. It is being compacted and terraced.

Can you send an inspector out to shut down the operation? Let us know if you need a letter or anything else from AMAFCA. And please keep us informed on the inspection progress.

Albuquerque Metropolitan Arroyo
Flood Control Authority
Lynn M. Mazur, P.E., C.F.M.
Development Review Engineer
Phone: (505) 884-2215
Mobile: (505) 362-1273
www.amafca.org

****

The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. § 2517(4). This e-mail is intended only for the use of those to whom it is addressed and may contain information which is privileged, confidential and exempt from disclosures under the law. If you have received this e-mail in error, do not distribute or copy it. Return it immediately with attachments, if any, and notify me by telephone at (505) 884-2215.

From: Hines, Loren
Sent: Monday, March 26, 2012 4:57 PM
To: Mazur, Lynn
Cc: Lovato, Jerry; Wagener, Kurt
Subject: Pino ponding easement

Lynn:
I have attached the sheet from the Plat for Tract N-7-A, and an aerial showing the relationship of the easements on the ground and pictures taken today of significant grading and fill being done within the ponding easements.
Loren

Loren J. Hines
Real Estate Manager

AMAFCA
Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect Avenue NE
Albuquerque, New Mexico 87107
(505) 884-2215
lhines@amafca.org

****

The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. § 2517(4). This e-mail is intended only for the use of those to whom it is addressed and may contain information which is privileged, confidential and exempt from disclosures under the law. If you have received this e-mail in error, do not distribute or copy it. Return it immediately with attachments, if any, and notify me by telephone at (505) 884-2215. Thank you.

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.1913 / Virus Database: 2114/4895 - Release Date: 03/26/12

Dourte, Richard H.

From: Wagener, Kurt [kwagener@amafca.org]
Sent: Thursday, March 29, 2012 1:30 PM
To: Dourte, Richard H.
Cc: Lovato, Jerry; Mazur, Lynn
Subject: RE: Grading and earth moving within the Tanoan area without proper permits

Saiz Trucking and Earth Moving, Inc.
10601 Central NE Albuquerque, NM 87102

Richard:
I apologize for sending out the draft. I realized it wasn't signed after I sent it.
I was trying to get it to Larry as soon as possible so he would know the seriousness of this.
Kurt

From: Dourte, Richard H. [mailto:RDourte@cabq.gov]
Sent: Thursday, March 29, 2012 11:10 AM
To: Wagener, Kurt
Subject: RE: Grading and earth moving within the Tanoan area without proper permits

Kurt, do you have Mr. Saiz' address and company name???

Thanks,

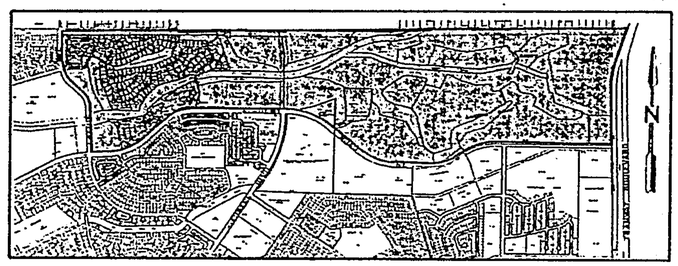
From: Wagener, Kurt [mailto:kwagener@amafca.org]
Sent: Thursday, March 29, 2012 10:14 AM
To: L Saiz
Cc: Mazur, Lynn; Lovato, Jerry; Craig Hoover; Dourte, Richard H.
Subject: FW: Grading and earth moving within the Tanoan area without proper permits

Larry:
Please see attached letter about the grading you are doing up near Pino Dam. Some of the grading appears to be in the emergency spillway and the dam pool. The grading in the bottom may be on an AMAFCA easement. Per our conversation, please make sure you have all of your permits and approved plans in place before proceeding with the work.
Thanks,

AMAFCA
Kurt Wagener
Field Engineer
505-884-2215

The unauthorized disclosure or interception of e-mail is a federal crime. See 18 U.S.C. § 2517(4). This e-mail is intended only for the use of those to whom it is addressed and may contain information which is privileged, confidential and exempt from disclosures under the law. If you have received this e-mail in error, do not distribute or copy it. Return it immediately with attachments, if any, and notify me by telephone at (505) 884-2215. Thank you.

C27-37-1



LOCATION MAP
Zone Atlas Map No E-20 Z, E-21-Z, E 22-Z & E-23-Z

NOTES

1. Bearings are Plat bearings as shown on the Corrected Amended Summary Plat of TANOAN PROPERTIES filed May 18, 1984. Basis of bearings: New Mexico State Plane Grid Bearings.
2. Distances are ground distances.
3. Record bearings and distances of adjoining recorded plats are shown in parenthesis.
4. The purpose of the filing of this plat is to revise the tract boundaries defined by the Corrected Amended Summary Plat of the TANOAN PROPERTIES filed May 18, 1984 for assessment purposes, plat of THE MASTERS AT TANOAN, filed May 12, 1984 and a Replat of Tanoan Properties filed April 19, 1984, to identify new tracts for development as proposed by the amendment of the Academy/Tramway/ Eubank Sector Development Plan approved by the Environmental Planning Commission on December 20, 1984 (SD-78-1-7).
5. The stature of permanent drainage easements dedicated by the amended summary plat of the Tanoan Properties is not affected by this plat. The dedication of revised alignments of said easements, if changed, is with full and free consent and in accordance with the desire of the undersigned owner, the City of Albuquerque and the Albuquerque Metropolitan Arroyo Flood Control Authority. With the filing of this plat, the previous alignments of said easements will revert to the owner, its successors and assigns as approved by the DRB on April 9, 1985 as V-85-23. This dedication is for drainage, flood control and the construction, operation and maintenance of related facilities. This plat also identifies an additional floodwater requdired by construction of SAD-205.
6. The dedication to the Albuquerque Metropolitan Arroyo Flood Control Authority, its successors and assigns, of interim drainage easements identified by the amended summary plat of the Tanoan Properties are not affected by this plat. An additional interim easement as required by construction of SAD-205 has been identified. Any portion of any lands, right-of-way, or easement dedicated or granted herein shall revert to the owner, its successors and assigns as and to the extent said portion is declared unnecessary for flood control and drainage by the Board of Directors of the Albuquerque Metropolitan Arroyo Flood Control Authority. Any reversion shall be conveyed by quitclain deed.
7. The dedication to the Albuquerque Metropolitan Arroyo Flood Control Authority, its successors and assigns, of floodwater retention easements, either existing or required by construction of SAD-205 remain unchanged with the filing of this plat. Any portion of any lands, right-of-way, or easement dedicated or granted herein shall revert to the owner, its successors and assigns as and to the extent said portion is declared unnecessary for flood control and drainage by the Board of Directors of the Albuquerque Metropolitan Arroyo Flood Control Authority. Any reversion shall be conveyed by quitclain deed.
8. A variance or waiver from certain subdivision requirements has been granted by the City and the Albuquerque Metropolitan Arroyo Flood Control Authority in connection with this plat.

   Future subdivision of lands within this plat, zoning site development plan approvals, and development permits may be conditioned upon dedication of rights-of-way and easements, and/or upon infrastructure improvements by the owner for water, sanitary sewer, streets, drainage, grading and parks in accordance with current resolutions, ordinances and policies in effect at the time for any specific proposal.

   The City (and AMAFCA with reference to drainage) may require and/or permit easements to be added, modified or removed when futue plats or site development plans are approved.

   By its approval the City makes no representation or warranties as to availability of utilities, or final approval of all requirements including (but not limited to) the following items: water and sanitary sewer availability; future street dedications and/or improvements; park and open space requirements; drainage require-ments and/or improvements; and excavation, filling or grading requirements. Any person intending development of lands within this subdivision is cautioned to investigate the status of these items.
9. Tracts "K-2-A", "K-2-B", "K-2-C", "K-2-D", "K-2-E", "K-3-A", "K-4-A", "L-2-A", "L-6" AND "L-7" are not to be developed unless incorporated into adjacent larger tracts.
10. There shall be a ten (10) foot Pedestrian Pathway and Access Easement along those boundaries of the Open Space tracts that adjoin developed or developable tracts.

REVISION PLAT
OF
TANOAN PROPERTIES
ALBUQUERQUE, NEW MEXICO
MARCH, 1985

AR 35406

SUBDIVISION DATA

1. DRB Number 84-744
2. Zone Atlas Index No.: E-20-Z, E-21-Z, E-22-Z and E-23-Z
3. Gross Subdivision Acreage: 480.566 Acres.
4. Total Number of Tracts Created: 37 Tracts.
5. Total Mileage of Full-Width Streets Created: 0.1679 Mile.
6. Total Mileage of Half-Width Streets Checked: 0.1407 Mile.
7. This Plat was compiled from Plats of Record:

C27
37

APPROVALS

PLAT NUMBER SP-85-201

for PLANNING DIRECTOR	DATE 5-1-85
for CITY ENGINEER	DATE 4-9-85
A.M.A.F.C.A.	DATE 4/8/85
TRAFFIC ENGINEER	DATE 4-9-85
CITY SURVEYOR	DATE 042485
PROPERTY MANAGEMENT	DATE 4-24-85
WATER RESOURCES	DATE 4-9-85
PARKS AND RECREATION	DATE 4-9-85
PUBLIC SERVICE COMPANY OF NEW MEXICO	DATE 4-16-85
MOUNTAIN BELL	DATE 4/23/85
GAS COMPANY OF NEW MEXICO	DATE 4-25-85

SURVEYOR'S CERTIFICATION

I, A. Dwain Weaver, a registered New Mexico Land Surveyor, certify that this plat was prepared by me or under my supervision, shows all easements of record, meets the minimum requirements for monumentation and surveys contained in the Albuquerque Subdivision Ordinance, and is true and accurate to the best of my knowledge and belief.

A. Dwain Weaver
P.L.S. No. 6544
New Mexico

Bohannan-Huston, Inc.
4125 Carlisle N.E.
Albuquerque, NM 87107

State of New Mexico)
) ss
County of Bernalillo)

The foregoing instrument was acknowledged before me this 9th day of April, 1985, by A. Dwain Weaver.

Notary Public

My Commission Expires: 2/28/86

DEDICATION

The foregoing Revision Plat of that certain tract of land situate in the City of Albuquerque, New Mexico within Sections 27, 28 and 29, Township 11 North, Range 4 East, N.M.P.M., being and comprising Open Spaces "4-A" and "4-B" of THE MASTERS AT TANOAN as the same are shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on May 10, 1984 and Open Space "5-A" of the Replat of Tanoan Properties as the same is shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on April 19, 1984, Tract 155, and also Tracts "E", "I", "K-1", "K-2", "L", "M", "N", "O" and "P" of the Corrected Amended Summary Plat of TANOAN PROPERTIES as the same are shown and designated on the plat filed in the office of the County Clerk of Bernalillo County, New Mexico on May 18, 1984; and now hereon shown and comprising Open Spaces "4-A-1", "4-B-1", "4-C", "5-A-1" and "5-B", and Tracts "155-A", "K-1-A", "K-2-A","K-2-B", "K-2-C", "K-2-D", "K-2-E", "K-3", "K-3-A", "K-4", "K-4-A", "L-2", "L-2-A", "L-3", "L-4", "L-5", "L-6", "L-7", "M-1", "M-2", "N-1", "N-2", "N-3", "N-4", "N-5", "N-6", "O-1", "O-2", "O-3" and "P-1", and also tracts for "THE CHAMPIONS AT TANOAN" and "THE HIGHLANDS AT TANOAN" of the Revision Plat of TANOAN PROPERTIES is with the free consent and in accordance with the desires of the undersigned owner(s) and/or proprietor(s) thereof and said owner(s) and/or proprietor(s) do hereby grant drainage easement as shown hereon and dedicate additional road right-of-way to the City of Albuquerque, New Mexico as shown hereon, including the right of ingress and egress and the right to trim interfering trees.

AMERIWEST CORPORATION (Owner of Tracts 155-A,4-B-1,K-1-A,K-2-C,K-3,K-4, L-2,L-3,L-4,L-5,L-6,M-1,M-2,N-1,N-2,N-3,N-4,N-5, N-6,O-1,O-2,O-3,P-1, THE CHAMPIONS AT TANOAN & THE HIGHLANDS AT TANOAN, L-1-A, and N-7.

Allan L. Whitsel
Vice President

STATE OF NEW MEXICO)
) SS
COUNTY OF BERNALILLO)

The foregoing instrument was duly acknowledged before me this 22nd day of March, 1985 by Allan L. Whitsel, Vice President of AMERIWEST CORPORATION, a New Mexico corporation on behalf of said corporation.

OFFICIAL SEAL
My Commission Expires: 10-11-88

Notary Public

David Price (Co-owner of Tracts 4-A-1,4-C,5-A-1, 5-B,K-2-A,K-2-B,K-2-D,K-2-E,K-3-A, K-4-A,L-2-A,L-7)

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

The foregoing instrument was duly acknowledged before me this 27th day of MARCH, 1985 by DAVID PRICE.

My Commission Expires:

Notary Public

Dallas Price (Co-Owner of Tracts 4-A-1,4-C,5-A-1, 5-B,K-2-A,K-2-B,K-2-D,K-2-E,K-3-A, K-4-A,L-2-A,L-7)

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

The foregoing instrument was duly acknowledged before me this 27th day of MARCH, 1985, by DALLAS PRICE.

My Commission Expires: OCT. 20, 1987.

Notary Public

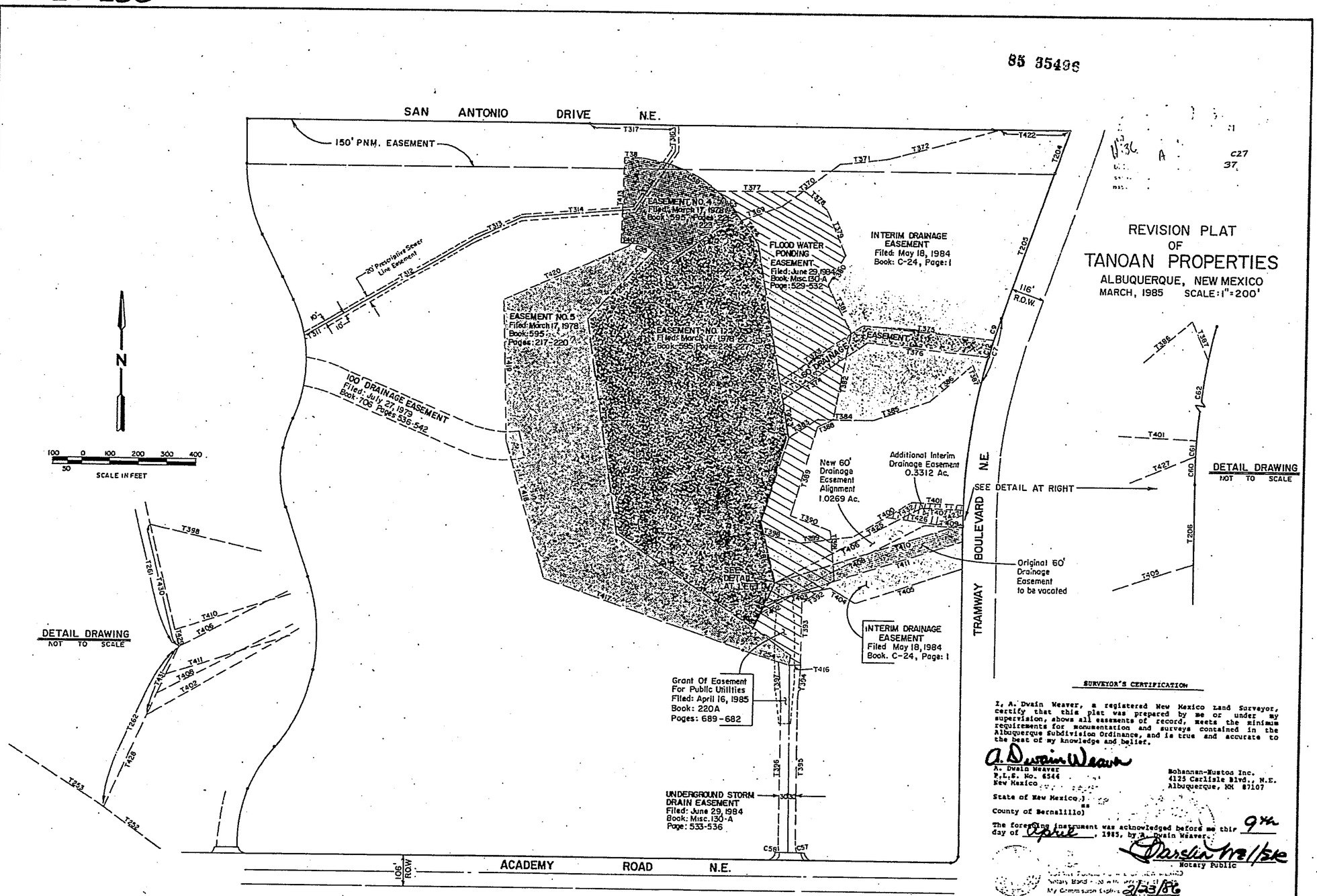
RECEIVED
JUL 27 2012
HYDROLOGY SECTION
JOB NO. 42398

SHEET 1 OF 9 SHEETS

C27 - 37-1

C27-37-7

85 354 98



REVISION PLAT
OF
TANOAN PROPERTIES
ALBUQUERQUE, NEW MEXICO
MARCH, 1985 SCALE: 1"=200'

W 33 A C27 37

SURVEYOR'S CERTIFICATION

I, A. Dwain Weaver, a registered New Mexico Land Surveyor, certify that this plat was prepared by me or under my supervision, shows all easements of record, meets the minimum requirements for monumentation and surveys contained in the Albuquerque Subdivision Ordinance, and is true and accurate to the best of my knowledge and belief.

A. Dwain Weaver
A. Dwain Weaver
N.M.L.S. No. 6544
New Mexico

Bohannan-Huston Inc.
4125 Carlisle Blvd., N.E.
Albuquerque, NM 87107

State of New Mexico)
ss
County of Bernalillo)

The foregoing instrument was acknowledged before me this 9th day of April, 1985, by A. Dwain Weaver.

Notary Public

My Commission Expires 2/23/86

JOB NO. 42398

1358

SHEET 7 OF 9 SHEETS

C27-37-7