

09/27/2004 11:58 FAX 15052889028

MILLER ENGINEERING

0002

ATTN: BRAD BINGHAM

CONFIDENTIAL

MILLER ENGINEERING CONSULTANTS  
Engineers • Planners

September 27, 2004

Mr. Gary Croley  
C/O Mr. Eugene Harris  
2334 Rio Grande Blvd. NW  
Albuquerque, New Mexico 87104

RE: Mr. Harris Irrigation Ditch

Dear Mr. Croley:

As requested, we have prepared a sketch outlining the results of the as-built elevations obtained during our site visit last week (see attached sketch).

The elevations shown in the top box are the design elevations outlined in the construction drawings prepared by Thompson Engineering. The elevations shown in the bottom portion of the box are those obtaining during our site visit.

Based on our review of the Thompson Engineering design, our recent site visit and the as-built elevations obtained in the field, we offer the following observations & opinions:

- 1) We understand that historically, Mr. Harris has received irrigations flows from the south distribution box without the aide of a pump. This was confirmed during our recent as-built survey. Based on the elevations of the existing distribution box on the south end and elevations taken in Mr. Harris' existing ditch in front of his property, it appears that adequate irrigations flows can be provided to Mr. Harris' property without the aide of a pump. The invert of the existing distribution box is approximately 4962.3. The existing natural invert of Mr. Harris' ditch and associated culverts under his driveway are approximately 4962.15, which is 0.15 feet lower than the invert of the existing distribution box.
- 2) The new irrigation ditch was not constructed in accordance with the Thompson Engineering design drawings. It appears that the as-built elevations deviate as much as 0.2 feet from the plan elevations. In addition, the typical sections call for a ditch depth of 1.5 feet. In most places, we measured ditch depths of less than one foot. The typical section does not call for lining of this ditch with shot-crete as provided by the contractor.
- 3) The new RCP culvert under Villa Dora Way is in a sump condition along the flow line of the ditch. This has created substantial ponding inside the culvert and at the inlet and outlet of the structure. We are concerned with the long-term ponding of water and the associated potential for mosquito infestations to occur. The sump condition that has been created in this area of the ditch compounded by the imperviousness of the shot-crete ditch should be cause for some concern. Since the water is no longer able to infiltrate, the only natural means available to eliminate the ponding of this water is by evaporation. Water that is ponding within the culvert will evaporate very slowly since there is not direct contact with the atmosphere.

27 Richland Drive • Tijeras, New Mexico 87059  
Phone (505) 288-7771 • Fax (505) 288-9028 • E-mail: vjmiller1@msn.com

09/27/2004 12:14 FAX 15052889028

MILLER ENGINEERING

001

Mr. Croley  
September 27, 2004  
Page 2

We are recommending the following improvements to provide Mr. Harris with proper irrigations flows to his property.

- 1) The ditch should be regraded to a depth of 1.5 to 2.0 foot. The invert of the ditch should be placed on a flat slope from the existing distribution box to the south end of Mr. Harris' property. The ditch may be lined with concrete or an equivalent lining system to minimize maintenance. However, the ditch should not have any significant ponding areas along the invert, which may cause long-term ponding of water.

It is important to maintain a minimum ditch depth of 1.5 feet. Since the slope is essentially flat between the distribution box and the ditch invert on Mr. Harris' property, it is important to maintain this minimum ditch depth of 1.5 feet so the depth of water (hydraulic head or hydraulic gradient) may build up to serve Mr. Harris' property which is located approximately 300 feet away from the distribution box.

It appears that the new RCP culvert will need to be re-installed at the proper elevation, so that there is not ponding of water along the channel invert. The channel north of this structure should be placed on a milder slope to ensure proper flow of water to Mr. Harris' property.

If you have any questions or need any additional information, please feel free to contact our office.

Sincerely,

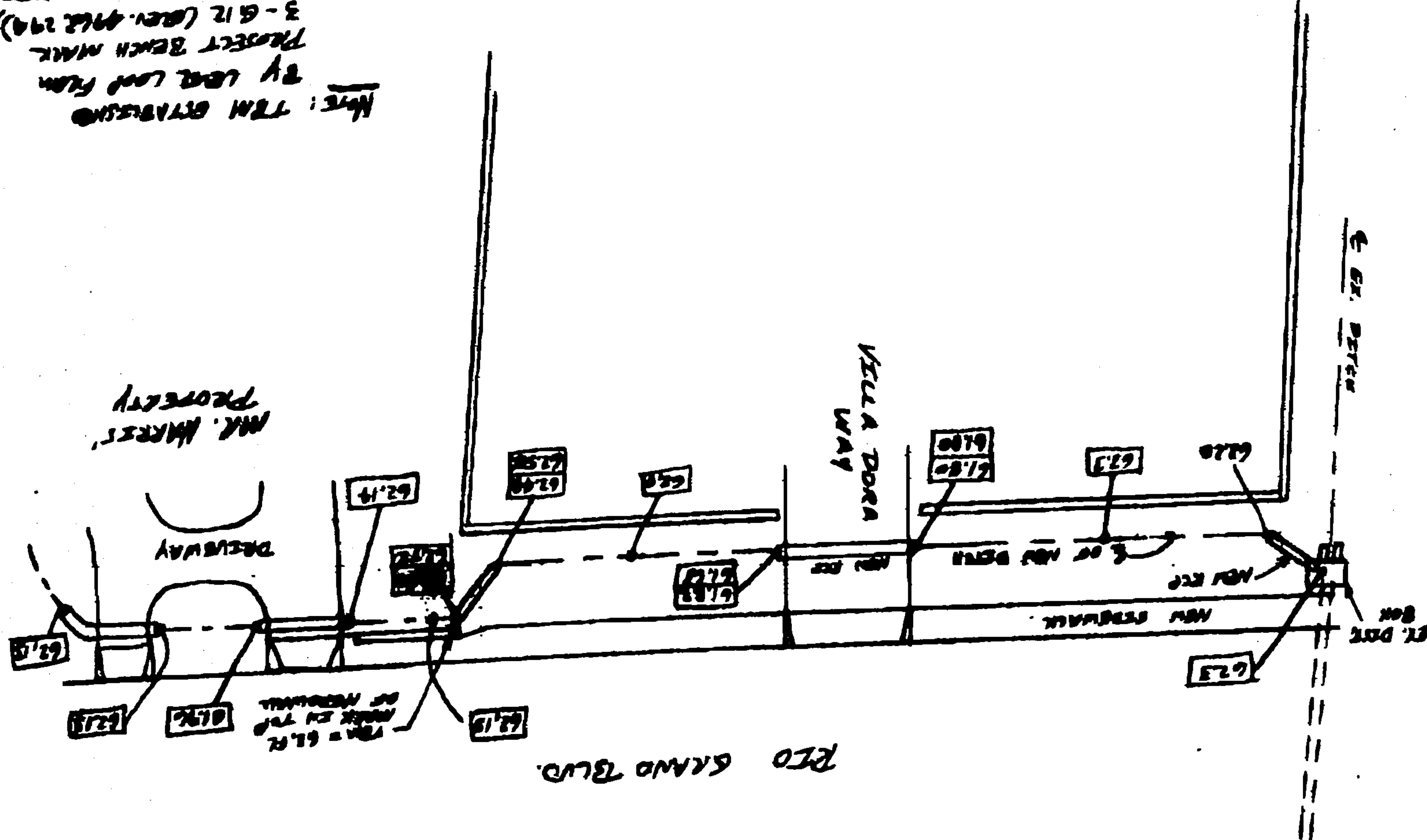
MILLER ENGINEERING CONSULTANTS



Verlyn A. Miller, P.E.  
President

VAM:jmj  
Enclosure

LEND



22-141 50 SHEETS  
22-142 100 SHEETS  
22-144 200 SHEETS

500



FROM : ACTION RV SPECIALISTS ABQ

FAX NO. : 505 294 0329

Jul. 22 2004 01:39PM P2

July 21, 2004

Via Fax only 242-6225

William S. Kirschner  
Attorney at Law  
THE JAFFE LAW FIRM

RE; Eugene Harris  
Your File No. 80226

Dear Mr. Kirschner:

In response to your letter dated July 20, 2004, I would like to inform you and your client, Mr. Harris that a meeting took place at Wayne A. Mc Fadden's property on July 21, 2004 those present were myself, Jill Boland, Dale Mitchell with TLC, Jim Spinello and Bob Roy with Smith Engineering and Dan Garney with Survey Southwest via phone.

The as builds have been done on the property, and the private irrigation ditch in front of Wayne A. Mc Fadden's property has been done to grade. The complete grading and drainage plan was done by Thompson Engineering and approved by the City of Albuquerque.

We understand that Mr. Harris originally irrigated from the ditch that ran to the North of his property, which has been terminated due to the strip mall being constructed. His alternative was to irrigate from the South of his property. Water is able to be received from the South but is traveling up-hill. This is only working do to flow and not head pressure. We have simply constructed a new ditch and did not change the grade of the land nor did we change the diversion or channel from which the water is received.

Several observations and concerns were determined by the Engineers and TLC:

- 1) The property to the South of Wayne A. McFadden's property is now being irrigated after years of none use of provided irrigation. The ditches are blocked and built up with dirt above the diversion channel on the property. Coffee cans are being used as pipe out of the diversion channel and no head gate is being used to block the water. Dirt is not a suitable head gate.

FROM : ACTION RV SPECIALISTS ABQ

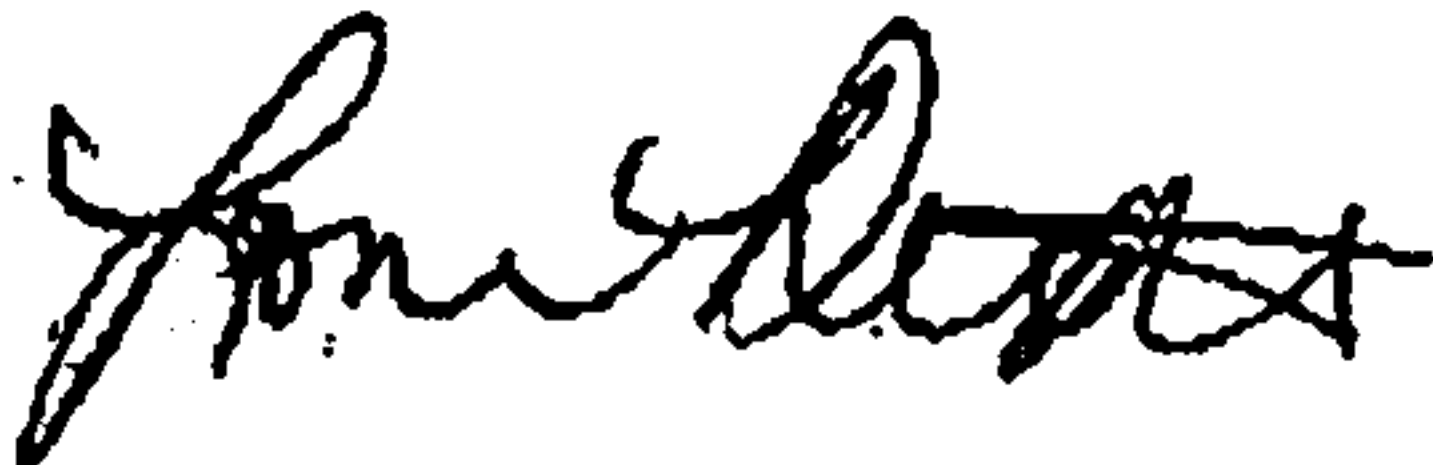
FAX NO. : 505 294 0329

Jul. 22 2004 01:39PM P3

- 2) Mr. Harris is able to receive water to the ditch in front of his property without any interference. This was again observed on July 20, 2004. Mr. Harris's property was never meant to be originally irrigated from the channel being used. Because the water pressure is based on flow and not head pressure, it is crucial that Mr. Harris places his pipe and ditches to meet the flow. By visual inspection only, it appeared to the Engineers and Contractors that the pipes Mr. Harris installed in front of his property are installed too high and need to be lowered. It was recommended he have a Surveyor determine the elevations of his property and lay the pipes accordingly for better flow.
- 3) The majority of the water that is left over in the ditch in front of Wayne A. McFadden's property, after Mr. Harris is done irrigating, is due to the water not being able to flow back down hill as a result of the blocked channel to the neighbor on the Southside of Wayne A. McFadden's property. Since both neighbors are now irrigating from the same channel, it was recommended that Mr. Harris irrigate first, and then the neighbor to the South of Wayne A. McFadden's property irrigate second, as water would flow back down hill and through the open channel.
- 4) Some water will pool in the new ditch as it did in the original ditch, however it might be minimized if the above steps are taken. The absorption rate of the pooling water has been slowed as we had the ditch lined with shot Crete. This is a process that even the Water Conservancy uses to conserve water and help with weed and debris control.
- 5) The Eastside of the ditch on Wayne A. McFadden's property is in the process of being reinforced. We had stopped all construction to the Eastside of the ditch, until verification of the grading was complete. We will be continuing construction immediately.

We will continue to monitor the irrigation activities of our neighbors. It is a priority for us to insure that what is done on Wayne A. McFadden's property is correct. Last but not least it remains our intention to bring long lasting quality to this neighborhood and with that a respect and friendship with all of our neighbors.

Sincerely,



Lonna Dexter  
Agent for Wayne A McFadden



G-13/D22

# THE JAFFE LAW FIRM

May 28, 2004

Via Fax only 332.5451

Lana Dexter and Jill Boland  
Keller Williams Realty

RE: Eugene Harris  
Our File No. 80226

Dear Ms. Dexter and Ms. Boland.

I am writing on behalf of Mr. Eugene Harris regarding the irrigation ditch which runs to the south of his property. In the course of development by Keller Williams, the subcontractor, TLC, covered up and blocked the irrigation ditch that runs to Mr. Harris' property. This is an interference with water rights that have been held by Mr. Harris since 1936. This interference with his rights has caused Mr. Harris considerable financial expense and mental distress.

Mr. Harris has been forced to hire a consultant and contractor to construct a new ditch on his property. Mr. Harris may lose many plants due to the lack of irrigation water. He has several large elm trees on his property which are beginning to dry out, which may result in these trees dropping branches which would damage buildings on Mr. Harris' property.

Mr. Harris has attempted to keep his plants alive by using a hose connected to city water. The flow from this hose does not, however, equal the flow from Mr. Harris' irrigation ditch and is inadequate for his needs.

Mr. Harris will expect compensation for his expenses incurred in redigging the irrigation ditch which was inappropriately covered up by TLC. In addition, he expects to be reimbursed for his costs in using the city water, and for the replacement of any damaged plants with plants of equal size and value.

Mr. Harris makes demand for an immediate connection of his irrigation ditch with the Middle Rio Grande Conservancy Ditch that runs along Rio Grande Boulevard. He is willing to work with TLC and PNM to ensure that water is cut off at such time as PNM requires for installation of utility lines.

Lana Dexter and Jill Boland  
Keller Williams Realty  
May 28, 2004  
Page 2

Finally, Mr. Harris expects that the fencing around his property be restored to its former condition, without expense to him.

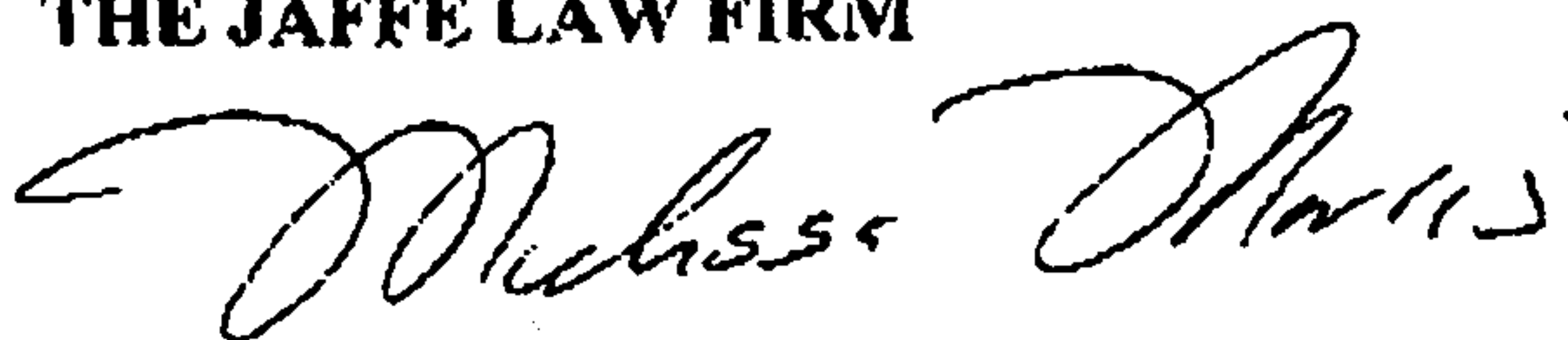
It is essential that this matter be addressed immediately to prevent further damages to Mr. Harris' property. As you know, Gary and Debra Croley have a power of attorney for Mr. Harris and are assisting him in this matter. As you also know, Mr. Harris is 96 years old and not able to handle the stress of dealing with this situation on his own.

Please make contact immediately with Mr. and Mrs. Croley to assure them that Mr. Harris' water supply will be restored immediately, and that Mr. Harris will be compensated for his losses.

Thank you for your immediate attention to this matter.

Very truly yours,

THE JAFFE LAW FIRM



Melissa Morris  
Attorney at Law  
MM:R

c: Eugene S. Harris  
2334 Rio Grande Blvd., NW  
Albuquerque, NM 87104-3220

June 8, 2004

Via Fax only 242-1014

Melissa Morris  
Attorney at Law  
THE JAFFE LAW FIRM

RE: Eugene Harris  
Your File No. 80226

Dear Ms. Morris:

In response to your letter dated May 28, 2004, the irrigation ditch that runs to the south of Mr. Harris property is currently being rebuilt as to the City's requirements. The complete grading and drainage plan has been provided to Mr. Gary Croley, POA for Mr. Harris.

The City has approved all infrastructure and has given the developer until March 31, 2005 to complete all public and / or private subdivision improvements, please see attached documentation. The completion time for the ditch is scheduled for June of 2004, obviously way ahead of schedule.

The fencing/wall that Mr. Harris is referring to was an encroachment on the current owners land, please see attached documentation. The fencing/wall was removed at no expense to Mr. Harris. The developer is currently in the process of rebuilding a wall, still within 1 foot of the current owner's property.

Sincerely,



Lonna Dexter  
Keller Williams Realty  
Agent for Wayne A McFadden

Eugene S. Harris  
10026096866  
# 80226  
MM

8



Mark S. Jaffe  
Also admitted in New York

Albert B. Lassen  
of Counsel  
Also admitted in Arizona

# THE JAFFE LAW FIRM

Charles L. McElwee  
Elena Spielman  
Melissa Morris  
Sharon J. Fleming  
Todd E. Farkas  
Robert Foster  
Judy K. Kelley  
Mark Anthony Acuña  
Ingrid Mae Carlin  
Michelle A. Bowdon  
William S. Kirschner

June 22, 2004

**VIA FACSIMILE: 505-332-5451**

Lonna Dexter  
Keller Williams Realty

Re: Eugene Harris – Water Rights

Dear Ms. Dexter:

This is in response to your letter of June 8, 2004. Although you state in your letter that the city has approved all infrastructure and granted the developer until March 31, 2005 to complete all improvements, it is not within the city's authority to grant the developer permission to cut off Mr. Harris' use of the ditch for irrigation.

Please read NMSA 73-2-5 which states as follows:

Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation, for five years, it shall be conclusively presumed as between the parties, that a grant has been made by the owners of the land, upon which such ditch is located, for the use of the same; provided, that nothing herein contained shall be construed to prevent the owner of a servient estate from making any alterations, or changes in the location, of any ditch upon his land, so long as such alternation or change of location shall not interfere with the use of such ditch by the owner, or owners, of the dominant estate or estates. (emphasis added)

On June 17, 2004, Mr. Gary Croley met with Jerry Flores, the Albuquerque Division Manager of the Middle Rio Grande Conservancy District, Ray Gomez, engineer with the MRGCD, and Jaylene Spivey of the Office of the State Engineer, Albuquerque Office. At that meeting each one of these individuals stated to Mr. Croley that a developer does not have a right to restrict the use of water from an irrigation ditch to one having the right to use of the ditch. Additionally, they all agreed that the city does not have permission to cut off an individual's water supply.

Mr. Croley also spoke to Mr. Hilario Rubio of the New Mexico Office of the State Engineer on June 16, 2004; a copy of a letter from Mr. Rubio to Mr. Croley is attached to this fax. The Cox case, referred to by Mr. Rubio may be located at 124 N.M. 529. In that case, the Court clearly states that an owner of property over which another property has an easement for use of a ditch for irrigation cannot unreasonably interfere

320 Gold Avenue Southwest at Fourth Street • Suite 1300

Mail: PO Box 809 • Albuquerque, New Mexico 87103-0809 • 505-242-9311 • Fax: 505-242-6225

Lonna Dexter  
June 22, 2004  
Page 2 of 2

---

with the dominant estate owners use of the ditch. Clearly, complete restriction of Mr. Harris' use of the ditch and prevention of his access to his water rights is an unreasonable interference of his use.

Demand is hereby made upon Keller Williams to immediately restore full access to Mr. Harris of his irrigation water which was supplied by the ditch blocked by your subcontractors. Restoration of Mr. Harris' access to water will not relieve Keller Williams of liability for existing damage by its wrongful actions. However, such restoration will help prevent additional damage to Mr. Harris' property, trees and other plants.

Very truly yours,

**THE JAFFE LAW FIRM**



MELISSA MORRIS

MM/jma  
Attachment

cc: Gary Crowley (via facsimile and regular US mail)

---





STATE OF NEW MEXICO

OFFICE OF THE STATE ENGINEER

John R. D'Antonio, Jr.  
State Engineer

LITIGATION & ADJUDICATION  
PROGRAM

130 South Capitol  
Santa Fe, New Mexico 87501

Mailing Address:  
P.O. Box 25102  
Santa Fe, NM 87504-5102  
Telephone: (505) 827-6150  
Fax: (505) 827-3887

June 16, 2004

Mr. Gary Croley  
POA for Mr. Eugene Harris  
111 Amy Road  
Los Lunas, NM 87031

Sent via facsimile on June 16, 2004

Dear Mr. Croley:

My position is acequia liaison officer for the New Mexico Office of the State Engineer in which I provide assistance to ditch users. I do not have or exercise authority over any ditch organization or member or others relating to them. However, I must say that the cutting off of the water to your father's (Eugene Harris) property off Rio Grande Blvd. in Albuquerque which is fed by a lateral in the Middle Rio Grande Conservancy District system by the actions of contractors working for Keller Williams Realty, Developer, for a project to put in drainage culverts is not in keeping with NMSA 73-2-5. My reading of that statute and of the Cox case decided in 1996 in the NM Court of Appeals indicates that the Developer has not adhered to 73-2-5 which states: "so long as such alteration or change of location shall not interfere with the use of such ditch by the owner, or owners, of the dominant estate or estates." What I write here is conditioned on the accuracy of the information you provided to me this morning over the telephone. The Cox case speaks of the need for reasonable actions on the part of landowner and ditch user and it cannot be reasonable to not provide a way for the water to flow as soon as possible to your father's fruit trees.

I understand that reps from MRGCD and Ms. Jalayne Spivey of our office in Albuquerque will visit with you tomorrow at the site. Please excuse me from attending as I am already committed to another meeting. I hope this has been of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Hilario Rubio".

Hilario Rubio  
Acequia Liaison Officer





# City of Albuquerque

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

February 21, 1994

Eugene Harris  
2334 Rio Grande NW  
Albuquerque, NM 87107

**RE: RIO GRANDE BLVD. IMPROVEMENTS PH II, 4011.91.**  
**SUBJECT: CONSTRUCTION OF 3.5' SIDEWALK AT 2314 RIO GRANDE NW**

Dear Mr. Harris,

As a part of the referenced Project, the City has programmed to build 3.5' wide concrete sidewalks at various locations along both sides of Rio Grande Blvd. Due to the existing location of your irrigation ditch at the subject address, we will not be able to construct a 3.5' wide sidewalk and a 8" wide retaining wall per plan. The purpose of this letter is to request your permission for the Contractor to shift the ditches approximately 2 feet east in order to maintain a 3.5' wide sidewalk and a 8" wide retaining wall. This ditch relocation work will also include relocating the existing concrete pipe culvert connecting the ditches at driveway areas, reinstalling metal pipe laterals and any existing homemade metal gates. If any portions of your existing ditch is concrete, it will be reconstructed with concrete at a equal condition or better. All the mentioned improvements and the ditch work will be done at no cost to you.

Should you have any questions regarding the Project, please call me at 768-2530. Otherwise, if concurred, please sign at space provided below to acknowledge your approval.

Sincerely,

Peter Chang, P.E.  
Project Engineer  
Construction Mgmt. Sec.  
Engineering Group, PWD

Approved:

Eugene Harris

Date

XC: Farzad Omidvaran, NMSH&TD  
Ed Adams, Transportation Design Section  
f/4011.91 Project Correspondence  
RG:f/Readers'

Wednesday, April 06, 2005

**To:** The City of Albuquerque, Office of the Mayor – Mr. Martin Chavez  
And Members of the Development Review Board

**From:** Eugene S. Harris, who resides at 2334 Rio Grande Blvd. NW. , Albuquerque, NM  
and Deborah and Gary Croley – P.O.A. for Mr. Harris

**RE:** Request for the City to construct or cause the incomplete improvements to be constructed at the Cielo Su Tierra Subdivision, # 724281, on Rio Grande Blvd in Albuquerque, NM.

---

Mr. Mayor and DRB Members,

Thank you for taking time out of your busy schedules to meet with us today.

We are making this request on behalf of Mr. Eugene S. Harris, the 96 year old gentleman who resides directly to the North of the Cielo Su Tierra subdivision and has been using and maintaining irrigation ditches to provide water to his property since he and his neighbors constructed the ditches in 1936 in collaboration and agreement with the MRGCD.

As a result of the Subdivider's construction activities, Mr. Harris has suffered a significant amount of damage to his trees and property due to the blocking off of his water supply at the irrigation ditch on Rio Grande Blvd., in order for the subdivider to create a temporary entry to their project, their removal of his headgates and vacating a ditch easement that was still in use by him. The subdivider also took down four of his fences and a gate in order to build their new wall. The Subdivider also left an open trench with rebar sticking up about 3' as well as rebar that "missed" their new wall and was bent over on Mr. Harris' property. These problems began in December of 2003 and most of them have still not been resolved to date. Due to some information obtained just yesterday afternoon, we would like to go through a summary of events and follow up with the current status of these issues.

Summary of; interference with Mr. Harris' irrigation water rights by unreasonably and unlawfully blocking the irrigation ditch that supplied water to Mr. Harris's property, destroyed headgates, vacated ditch easement and uncorrected fencing damage by Subdivider, Wayne A. McFadden, Keller Williams Realty, and their agents, Jill Boland and Lonna Dexter and Subcontractors.

1. The survey, submitted to the City for approval, did not show Mr. Harris's irrigation ditch to the South of his property line, but showed an "encroachment". Brad Bingham, City Hydrology, told me that he would not have approved their plan, without addressing the ditch, had it been shown. Instead, later, they just vacated it, without Mr. Harris's consent, against State laws and City ordinances



- and ignored his water rights and easement rights, and told him that it was his responsibility to re dig a new ditch on his side of their new wall.
2. Jill Boland told Mr. Harris that his fence was encroaching on their property. Mr. Harris and his neighbors built this fence together and the "encroachment" was to allow for a gate put in, allowing access to the ditch built in 1936, for maintenance purposes.
  3. After telling Mr. Harris this, Jill Boland attempted to get Mr. Harris to pay for demolition and removal of his existing wall and fencing and part of their new wall. Mr. Harris asked me to call Jill to discuss this matter as he had not ordered, nor did he want a new wall.
  4. On 12/08/03 I informed Jill that Deborah Croley, my wife, has P.O.A. for Mr. Harris and asked her to include Deborah in any further matters concerning Mr. Harris or his property. Both Jill and Lonna have consistently ignored this request. Finally, Jill agreed to take care of the wall/fencing costs at no cost to Mr. Harris.
  5. The developers started tearing out Mr. Harris's fencing and wall without warning or collaboration with him. After many requests, they have never restored his fencing, which ran perpendicular to their new wall; however, they did get a fencing crew to put up a security fence across the front of *their* property.
  6. On or about 03/18/04, the developers blocked off Mr. Harris's water flow, under drought conditions, in order to allow for a temporary entry to their project. Since this was the beginning of the irrigation season, his property had not been irrigated since September of 2003 and did not receive adequate water supply until 07/15/04 and then only through our efforts using a pump. Mr. Harris had been trying to save his trees and plants by watering them with a garden hose, which was not an adequate water supply
  7. The agents told Mr. Harris that they had fought with the City for him to keep the ditch and that the City had taken a stance of "no irrigation". Lonna later told me this also. (Later, Ray Gomez with MRGCD verified that the City had always required them to widen the sidewalk and relocate the ditch accordingly). The agents kept saying that "in about a week or so" they would restore his water flow. They kept using the City as reinforcement for blocking off his water flow and later wrote that the City had given them until March 31<sup>st</sup>, 2005 to complete their improvements.
  8. Jill and Lonna ignored my request to install a temporary culvert as well as requests to supply water to Mr. Harris using the tankers that they were using to supply water to their project. A temporary culvert installed at their entry before filling in the ditch would have allowed Mr. Harris to use the irrigation water during most of the construction. When the City re-built the ditch in 1994, the contractor supplied irrigation water to Mr. Harris and his neighbors using tankers.
  9. Again, Lonna told us that she would have water restored "in about a week" and that it was Mr. Harris's responsibility to re dig a new ditch on his side of their new wall. Out of desperation, Mr. Harris had to hire a contractor to trench and install new irrigation piping in order to be ready for water. He was concerned that a new ditch might damage their new wall and footing.
  10. Instead of installing a temporary culvert, they installed culverts and channels to suit their plans. By visual inspection, the culvert installed under their entry



appeared to be placed too low and the grades were shot incorrectly. Now a temporary means of restoring water flow was not an option and it was clear that that the water flow would not be restored in the near future.

11. Mr. Harris asked his Attorney to write a letter asking the agents to restore his water flow as they had still not made good on their promises and his trees and shrubs were dying. She also provided the relevant State law NMSA 73-2-5.
12. Lonna got angry because of the first letter and said she was told not to talk to us anymore. She said that she could not help what the City Engineers were doing and they were having problems with TLC.
13. Lonna's responses, when she responded, to Mr. Harris's Attorneys' letters were evasive and inaccurate.
14. Their first attempt, after over three months of promises, at turning water in to the new ditch failed miserably and the ditch collapsed at the channel. . Lonna later blamed Mr. Harris for this problem by saying, in one of her responses, that he tried to run the water without authorization. The MRGCD water master had given Mr. Harris permission to use the water as long as it was available. We continued to try to help with the ditch problems and informed Lonna that the grades were not correct.
15. Although Lonna denies any serious problems with the ditch, she decides to line it with shotcrete to try to correct design and grading problems.
16. Their second attempt at turning the water in was disastrous. The grading and placement of their culvert were obviously not correct. The water overflowed the new ditch on both the North and South ends of the new ditch before reaching the North end of Mr. Harris's property and flooded the subdivision property as well as their Southerly neighbors' property. We had to turn the water off again.
17. Mr. Harris's Attorney sent Lonna another letter dated 07/20/04. Lonna responds in a letter dated 07/21/04 and states that the as builts have been done and approved by the City. She also tells us that Mr. Harris's property was never meant to be irrigated from the channel being used and ~~that~~ claims that his water was received from the North. She gives Mr. Harris some irrigation instructions and she pretty much tells us that this is as good as it gets and suggests that Mr. Harris should "fix" the problems by hiring a surveyor and lowering his irrigation system. Note that Lonna claims, in observation # 5 that they had stopped construction until verification of grading was complete. Mr. Harris's water has always been received from the South and from this ditch.
18. We shot some preliminary grades and had our engineer evaluate the ditch and verified that the grades were incorrect.
19. I contacted Brad Bingham, City Hydrologist, at the advice of the MRGCD engineer, and Brad and the City engineer, Jim Pung came out and looked at the situation and agreed that this is all wrong. They locked down the liability bond on the project and will require the developers to re build the ditch and headgates and restore the fences and gate. Mr. Bingham thanked me for bringing this to his attention as it could have been a huge liability to the City had they signed off on the project. Later, after no action by the developers to correct these issues, Mr. Bingham also stopped all new building permits as well as CO's for the two houses

under construction. We also met with representatives from the MRGCD and the State Engineers' office, on site, who also referred to NMSA 73-2-5.

20. As it turned out, the developers did not follow the Engineered design and had shot some wrong grades. Also, they did not verify which direction the water was received from and got it backwards and terminated the culvert, which supplies water to the ditch, that runs under Rio Grande Blvd. They later corrected this problem at the request of their Southerly neighbors who then had no water either.
21. Mr. Harris hired an Arborist to appraise tree damage.
22. We met with Mr. Harris's southerly neighbors, who had also had problems with the agents, and obtained a letter from them describing their dealings with the agents.
23. The damages to Mr. Harris's property were reduced, due to our taking action to do so. The agents made no offers to help us to irrigate, using a pump, or otherwise.
24. We hired Mr. Verlyn Miller to come to the site and shoot grades and provide us with an Engineer's report and to represent us. We provided Brad Bingham, who had been named our contact person, with Mr. Miller's report and suggestions in order to help with fixing the ditch problems.
25. I called Ray Gomez with the MRGCD and he agreed to issue a special use permit to get water from the Rio Grande if we rented a tanker and a pump. Instead, we were able to use a pump to pull and push the water from the ditch that has a "belly" in it to irrigate Mr. Harris's property. Although it was hard work, time consuming and required constant monitoring, we continued this process throughout the irrigation season.

#### Current conditions:

The subdivider's construction deadline was March 31<sup>st</sup>, 2005.

Mr. Harris's fencing has still not been restored to its former condition.

The vacated ditch issue has been ignored. It is shown on the plans we have obtained from the City.

Irrigation season is here again and the developers have still not restored the irrigation ditch and headgates, which they relocated, to its former state of usability. The Subdivider has cut off the rebar that was sticking up out of their open trench, last November, after PNM had flagged it. The Subdivider has removed a channel and a portion of the lined ditch at the North end in order to try another fix and have filled in the open trench in the last month or so.

Although the City had locked down the Subdivider's bond last August, until all of these problems were corrected, we were informed yesterday afternoon that the City had recently released the Subdivider's financial guaranty and had accepted the improvements. We understand that the Subdivider needed the money to try to fix the ditch. I talked to Mr. Bingham and we will schedule another test for the ditch but the headgates are still not replaced. I also reminded him about the fences still being down and said he has already asked the agents to correct this problem twice.

HE

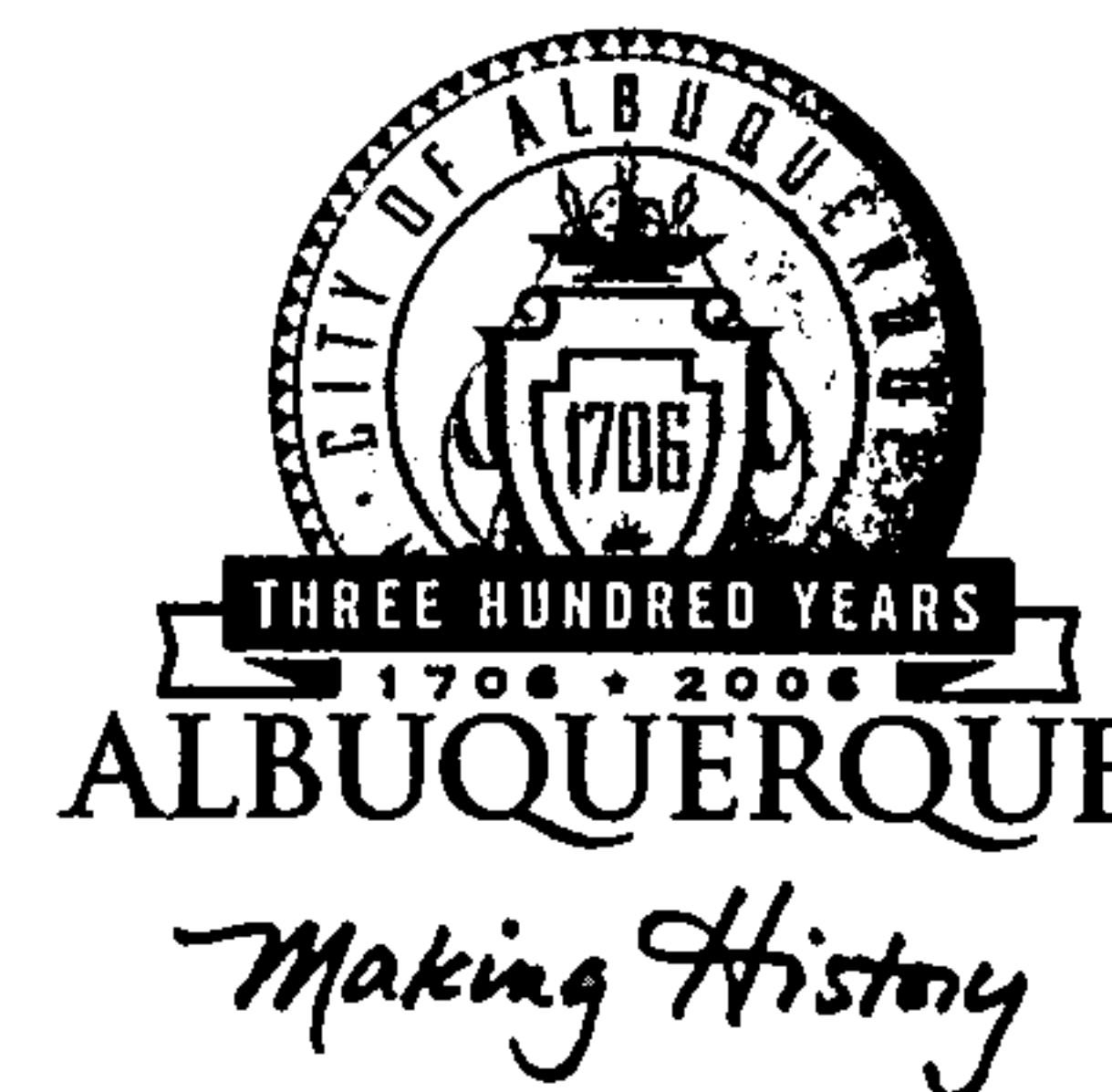


## Cielo Su Terra

- Project consisted of an 8-lot subdivision east of Rio Grande.
- The developer was required to dedicate 3 feet of R/W.
- There is an existing private irrigation ditch in this 3 foot strip which would have to be relocated as part of the improvements required.
- Contractor did not build new ditch per plan (which had design errors anyway).
- Neighbor (which needed the ditch to irrigate his property) was cut off during construction and afterwards because the ditch was built wrong – he had to pump the water to his property.
- I tried to get the developer to fix the problem but got nowhere so I held up release of Financial Guarantees and issuance of building permits until the developer agreed to fix the ditch. Revisions to the ditch have been made but they have not been tested. Does the irrigation water actually get to the intended property?



# CITY OF ALBUQUERQUE



February 14, 2005

Dave Thompson, PE  
Thompson Engineering Consultants, Inc.  
4800-C Juan Tabo NE  
Albuquerque, NM 87111

**Re: Alvarado Gardens Lot 33 & 34 subdivision Grading Certification  
Engineer's Stamp dated 1-24-05, (G13/D22)**

Dear Mr. Thompson,

Based on information contained in your submittal dated 1-25-05, the above referenced certification is approved for Release of SIA and Financial Guarantees.

P.O. Box 1293

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

Albuquerque

New Mexico 87103

[www.cabq.gov](http://www.cabq.gov)

Sincerely,

Bradley L. Bingham, PE  
Principal Engineer, Planning Dept.  
Development and Building Services

C: Marilyn Maldonado, CPN 724281  
file

**DRAINAGE INFORMATION SHEET**  
(REV. 1/28/2003rd)

G-13/D22

PROJECT TITLE: ALVARADO GARDENS SUBDIVISION LOTS 1 THRU 8 ZONE MAP/DRG. FILE #: G13  
DRB #: 1002531 EPC #: \_\_\_\_\_ WORK ORDER#: \_\_\_\_\_

LEGAL DESCRIPTION: LOTS 33 & 34, UNIT 1, ALVARADO GARDENS  
CITY ADDRESS: \_\_\_\_\_

ENGINEERING FIRM: Thompson Engineering Consultants, Inc.  
ADDRESS: 4800 Juan Tabo NE, Suite C  
CITY, STATE: Albuquerque, NM

CONTACT: David Thompson  
PHONE: 271-2199  
ZIP CODE: 87111

OWNER: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
ZIP CODE: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
ZIP CODE: \_\_\_\_\_

SURVEYOR: Surveys Southwest  
ADDRESS: 333 Lomas Blvd. NE  
CITY, STATE: Albuquerque, NM

CONTACT: Dan Graney  
PHONE: 998-0303  
ZIP CODE: 87102

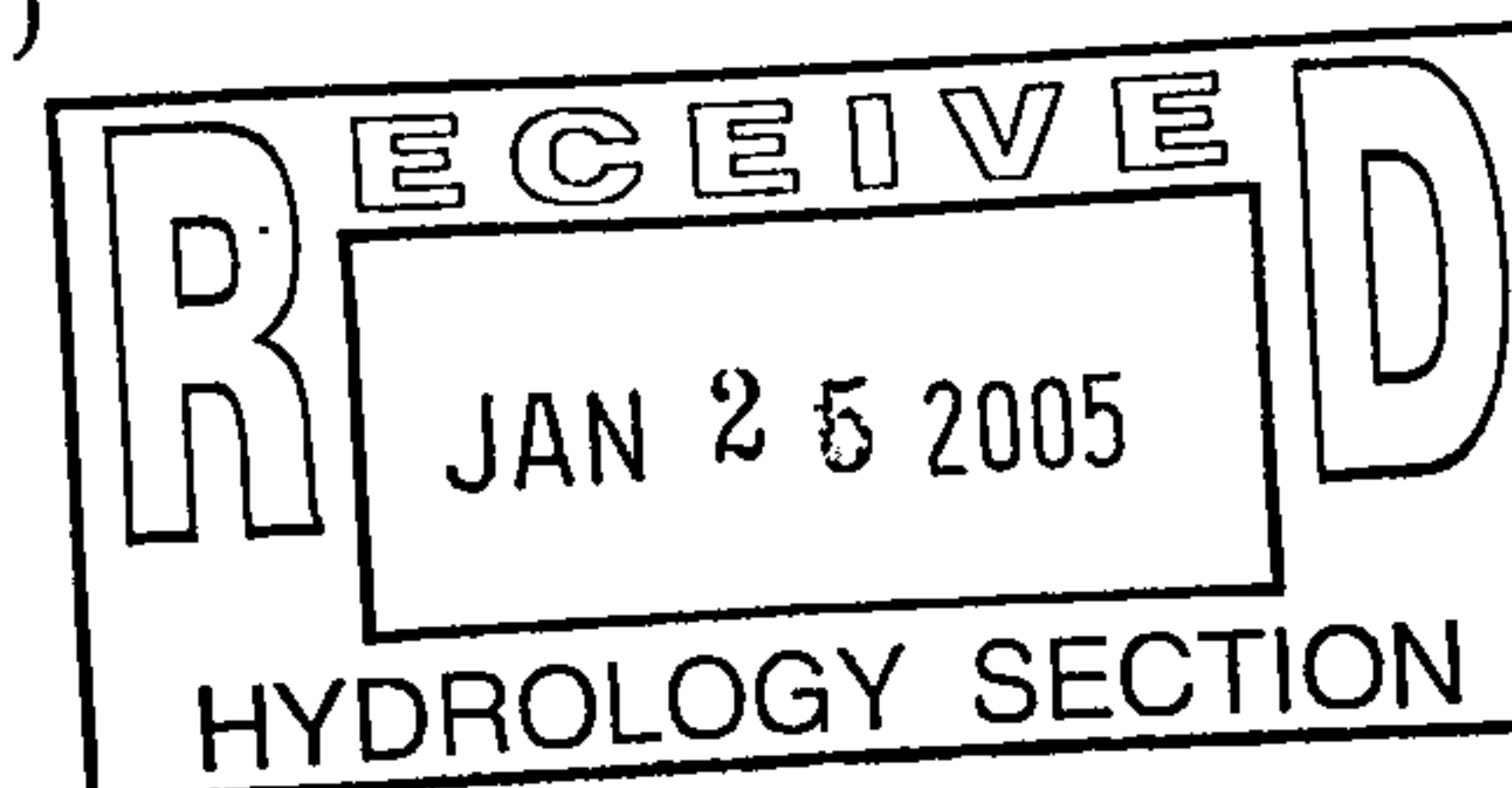
CONTRACTOR: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
ZIP CODE: \_\_\_\_\_

CHECK TYPE OF SUBMITTAL:  
☐ DRAINAGE REPORT  
☐ DRAINAGE PLAN 1<sup>st</sup> SUBMITTAL, REQUIRES TCL or equal  
☐ DRAINAGE PLAN RESUBMITTAL  
☐ CONCEPTUAL GRADING & DRAINAGE PLAN  
☐ GRADING PLAN  
☐ EROSION CONTROL PLAN  
☒ ENGINEER'S CERTIFICATION (HYDROLOGY)  
☐ CLOMR/LOMR  
☐ TRAFFIC CIRCULATION LAYOUT (TCL)  
☐ ENGINEER'S CERTIFICATION(TCL)  
☐ ENGINEER'S CERTIFICATION (DRB APPR. SITE PLAN)  
☐ OTHER

CHECK TYPE OF APPROVAL SOUGHT:  
☒ SIA/FINANCIAL GUARANTEE RELEASE  
☐ PRELIMINARY PLAT APPROVAL  
☐ S. DEV. PLAN FOR SUB'D. APPROVAL  
☐ S. DEV PLAN 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)

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



DATE SUBMITTED: January 25, 2005 BY: [Signature]

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location and scope of 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 acres
2. **Drainage Plans:** Required for building permits, grading permits, paving permits, and site plans less than five (5)
3. **Drainage Report:** Required for subdivisions containing more than ten (10) lots or constituting five (5) acres or



# ***City of Albuquerque***

P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

July 24, 2003

Dave Thompson, PE  
Thompson Engineering Consultants, Inc.  
4800-C Juan Tabo NE  
Albuquerque, NM 87111

**Re: Alvarado Gardens Lot 33 & 34 subdivision Drainage Report**  
**Engineer's Stamp dated 7-11-03, (G13/D22)**

Dear Mr. Thompson,

Based on information contained in your submittal dated 7-11-03, the above referenced report is approved for Preliminary Plat action by the DRB. The proposed perimeter wall and property division walls must appear on your infrastructure list and be partially (1' plus foundation) financially guaranteed.

This project requires a National Pollutant Discharge Elimination System (NPDES) permit. If you have any questions please feel free to call the Public Works Hydrology section at 768-3654 (Charles Caruso) or 768-3645 (Brian Wolfe).

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

Sincerely,

Bradley L. Bingham, PE  
Sr. Engineer, Planning Dept.  
Development and Building Services

C: Chuck Caruso, CoA  
file



**DRAINAGE INFORMATION SHEET**  
(REV. 1/28/2003rd)

G-13/D22

PROJECT TITLE: ALVARADO GARDENS SUBDIVISION LOTS 1 THRU 8 ZONE MAP/DRG. FILE #: G13

DRB #: 1002531 EPC #: \_\_\_\_\_ WORK ORDER#: \_\_\_\_\_

LEGAL DESCRIPTION: LOTS 33 & 34, UNIT 1, ALVARADO GARDENS

CITY ADDRESS: \_\_\_\_\_

ENGINEERING FIRM: Thompson Engineering Consultants, Inc.

ADDRESS: 4800 Juan Tabo NE, Suite C

CITY, STATE: Albuquerque, NM

CONTACT: David Thompson

PHONE: 271-2199

ZIP CODE: 87111

OWNER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

PHONE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

PHONE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

SURVEYOR: Surveys Southwest

ADDRESS: 333 Lomas Blvd. NE

CITY, STATE: Albuquerque, NM

CONTACT: Dan Graney

PHONE: 998-0303

ZIP CODE: 87102

CONTRACTOR: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE: \_\_\_\_\_

CONTACT: \_\_\_\_\_

PHONE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

CHECK TYPE OF SUBMITTAL:

☒ DRAINAGE REPORT

☐ DRAINAGE PLAN 1<sup>st</sup> SUBMITTAL, REQUIRES TCL or equal

☐ DRAINAGE PLAN RESUBMITTAL

☐ CONCEPTUAL GRADING & DRAINAGE PLAN

☐ GRADING PLAN

☐ EROSION CONTROL PLAN

☐ ENGINEER'S CERTIFICATION (HYDROLOGY)

☐ CLOMR/LOMR

☐ TRAFFIC CIRCULATION LAYOUT (TCL)

☐ ENGINEER'S CERTIFICATION(TCL)

☐ ENGINEER'S CERTIFICATION (DRB APPR. SITE PLAN)

☐ OTHER

CHECK TYPE OF APPROVAL SOUGHT:

☐ SIA/FINANCIAL GUARANTEE RELEASE

☒ PRELIMINARY PLAT APPROVAL

☐ S. DEV. PLAN FOR SUB'D. APPROVAL

☐ S. DEV. PLAN 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

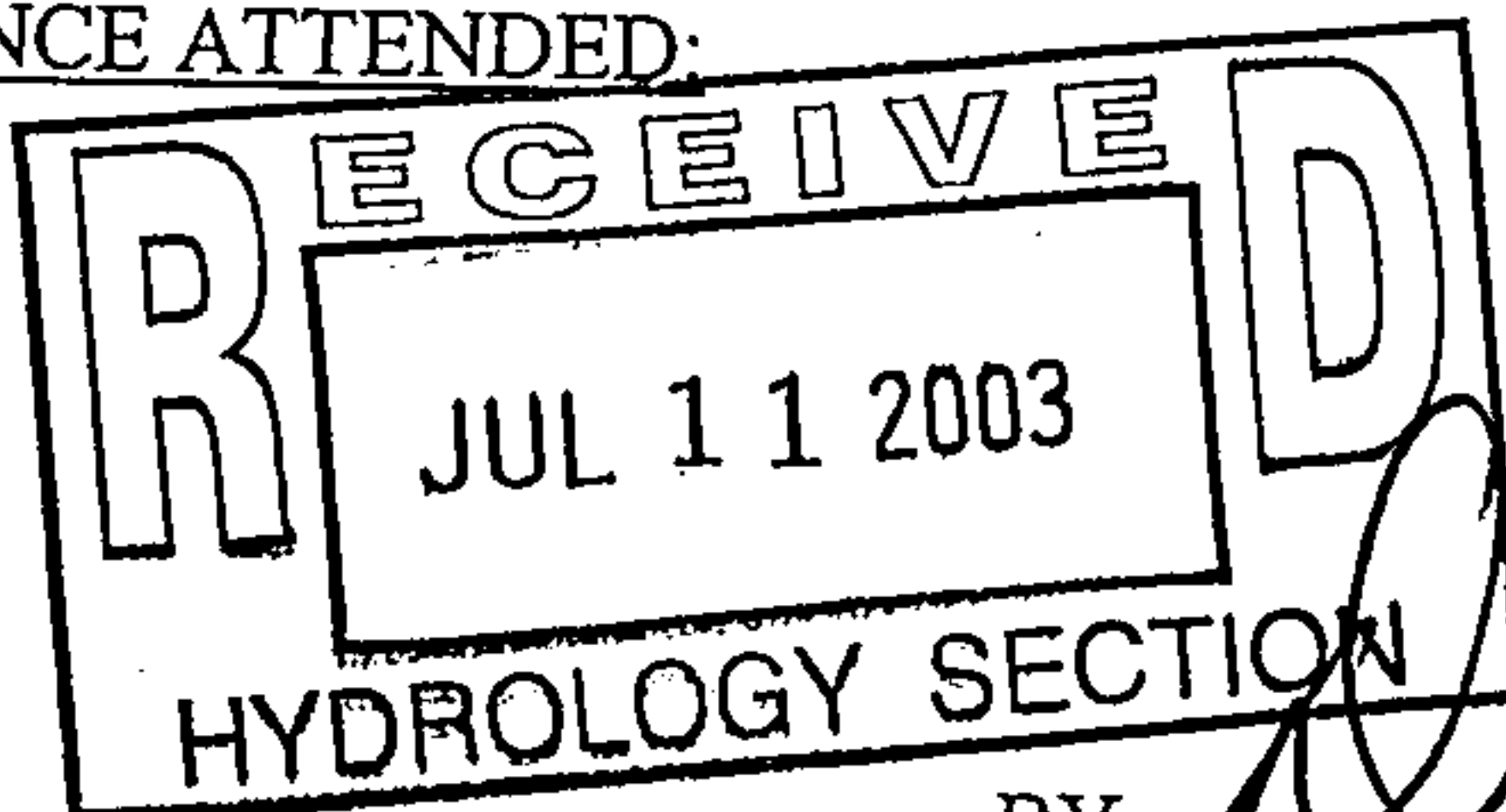
☐ OTHER (SPECIFY)

WAS A PRE-DESIGN CONFERENCE ATTENDED:

☐ YES

☒ NO

☐ COPY PROVIDED



DATE SUBMITTED: July 11, 2003

BY: [Signature]

Requests for approvals of Site Development Plans and/or Subdivision Plats shall be accompanied by a drainage submittal. The particular nature, location and scope of 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 acres
2. **Drainage Plans:** Required for building permits, grading permits, paving permits, and site plans less than five (5)
3. **Drainage Report:** Required for subdivisions containing more than ten (10) lots or constituting five (5) acres or

**DRAINAGE REPORT**  
**FOR**  
**ALVARADO GARDENS SUBDIVISION**  
**LOTS 1 THROUGH 8**



Prepared by:  
Thompson Engineering Consultants, Inc.  
4800 Juan Tabo NE, Suite C  
Albuquerque, NM 87111

July 2003



TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION AND SITE LOCATION .....	1
METHODOLOGY .....	1
EXISTING DRAINAGE CONDITIONS.....	1
INTRODUCTION .....	1
OFF-SITE FLOWS.....	1
ON-SITE FLOWS .....	1
DEVELOPED DRAINAGE CONDITIONS .....	2
DRAINAGE BASIN DELINEATION .....	2
HYDROLOGIC ANALYSIS .....	2
DRAINAGE CONCEPT .....	4

LIST OF PLATES

	<u>PAGE</u>
PLATE 1 – GRADING AND DRAINAGE PLAN	POCKET

LIST OF FIGURES

	<u>PAGE</u>
FIGURE 1 FEMA FLOOD INSURANCE RATE MAP .....	3

LIST OF TABLES

	<u>PAGE</u>
TABLE 1 EXISTING CONDITIONS HYDROLOGY .....	2
TABLE 2 DEVELOPED CONDITIONS HYDROLOGY .....	2
TABLE 3 PONDING DEPTHS.....	4



## **INTRODUCTION AND SITE LOCATION**

The proposed Alvarado Gardens Subdivision is located on the east side of Rio Grande Boulevard just south of Matthew Avenue. The 2.5 acre property will be subdivided into 8 residential lots. The site generally drains from north to south.

## **METHODOLOGY**

The hydrologic and hydraulic criteria in Section 22 of the City of Albuquerque Development Process Manual (DPM), entitled "Drainage, Flood Control, and Erosion Control," was followed to perform the analyses given in this report. The design storm used for both the existing undeveloped and developed conditions of the Alvarado Gardens Subdivision are the 100-year, 24-hour and 100-year, 10-day storm events for runoff volume computations.

## **EXISTING DRAINAGE CONDITIONS**

### ***INTRODUCTION***

The site has an average slope of less than 0.5%, and therefore is basically flat. The site gently slopes from west to east. Rio Grande Blvd. to the west is about a foot higher than the property. A private irrigation canal is located just east of the Rio Grande Right-of-Way. There are no offsite flows reaching the site and runoff ponds onsite. There are a total of five buildings on the property. The site is sparsely vegetated.

The FEMA Flood Insurance Rate Map Number 35001C0331D, effective date September 20, 1996, shown in Figure 1, indicates that the property is in Zone X, which is an area of 500-year flood; areas of 100-year flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 100-year flood.

### ***OFF-SITE FLOWS***

There are no offsite flows that reach the site.

### ***ON-SITE FLOWS***

For the existing conditions hydrologic analysis, land treatment types A, C, and D were used to determine peak flows. The Type D land treatment was used for the existing buildings onsite. Although there is only one drainage basin during existing conditions, runoff calculations were calculated for each proposed lot for comparison purposes. Table 1 shows the existing drainage conditions.

**Table 1 Existing Conditions Hydrology**

BASINS	Area (acres)	100yr- 6hr Peak Flow (cfs)	100yr- 24hr Runoff Volume (acre-ft)	100yr- 10day Runoff Volume (cf)	Land Treatment
Lot 1	0.3120	0.62	0.019	868	76%A, 20%C, 4%D
Lot 2	0.3173	0.65	0.020	938	75%A, 20%C, 5%D
Lot 3	0.3421	0.53	0.015	658	100%A
Lot 4	0.3072	0.58	0.017	726	80%A, 20%C
Lot 5	0.3002	0.68	0.022	1126	67%A, 21%C, 12%D
Lot 6	0.3349	0.67	0.021	962	77%A, 19%C, 5%D
Lot 7	0.3249	0.51	0.014	625	100%A
Lot 8	0.2500	0.39	0.011	481	100%A

## DEVELOPED DRAINAGE CONDITIONS

### *DRAINAGE BASIN DELINEATION*

Plate 1 shows that each lot will be a drainage basin since it will have CMU garden walls along the lot lines. The building pads and the road will be raised above the natural ground to allow for ponding on the lots.

### *HYDROLOGIC ANALYSIS*

To determine the peak flows of each basin a hydrologic analysis was performed in accordance to section 22.2 of the Development Process Manual (DPM). The property is located in Zone 2, which has a 100-year 24-hour storm event of 2.75 inches and a 100-year, 10-day storm event of 3.95 inches..

The subdivision was assigned land treatment values in accordance with Tables A-4 and A-5 of the DPM's section 22.2. Table 2 shows the Land Treatments and peak flows for each basin.

**Table 2 Developed Conditions Hydrology**

BASINS	Area (acres)	100yr- 6hr Peak Flow (cfs)	100yr- 24hr Runoff Volume (acre-ft)	100yr- 10day Runoff Volume (cf)	Land Treatment
Lot 1	0.3120	1.14	0.044	2508	23%B, 32%C, 45%D
Lot 2	0.3173	1.16	0.044	2553	23%B, 32%C, 45%D
Lot 3	0.3421	1.26	0.048	2774	17%B, 38%C, 45%D
Lot 4	0.3072	1.12	0.043	2470	23%B, 32%C, 45%D
Lot 5	0.3002	1.09	0.042	2413	23%B, 32%C, 45%D
Lot 6	0.3349	1.24	0.047	2716	17%B, 38%C, 45%D
Lot 7	0.3249	1.20	0.046	2634	18%B, 37%C, 45%D
Lot 8	0.2500	0.90	0.035	1996	27%B, 28%C, 45%D



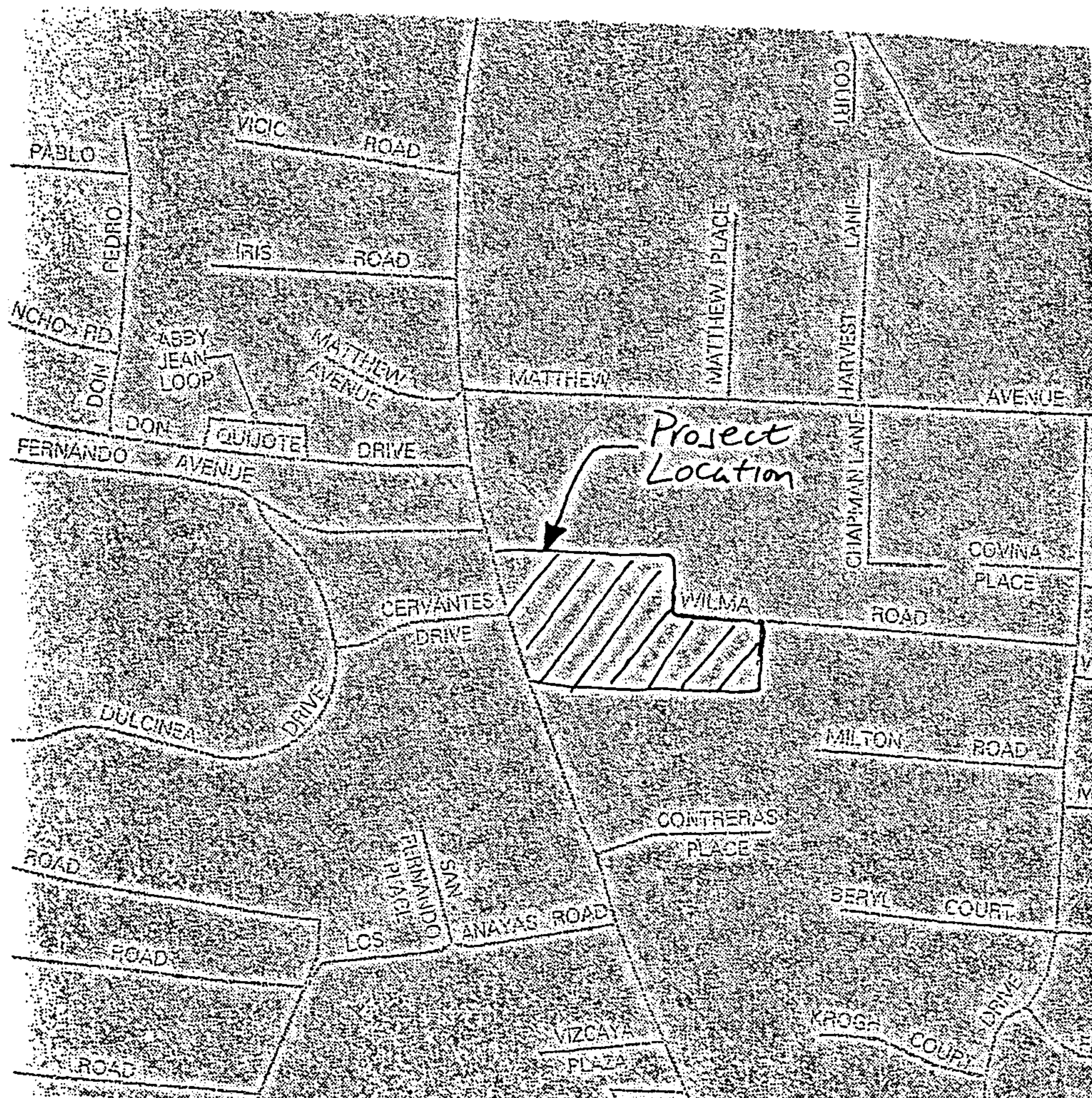


Figure 1 FEMA Flood Insurance Rate Map



## **DRAINAGE CONCEPT**

It is proposed that this subdivision will follow the "flat grading scheme." The subdivision fits all of the requirements for a flat grading scheme. The site is flat with no off-site flows. The maximum impervious area for each lot will be 45% including the pad and the driveway. The access road will have a graveled surface with no sidewalks. The pad elevation will be a minimum of one foot above the 100-year, 10-day storm water surface elevation. The high point of the road will be a minimum 4 inches above the 100-year, 10-day storm water surface elevation. A 6-foot high CMU wall will be constructed around the perimeter of the subdivision. The flow between the front yard and back yard will not be obstructed to allow for equalization of ponded water. Although there is a small diameter (15") storm sewer in Rio Grande Boulevard, it is over capacity and therefore cannot accept additional flows from this subdivision. Table 3 shows the ponding depths for each lot.

**Table 3 Ponding Depths**

<b>Basins</b>	<b>Area (SF)</b>	<b>Land Treatment D (45%)</b>	<b>Ponding Area (SF)</b>	<b>100yr- 10day Runoff Volume (cf)</b>	<b>Pond Depth (ft)</b>
Lot 1	13,590	6,116	5,675	2508	0.44
Lot 2	13,823	6,220	5,532	2553	0.46
Lot 3	14,900	6,705	5,201	2774	0.53
Lot 4	13,381	6,022	5,360	2470	0.46
Lot 5	13,077	5,885	5,497	2413	0.44
Lot 6	14,586	6,564	4,818	2716	0.56
Lot 7	14,153	6,369	5,013	2634	0.53
Lot 8	10,890	4,901	5,989	1996	0.33