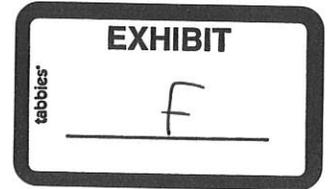


SECOND JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF BERNALILLO



SouthWest Organizing Project, New Mexico  
Health Equity Working Group, Pajarito Village  
Association, South Valley Coalition of  
Neighborhood Associations, Center for Social  
Sustainable Systems, South Valley Regional  
Association of Acequias, Daniel Richard "Rip"  
Anderson, Marcia Beauregard Fernandez,  
Santiago James Maestas, Rod Mahoney,  
Roberto Roibal, Kristine Suozzi, and  
Dr. Virginia Necochea,

Appellants/Petitioners

v.

NO. D-202-CV-201707037

Bernalillo County Board of County Commissioners  
and the individual members of the County  
Commission, Wayne Johnson, Debbie O'Malley,  
Stephen Michael Quezada, Maggie Hart Stebbins,  
and Lonnie Talbert,

and

Western Albuquerque Land Holdings,  
LLC, and Consensus Planning, Inc.,

Appellees/Respondents.

**AMENDED NOTICE OF APPEAL AND  
ALTERNATIVE  
PETITION FOR A WRIT OF CERTIORARI**

**Introduction**

The Appellants/Petitioners originally filed their Notice of Appeal and Alternative  
Petition for a Writ of Certiorari on October 2, 2017. In preparing Appellants/Petitioners'

recently submitted Statement of Appellate Issues (July 16, 2018), it was discovered that four parties to the proceedings below were inadvertently left off the caption of Appellants/Petitioners' originally filed Notice of Appeal and Alternative Petition for Writ of Certiorari. The Appellants/Petitioners therefore submit this Amended Notice of Appeal and Alternative Petition for Writ of Certiorari with the corrected caption and advise the Court that the following Parties were represented by legal counsel, the New Mexico Environmental Law Center, in the proceedings below and were inadvertently left off the caption of the Appellants/Petitioners' originally filed Notice of Appeal and Alternative Petition for Writ of Certiorari: South Valley Coalition of Neighborhood Associations, Center for Social Sustainable Systems, South Valley Regional Association of Acequias, and Dr. Virginia Necochea. See attached Exhibit A demonstrating that these Parties were represented by legal counsel, the New Mexico Environmental Law Center, in the proceedings below. (Record, 102889-102950).

The following parties therefore constitute the Appellants/Petitioners in this proceeding: the SouthWest Organizing Project, including its individual and group members; the New Mexico Health Equity Working Group, including its individual and group members; the Pajarito Village Association, including its individual and group members; the South Valley Coalition of Neighborhood Associations, including its individual and group members; the Center for Social Sustainable Systems, including its individual and group members; the South Valley Regional Association of Acequias, including its individual and group members; Daniel Richard "Rip" Anderson, Marcia Beauregard Fernandez, Santiago James Maestas, Rod Mahoney, Roberto Roibal, Kristine Suozzi, and Dr. Virginia Necochea (referred to

collectively as “the Appellants/ Petitioners”).

The Appellants/Petitioners seek review of the Bernalillo County Board of County Commissioners’ (“Board” or “Board of County Commissioners”) decision to deny Appellants/Petitioners’ appeal of the Bernalillo County Planning Commission’s (“Planning Commission”) decision recommending approval of the Santolina Level B.1 Master Plan and to “uphold” the Planning Commission decision. The Board of County Commissioners are Debbie O’Malley, Stephen Michael Quezada, Maggie Hart Stebbins, and Lonnie Talbert. (They and the Board of County Commissioners are referred to collectively as “the Board of County Commissioners” or “the Board”).

The decision by the Board of County Commissioners’ was issued on September 1, 2017, and a copy of the decision (“Board Decision”) is attached as Exhibit A.

The Appellants/Petitioners’ appeal of the Planning Commission’s decision to the Board of County Commissioners was appeal number COA2017-0001/SPR-2016-0001, and the language in the Board’s Decision stating the Board’s action is on the second page<sup>1</sup> of the Decision. It states:

**ACTION: DENIED THE APPEAL, THEREBY UPHOLDING THE COUNTY PLANNING COMMISSION’S RECOMMENDATION OF APPROVAL OF THE PLANNED COMMUNITIES SANTOLINA LEVEL B.1 MASTER PLAN**

Board’s Decision, second page (emphasis in original).

The explanation of the Board’s Decision is on the same page. It states the following:

At the August 30, 2017 public hearing, the Board of County Commissioners

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<sup>1</sup> The pages of the Board of County Commissioners’ Decision are not numbered.

voted to deny the [Petitioners'] appeal and uphold the County Planning Commission's decision to recommend approval of the Planned Communities Santolina Level B.1 Master Plan for more specific development with the Santolina Level Master Plan, with modifications to the findings and conditions.

*Id.*

Though the Board hearings held on the Santolina Level B.1 Master Plan were referred to as "special zoning meetings," Bernalillo County officials asserted several times that the Board's consideration of the Santolina Level B.1 Master Plan was a legislative matter and not a zoning matter. It therefore is not clear whether the Board of County Commissioners' Decision concerning the Santolina Level B.1 Master Plan was a decision by the Board acting as a zoning authority or a decision by the Board acting in a different capacity. Appeals from the Board of County Commissioners, when it acts as a zoning authority, are governed by NMSA 1978 sections 3-21-9 and 39-3-1.1 and NMRA 1-074. Appeals from the Board of County Commissioners, when it acts in another capacity, are governed by Article VI, sections two (2) and thirteen (13) of the New Mexico Constitution and NMRA 1-075. For that reason, the Appellants/Petitioners are filing this Notice of Appeal and alternative Petition for a Writ of Certiorari.

#### **Notice of Appeal**

The Appellants/Petitioners hereby appeal to the District Court for the Second Judicial District from the Board of County Commissioners' Decision. The Board's Decision denied the Appellants/Petitioners' appeal from a determination of the Planning Commission concerning the Santolina Level B.1 Master Plan and approved the Santolina Level B.1 Master Plan. The Appellants/Petitioners request that the Court vacate the Board of County

Commissioners' Decision.

This appeal is filed pursuant to NMSA 1978 sections 3-21-9 and 39-3-1.1. This appeal is timely pursuant to NMRA 1-074 because this appeal is filed within 30 days of the Board's Decision (Exhibit A, second page), which was issued on September 1, 2017. Exhibit A, p.1. The thirtieth day to file the appeal was a Sunday, October 1, 2017, therefore this appeal is filed on a Monday, October 2, 2017, pursuant to NMRA 1-006(C).

**Alternative Petition for a Writ of Certiorari**

The Appellants/Petitioners hereby petition the New Mexico District Court for the Second Judicial District for a writ of certiorari to review the Decision of the Board of County Commissioners. The Board of County Commissioners' Decision denied Appellants/Petitioners' appeal of the Planning Commission's decision recommending approval of the Santolina Level B.1 Master Plan and approved the Santolina Level B.1 Master Plan.

The Board of County Commissioners voted to deny the Appellants/Petitioners' appeal on August 30, 2017, and the Board of County Commissioners' Decision (Exhibit A) is dated September 1, 2017. The Appellants/Petitioners' appeal to the Board was number COA2017-0001/SPR-2016-0001, and the Board's denial of the Appellants/Petitioners' appeal is on the second page of the Decision.

**I. Jurisdiction**

The District Court's jurisdiction is based on Article VI, section two (2) of the New Mexico Constitution, which provides that an aggrieved party shall have an absolute right to one appeal and Article VI, section thirteen (13) of the New Mexico Constitution, which

provides that the District Courts shall have appellate jurisdiction in all cases originating in inferior tribunals in the District Courts' districts. The Appellants/Petitioners are aggrieved by the Decision of the Board of County Commissioners, and the Appellants/Petitioners therefore are entitled to review of the Board's Decision.

In accordance with NMRA 1-075, this Petition is timely because it is filed within 30 days of the Board's Decision, which is dated September 1, 2017. The thirtieth day to file the appeal was a Sunday, October 1, 2017, therefore this appeal is filed on a Monday, October 2, 2017, pursuant to NMRA 1-006(C).

## **II. The Board of County Commissioners' Proceedings**

The proceedings before Bernalillo County were initiated by Western Albuquerque Land Holdings, LLC's filing of the Santolina Level B.1 Master Plan for the proposed Santolina development. The Santolina Level B.1 Master Plan was considered by the Planning Commission, which made a decision on January 4, 2017 recommending that the Board of County Commissioners approve the Master Plan. The Planning Commission's written decision was issued on January 10, 2017.

Acting for the Appellants/Petitioners, the New Mexico Environmental Law Center filed an appeal (numbered COA2017-0001/SPR-2016-0001) of that decision to the Board of County Commissioners. Exhibit A, p. 2. The Board conducted several "special zoning meetings" concerning the Appellants/Petitioners' appeal and the Planning Commission's recommendation on March 14, 2017; April 4, 2017; August 15, 2017; and August 30, 2017.

During those hearings, County Staff presented the Santolina Level B.1 Master Plan; the Appellants/Petitioners presented their appeal; and agents for Western Albuquerque Land

Holdings, LLC (“WAHL”) and Consensus Planning, as well as representatives of the Bernalillo County Planning Department staff, presented arguments against the appeal. Following those presentations, the Board of County Commissioners denied the Appellants/Petitioners’ appeal and approved the Santolina Level B.1 Master Plan by a 3-2 vote.

**III. The Parties to the Board of County Commissioners’ Proceedings.**

The Board’s Decision denied the Appellants/Petitioners’ appeal to the Board from a determination of the Bernalillo County Planning Commission concerning the Santolina Level B.1 Master Plan, and approved the Santolina Level B.1 Master Plan. The appeal to the Board of County Commissioners’ proceedings was initiated by the Appellants/Petitioners, who were represented by Jaimie Park, an attorney with the New Mexico Environmental Law Center.

The Appellants/Petitioners’ appeal was opposed by Western Albuquerque Land Holdings, LLC (“WAHL”) and Consensus Planning (collectively referred to as the “Santolina Developers”), which were represented by Jim Strozier of Consensus Planning and John Salazar of Rodey, Dickason, Akin, Sloan, and Robb, PA. The Appellants/Petitioners’ appeal also was opposed by the Bernalillo County Planning Department staff. The County staff was represented by attorneys Michael Garcia and Robert White (who also provided legal counsel to the Board of County Commissioners). Other members of County staff also made comments concerning the Appellants/Petitioners’ appeal and the Santolina Level B.1 Master Plan, such as Catherine VerEcke, Richard Meadows, Vince Murphy, Juanita Garcia, John Barney, Dan McGregor, and Enrico Gradi.

**IV. The Appellants/Petitioners Are Entitled to Relief.**

The Appellants/Petitioners are entitled to have the Board of County Commissioners' Decision vacated for two reasons. First, valid Santolina Level A approvals, which are a prerequisite for a Level B master plan, are not in place. Second, the Planned Communities Criteria, which govern the proposed Santolina development, does not permit the Board to make Level B approvals *before* Level A approvals. Finally, the Santolina Level B.1 Master Plan does not comply with several requirements of the Bernalillo County Planned Communities Criteria, which govern master plans for planned communities such as the proposed Santolina development.

**A. The Prerequisite Level A Approvals Are Not in Place for the Proposed Santolina Development.**

The Bernalillo County Planned Communities Criteria, which govern planned communities like the proposed Santolina development, requires three phases of review and approval of a planned community: "Level A is the overall Community Master Plan, Level B includes the Village Plan, the community center, employment center, or all or part of an Urban Center plan. Level C is for subdivision or site development plan review." Planned Communities Criteria, page 35. In order to develop property as a planned community, the property must be zoned for planned communities. Bernalillo County Zoning Ordinance ("the Zoning Ordinance"), Section 19.5(B)(1). The Santolina developers, therefore, sought a Zone Map Amendment to change the zoning from A-1 Rural Agricultural to a Planned Communities zone. The Board approved the Santolina developers' Zone Map Amendment, as well as the Santolina Level A Master Plan and the Level A Development Agreement, in 2015.

The Appellants/Petitioners in this matter filed an appeal/alternative petition for writ of certiorari of the Board of County Commissioners' Level A approvals for the proposed Santolina development with the Second Judicial District Court in 2015. D-202-CV-2015-04466, consolidated with D-202-CF-2015-05363. The Court recently reversed the Board's decision approving the Zone Map Amendment, or Planned Communities Zone for the proposed Santolina development. Memorandum Opinion and Order, pp. 2, 8-9, 9-14, 16-18, 20 (May 31, 2017). The Court reversed the Board's approval of the Zone Map Amendment on the grounds that the Board's Zone Map Amendment proceedings were quasi-judicial and that the Board denied the Appellants/Petitioners procedural due process. *Id.*, pp. 9-14, 16-18.

Because the Zone Map Amendment is a condition precedent for subsequent Level A, B and C approvals, all approvals dependent upon the now invalid Zone Map Amendment are also invalid. Therefore, no valid Level A Master Plan and Level A Development Agreement are in place for the proposed Santolina development. The recently approved Santolina Level B.1 Master Plan is also invalid because it too relies upon the voided Zone Map Amendment. Furthermore, the Planned Communities Criteria does not permit the Board to make Level B approvals before Level A approvals for planned communities.

***1. The Court's ruling reversing the Zone Map Amendment means that the Board's Zone Map Amendment decision is void.***

The basis on which the Court reversed the Zone Map Amendment was that the Board of County Commissioners denied the Appellants/Petitioners procedural due process by not voting on the Appellants/Petitioners' motion to disqualify Bernalillo County Commissioner Art De La Cruz from participating in the proceedings concerning the Zone Map Amendment. Memorandum Opinion and Order, pp. 16-17. Moreover, the Appellants/Petitioners sought

to disqualify Commissioner De La Cruz from the entire proceeding, not just from voting on the Zone Map Amendment. *See* Appellants/Petitioners' Request for Recusal and Alternative Motion for Disqualification of Bernalillo County Commissioner de la Cruz. ("Request and Alternative Motion") (Santolina Level A Record ("R"), 80971-80979; the Santolina Level B Record has not yet been provided). As the Court noted, the Board heard argument on the Request and Alternative Motion, but never voted on the Request and Alternative Motion.

The Appellants/Petitioners filed their Request and Alternative Motion the day before the Board began its hearings on Santolina (R., 80971-80979), and the Request and Alternative Motion was taken up as a preliminary matter at the beginning of the Board's first hearing on March 25, 2015. R., 87277-87296. After the Board failed to vote on the Request and Alternative Motion, Commissioner De La Cruz participated in all of the Board's proceedings concerning the Zone Map Amendment as well as all of the Board's proceedings addressing the Santolina Level A Master Plan, and the Development Agreement. *See* R. 87296-87422 (March 25, 2015 Board hearing transcript); R. 87296-87422 (March 26, 2015 Board hearing transcript); R. 87719-87888 (May 11, 2015 Board hearing transcript); R. 87889-88123 (May 28, 2015 Board hearing transcript); R. 88124-88360 (June 16, 2015 Board hearing transcript); and R. 88361-88526 (June 24, 2015 Board hearing transcript).

The Board denied the Appellants/Petitioners procedural due process at the start of the Board's proceedings, and continued those proceedings on the basis of that denial of procedural due process. For that reason, this case is analogous to the situation in Nesbit v. City of Albuquerque, 1977-NMSC-107, 91 N.M. 455. In Nesbit, the developer of apartments failed to give the statutorily required notice to neighbors of the property in question. 1977-

NMSC-107, ¶1. After the City Commission denied the proposal, the developer obtained review in the District Court, which reversed the Commission in 1973. The Commission then approved the developer's proposal. *Id.* When construction began in 1976, the neighbors filed a motion to intervene in the litigation and a motion to set aside the 1973 judgment. The District Court granted both motions, and the developer appealed (*Id.*), arguing that even if the zoning agencies' decisions were invalid, the 1973 District Court decision was correct because all of the parties entitled to notice of that proceeding were served. *Id.*, ¶10. The Supreme Court disagreed, stating:

The 1976 district court found as a matter of law that the failure to give the notice required by statute *rendered all subsequent acts void*. The 1973 judgment and the subsequent approval by the City Commission were also void. *By failing to follow statutory procedures, due process of law was violated and no subsequent act could correct the defect.*

*Id.*, ¶11, emphasis added.

The Supreme Court's reasoning in Nesbit applies in this matter. There, the neighbors were denied procedural due process at the start of the City's proceedings, and the Supreme Court ruled that "no subsequent act could correct the defect." 1977-NMSC-107, ¶11. Here, the Board denied the Appellants/Petitioners procedural due process at the start of the Board's proceedings concerning the Zone Map Amendment and "no subsequent act by the Board [can] correct that defect." For that reason, all of the Board's proceedings concerning the Zone Map Amendment that occurred after the Board's denial of procedural due process – *i.e.*, all of the Board's proceedings on that issue – are void. Moreover, the Board cannot correct its error merely by taking a new vote on the Zone Map Amendment. If the Santolina Developers propose to seek a new amendment of the zone map, they must file a new

application requesting that relief, and that application must be considered first by the County Planning Commission.

*2. The ruling reversing the Zone Map Amendment also voids the Board's decision approving the Santolina Level A Master Plan.*

**a. Amendment of the zone map is a required condition for approval of the Santolina Level A Community Master Plan.**

The Bernalillo County Zoning Ordinance (“the Zoning Ordinance”) indicates that an area should be mapped for a planned community before or at the same time that a Level A Master Plan is approved, and this was confirmed by the Court’s Memorandum Opinion and Order. The appropriate sequence of approvals for establishment of a planned community is set forth in the Zoning Ordinance. Section 19.5(B)(1) of the Zoning Ordinance indicates that:

Adoption and amendment of rank two Level A plans is by the Board of County Commissioners. It is initially done when the PC [Planned Communities] zone is mapped for a community; application for the PC zone shall be accompanied by a proposed Level A plan for the planned community.

Zoning Ordinance (PC Planned Communities Zone), §19.5(B)(1).

The significance of this language was explained in the Court’s Memorandum Opinion and Order. The Court stated:

According to the Zoning Code, it appears the PC Zone is “mapped” first before the adoption of a Level A plan, given that the application for the PC Zone needs the Level A with it. This interpretation is supported by Finding of Fact ¶2 in the Decision regarding the Master Plan. [*Id.* 88647 (“The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone)).]

Memorandum Opinion and Order, pp. 13-14.

As interpreted by the Court, the Zoning Ordinance therefore indicates that an area should be zoned for a Planned Community before the adoption or at the time of approval of a Level A Master Plan, and this was the procedure followed by the Board in this matter. The Santolina property was zoned A-1 Rural Agricultural until the Board amended the zone map to change that zoning to Planned Communities. R. pp. 86821-86828; 88654-88656. In accordance with the timing dictated by the Zoning Ordinance, the Board made that zoning change first and then approved the Santolina Level A Master Plan. R. 86811-86818; 88635-88637. Moreover, the Zoning Ordinance indicates that this sequence was appropriate. The Ordinance states that:

All property is governed according to the zone in which it is located. Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.

Zoning Ordinance, §6.E.

The Santolina property was zoned A-1 Rural Agricultural before the Board changed the zoning to Planned Communities. The uses that the Zoning Ordinance authorizes in A-1 Rural Agricultural areas do not include Planned Communities, which means that the Santolina property could not be used for that purpose without the Zone Map Amendment.

**b. The Board's decisions confirm that approval of the Santolina Level A Master Plan depends on the approval of the zoning change.**

The Board of County Commissioners' written decisions changing the zoning for the Santolina property and the approval of the Santolina Level A Master Plan confirm that the zoning decision is a condition that is to be satisfied at or before the time of the approval of

the Master Plan. The Board's written decision changing the zoning for the proposed Santolina development from A-1 Rural Agricultural to Planned Communities states:

The decision is based on the following Findings:

1. The request is for a zone map amendment from A-1 Rural Agricultural to Planned Community Zone in connection with the proposed Santolina Planned Communities Level A Master Plan.  
....
3. The request for approval of the PC Planned Communities Zone has been submitted in conjunction with the request for approval of the Santolina Level A Master Plan (SPR-20130004).

Zone Map Amendment Decision, p.2, R. 86822. Similarly, the Board of County Commissioners' written decision approving the Santolina Level A Master Plan ("the Level A Master Plan Decision") stated:

The request for approval of the Santolina Level A Master Plan has been submitted in conjunction with a request for a zone change for Planned Communities (PC) Zoning in accordance with Section 19.5 of the Bernalillo County Zoning Code (Planned Communities Zone) (CZ-20130009).

Level A Master Plan Decision, p. 2, Findings ¶2, R. 88646.

**c. The Santolina Level A Master Plan also indicates its dependence on the Zone Map Amendment.**

The language of the Santolina Level A Master Plan itself confirms that the Zone Map Amendment is a condition for the approval of the Master Plan. For example, the Plan states:

Concurrently with the Bernalillo County approval of this Master Plan, the Planned Communities Zone (PC Zone) has been applied to the property. The Santolina PC Zone (see Chapter 4), places zoning on the property in alignment with the vision for Santolina expressed in this Level A Master Plan.

Santolina Level A Master Plan, p. 10, R. 86584.

As another example, the Master Plan indicates:

In addition to the Master Plan, WAHL [Western Albuquerque Land Holdings, LLC] also requested adoption of Planned Community Zone (PC Zone) for the entire Master Plan Area. The PC Zone is in conformance with the Level A Master Plan for the planned community.

*Id.*, p. 23, R 86597.

**d. The Court's ruling reversing the Zone Map Amendment voids the approval of the Santolina Level A Master Plan.**

The Zoning Ordinance indicates that a Zone Map Amendment changing zoning to Planned Communities Zone should be done before or at the same time as approval of a Level A Master Plan. In this matter, the Court reversed the Board of County Commissioners' decision amending the zone map to change the zoning for the proposed Santolina development property from A-1 Rural Agricultural to Planned Communities. The result of that decision is that the land where the proposed Santolina development would be located remains zoned A-1 Rural Agricultural, and the Board's decision changing the zoning of that land to Planned Communities is no longer valid. For that reason, the Board's approval of the Santolina Level A Master Plan also is not valid because the land addressed by that Master Plan is no longer zoned Planned Communities.

**e. The Court's ruling on the approval of the Santolina Level A Master Plan did not address the effect of a ruling voiding the Zone Map Amendment.**

Finally, although the Court affirmed the Board's approval of the Santolina Level A Master Plan, that does not mean that the Master Plan is not rendered void by the Court's ruling reversing the Zone Map Amendment. The Court affirmed the Board's approval of the Master Plan based on the determination that the approval of the Master Plan was a legislative

action.<sup>2</sup> The Court's ruling never addressed the effect on the approval of the Master Plan of a ruling reversing and thereby voiding the Zone Map Amendment. For that reason, the Court's ruling affirming the approval of the Master Plan does not preclude a ruling that the reversal of the Zone Map Amendment also voids the Board's approval of the Master Plan.

*3. The Court's ruling reversing the Zone Map Amendment voids the Board's approval of the Development Agreement.*

**a. Amendment of the zone map is a required condition for approval of the Santolina Level A Development Agreement.**

The Board of County Commissioners entered into Level A Development Agreement on August 10, 2015, nearly two months after the Board's approvals of the Zone Map Amendment and the Santolina Level A Master Plan. R 88725. Section 3.3 of the Development Agreement expressly states the Agreement's dependence on the Zone Map Amendment; it provides:

This Agreement is contingent upon action by the Governing Body approving the Master Plan, the Land Use Plan, the PC Zoning, and this Agreement.”

R 88662.

Moreover, this reflects the Development Agreement's relationship to the Zone Map Amendment. The Zone Map Amendment provides the framework for a Planned Community and is the means for implementing the Planned Communities Criteria and ensuring compliance with the Comprehensive Plan. The Development Agreement is the contract between the Board and the Santolina Developers designed to ensure compliance with the Planned Communities Criteria.

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<sup>2</sup> The Appellants respectfully disagree with this determination.

**b. The Development Agreement is also dependent upon the now void Santolina Level A Master Plan.**

As noted above, the Court's ruling voiding the Zone Map Amendment also voids the Board of County Commissioners' approval of the Santolina Level A Master Plan. However, there can be no valid Development Agreement without a valid Level A Master Plan for three reasons. First, the language of section 3.3 of the Development Agreement quoted above confirms that a valid Level A Master Plan is a condition for the approval of the Development Agreement. *Id.* Second, the Planned Communities Criteria confirm that approval of a Development Agreement is dependent on approval of a valid Level A Master Plan. The Planned Communities Criteria require the following, in pertinent part:

Level A development agreement will be developed *in accordance with* the Community Master Plan to:

- a. *Codify the Master Plan* and Land Use Plan.
- b. Outline a preliminary infrastructure/service agreement to cover phasing of master plan and public services/facilities, and designation of financial, operations, and management responsibility over time.
- c. Commit to mitigation of negative consequences of development when known.
- d. Provide an assignable agreement expressing items mutually accepted by the City and/or County and the planned community developer and committing to their permanency unless re-negotiated.
- e. Provide a document suitable as a legally recorded instrument with the County Clerk.
- f. Identify incentives to be provided by the City to the developer, if any are agreed to.

Planned Communities Criteria, pp. 36-37, emphasis added.

Third, Section 19.5 of the Zoning Ordinance confirms that approval of a Development Agreement is dependent on approval of a valid Level A Master Plan. Section 19.5(A)(2) states:

Until a Level B plan has been adopted by the County to govern a site, uses and regulations specified in the Level A Development Agreement, which must accompany

initial county zoning, shall govern the interim permissive and conditional uses. The uses *shall be consistent with the Level A Plan: community plan.*

Zoning Ordinance (Planned Communities Zone), §19.5(A(2), emphasis added.

For those reasons, the Court's ruling rendering the Zone Map Amendment and the Santolina Level A Master Plan void also voids the Development Agreement. Therefore, there were no valid Level A approvals in place when the Board voted to approve the Level B.1 Master Plan.

***4. The Court's reversal of the Zone Map Amendment also voids the Board's decision approving the Santolina Level B.1 Master Plan.***

The Board's recent Level B approval of the Santolina Level B.1 Master Plan is also invalid because it too is dependent upon a valid Zone Map Amendment, which is no longer in place. *See* Santolina Level B.1 Master Plan, Chapter 3, pages 16-31 (January 2016). County Staff has conceded that the Level B.1 Master Plan is dependent upon a valid Zone Map Amendment, as follows:

The Level B Plan also includes the specific zoning regulations and details for the Planned Communities (PC) zoning that was adopted conceptually in 2015 (See Chapter 3). The zoning includes eleven specific districts that generally coincide with the land use areas, and it also provides specific design standards within each of the zoning districts and in a section for Design Standards.

County Staff Summary by Catherine VerEecke, page 2 (August 30, 2017). The Board also made the following finding in support of its approval of the Level B.1 Master Plan:

The Level B.1 Plan (Chapter 3) makes a provision for Zoning Districts in accordance with the Land Use Plan that include permissive, prohibited, and conditional uses, height, area, off-street parking, and landscape and buffer regulations *in accordance with the Planned Communities (PC) Zone* of the Bernalillo County Zoning Ordinance.

Board's Decision, Finding 11 (September 1, 2017).

**B. The Board of County Commissioners Cannot Make Level B Approvals Before Valid Level A Approvals Are in Place.**

Furthermore, the Planned Communities Criteria does not permit the Board to make Level B approvals *before* Level A approvals. The Planned Communities Criteria provides the following, in pertinent part, “While this process outlines three separate levels of review, it is possible that levels could be developed simultaneously and approved jointly.” Planned Communities Criteria, page 35. As discussed above, there are no longer valid Level A approvals in place. Therefore, the Board made a Level B approval *before* valid Level A approvals. For these reasons, the Court should vacate the Board’s approval of the Level B.1 Master Plan and remand for further proceedings in compliance with the Planned Communities Criteria.

**C. The Santolina Master Plan Does Not Comply With The Bernalillo County Planned Communities Criteria.**

The Santolina Level B.1 Master Plan is governed by the Planned Communities Criteria that have been adopted by the Board of County Commissioners. However, the Santolina Level B.1 Master Plan fails to comply with several important requirements of those Criteria.

***1. The Santolina Level B.1 Master Plan does not provide required information concerning availability of water.***

The Planned Communities Criteria make clear that a developer of a proposed planned community must demonstrate the availability of water for the proposed development, including identification of depth to groundwater, proximity to production wells, and documentation of physical and legal availability of water. Planned Communities Criteria, pp. 36, 39. The Santolina Level B.1 Master Plan provides none of this information. For that

reason, the Board's Decision denying the Appellants/Petitioners' appeal of the Master Plan and approving the Master Plan should be vacated.

The Santolina Level B.1 Master Plan purports to demonstrate that the Water Utility Authority has made a commitment to provide water for the proposed Santolina development by referencing a July 2014 letter from the Water Utility Authority. Santolina Level B.1 Master Plan, p. 5. In fact, however, the letter in question does not indicate any such commitment by the Water Utility Authority, nor does the letter indicate that either water rights or water are available.

The only positive statement in the letter, which is from Water Utility Authority Executive Director Mark Sanchez, states that, "The Water Authority is capable of serving the master planned community." Sanchez letter, ¶1. However, the letter indicates clearly at several points that the Water Utility Authority's capability to provide service is not guaranteed. The letter states:

[S]ervice will be contingent upon the Santolina developer's ability to comply with the Water Authority's current guidelines, policies and ordinances, as amended from time to time.

...

If the CPC decides to recommend approval of the master plan [Level A Master Plan], the Water Authority recommends that the CPC provide conditional approval which requires that the developer successfully execute a development agreement with the Water Authority for the Santolina Master Plan.

...

In order for Santolina to be served by the Water Authority, the developer will need to provide significant infrastructure improvements, and the expansion will need to occur at no net expense to the existing ratepayers.

Sanchez letter, ¶¶1-3.

Mr. Sanchez later testified before the Board:

With regard to the letter which was sent to the CPC [County Planning Commission], *I think it was taken a little out of context. It's been represented that we either endorsed it [Santolina] or committed service, neither of which is the case.*

Board Hearing Transcript, TR-69: 3-7 (March 25, 2017) (emphasis added). There is therefore no merit to the Santolina Level B.1 Master Plan's assertion that the Water Utility Authority has indicated that it has the capacity and capability to provide the water that is required.

Moreover, the Water Authority's ability to make any such guarantees is very limited for three reasons. The first is that the Water Authority has no legal authority to grant the Santolina development water rights. The only entity in New Mexico that can approve the use of water for a specific purpose (such as a proposed development) is the New Mexico State Engineer. *See* NMSA 1978 §74-9-2. The second is that the Water Authority does not have the water rights to supply the proposed development. The third is that existing consumptive uses in the Middle Rio Grande exceed the legally available supply.

Norman Gaume, former director of the New Mexico Interstate Stream Commission and an expert in the matter of the Albuquerque metropolitan area's water supplies and the water supplies legally available within the Middle Rio Grande as limited by the Rio Grande Compact, raised the issues of water rights and legally available water supply in the Middle Rio Grande during the Board of County Commissioners Level A Master Plan proceedings. Norman Gaume Written Testimony for May 11, 2015 Board of County Commissioners Hearing (May 17, 2015). The developers have not provided any documentation in the Level B.1 Master Plan or supporting technical documents that indicates that the Water Authority currently has the water rights to supply Santolina and that the existing consumptive uses of

water in the Middle Rio Grande do not exceed the currently available supply.

For the above reasons, the Santolina Level B.1 Master Plan therefore does not demonstrate “substantial consistency with the Planned Communities Criteria in the areas of...Environment and...Government and Public Service” as the Board has asserted. Board Decision, Finding 7 (September 1, 2017).

**2. *The Santolina Level B. 1 Master Plan does not provide required information concerning land use.***

**a. The Level B.1 Master Plan does not include the analyses of environmental resources mandated by the Planned Communities Criteria.**

The Planned Communities Criteria mandate that Level B master plans analyze several environmental features and resources that may be affected by developments, such as the proposed Santolina development. The Criteria require:

Analysis of slopes, drainage, soils, animal life, groundwater, vegetation, airport noise zones, and other environmental characteristics which identify unique and important site features for protection and optimum use or which restrict development.

Planned Communities Criteria, p. 39.

The Santolina Level B.1 Master Plan provides no information about airport noise zones, and the only information that is provided about ground water are statements that the ground water is at a depth of 700 to 1,000 feet below ground surface, that no water supply wells are planned at this time, and that aquifer recharge is not contemplated at this time. Plan, pp. 96-97. There is nothing in the Level B.1 Master Plan about the quality of the ground water or its gradient, or about measures that are to be put in place to prevent pollution of ground water by the industry that is expected to be located at the Santolina development.

In addition, although there are general descriptions of the vegetation and wildlife in the area of the proposed Santolina development (Plan, p. 80), the Master Plan provides no information about the impact of the proposed development on the vegetation or wildlife or about how any impacts on the vegetation and wildlife will be mitigated.

**b. The Level B.1 Master Plan presents only an incomplete strategy for meeting community air quality standards and objectives and ensuring that residents will not be affected by toxic air emissions.**

The Santolina Level B.1 Master Plan also fails to present a complete strategy for ensuring that community air quality standards are met and that residents near industrial facilities will not be impacted by toxic air emissions. The Plan relies on an analysis that was prepared to compare the “Santolina Scenario” development with the Mid Rio Grande Council of Governments MTP Trend scenario, and asserts that the analysis demonstrates that the proposed Santolina development would not result in significant changes in carbon monoxide emissions. Plan, pp. 82-83. However, the alleged analysis in question is neither included in the Plan nor cited specifically.

The Plan also asserts that the proposed development will not create increased levels of carbon monoxide because the creation of local jobs will ensure that residents do not have to travel to other areas of Bernalillo county for work, but the Plan contains no contingency measures to be employed to limit carbon monoxide emissions if those local jobs do not materialize. *Id.*, pp. 82-84. In addition, the Plan states that “County or regional regulations for pollen control will be complied with stringently”, and proposes “careful design of landscaping palettes” to reduce pollen (*Id.*, p. 84) without explaining what the regulations accomplish or how “landscaping palettes” function to reduce pollen.

Finally, the Santolina Level B.1 Master Plan's attention to industrial emissions is limited to a statement that:

Industrial and manufacturing emissions typically from stationary sources are regulated by multiple local, County, state and federal regulations. This type of development in Santolina will be held to a high standard and must comply with all applicable regulations.

*Id.*, p. 84.

The Plan says nothing about what types of industry and manufacturing are expected to be located in Santolina or what kinds of emissions they will produce. The Plan also provides no information about the effects that these emissions have on people who are exposed to them or the effectiveness of the "multiple local, County, state and federal regulations" that allegedly govern them. There also is no information about the direction or velocity of prevailing winds and their relationship to the areas where people will live in the proposed development. Finally, the Plan says nothing about who these people will be, and specifically whether they will be old people and young children, who are particularly susceptible to air pollutants.

**c. The Level B.1 Master Plan does not include required information regarding "market potential and opportunities" for the proposed Santolina development.**

The Planned Communities Criteria establish specific requirements for Level B master plans concerning land use. For example, Level B master plans are required to provide:

conceptual description[s] of village characteristics in terms of market potential and opportunities, including location and description of village center – parcel sizes by use, suitability to natural topography, intensities, service area of center.

Planned Communities Criteria, p. 38.

Contrary to these requirements, the Santolina Level B.1 Master Plan provides no information about the specifics of “market potential and opportunities.” The Plan includes general statements about anticipated growth on the West Side of Albuquerque (Plan, p. 12), and provides approximate numbers for the people expected to live in Santolina and the jobs that are anticipated to be created there, but includes no specific information to back up these numbers. *Id.* There is nothing in the Plan about what kinds of jobs these will be or where these people currently are who will migrate to Santolina. The Plan also has no explanations about its apparent assumptions that these people will have adequate training to work in these jobs or adequate means to afford the cost of housing offered in the development, which is also not provided in the Plan.

**d. The Level B.1 Master Plan does not include required information regarding village centers and “suitability to natural topography.”**

In addition, Level B master plans are required to explain the “suitability to natural topography” of village centers. Planned Communities Criteria, p. 38. However, the only village center that the Santolina Level B.1 Master Plan addresses is the Village Verde Residential Village Center, and the Plan’s only information concerning the relationship of that village center to natural topography is the statement that the village center is located adjacent to the western escarpment open space, which allegedly will provide “recreational opportunities as well as pedestrian and bicycle connections to the Village Center”. Plan, p. 14.

For the above reasons, the Santolina Level B.1 Master Plan therefore does not demonstrate “substantial consistency with the Planned Communities Criteria in the areas of...Land Use” as the Board has asserted. Board Decision, Finding 7 (September 1, 2017).

3. *The Santolina Level B.1 Master Plan does not comply with the “no net expense” requirement of the Planned Communities Criteria, the Bernalillo County Comprehensive Plan, and the Santolina Level A Development Agreement.*

The Planned Communities Criteria, the Bernalillo County Comprehensive Plan and the Santolina Level A Development Agreement all require that, “the Level B Master Plan analysis for subsequent development phases of the Project must also satisfy the ‘no net expense’ policy.” Santolina Level A Development Agreement, Section 7, p. 9 (August 10, 2015). The “no net expense” policy means that a planned community must be developed, including government and public facilities, at no net expense to the governments of Bernalillo County and the City of Albuquerque. The Santolina Level B.1 Master Plan fails to demonstrate compliance with this “no net expense” requirement for the following reasons.

a. **The Santolina Level B.1 Master Plan “Fiscal and Economic Impact Study” does not demonstrate “no net expense” to the County.**

The Santolina Level B.1 Master Plan “Fiscal and Economic Impact Study” is based upon unrealistic assumptions regarding high rates of population growth and job creation. This study also failed to include in its analysis the 20 Santolina Tax Increment Development Districts (“TIDDs”) approved by the Board of County Commissioners. Santolina Level B.1 “Fiscal and Economic Impact Study”, pp. 6-11, 16-18 (January 21, 2016). These TIDDs will transfer forty-five (45) percent of the gross receipts tax increment and forty-five (45) percent of the property tax increment generated with the districts away from the Bernalillo County General Fund to the developers. The County will be losing, at a minimum, \$500 million from its gross receipts tax increment and property tax increment over the next 50 years, but due to inflation that loss will more likely be \$1 billion.

Additionally, the “Fiscal and Economic Impact Study” estimates of County costs do not include any expenditures for water, new infrastructure, infrastructure maintenance, or open space acquisition. The Study also does not consider the costs that will be incurred by the County for transportation and schools. *Id.* at pp. 11-7.

**b. The Santolina Level B.1 Master Plan does not demonstrate “no net expense” to the County for transportation/roadway infrastructure.**

Vital to a “no net expense” analysis is the phasing strategy for the Project. The Level B.1 Master Plan does not provide a phasing strategy for the Project in general, as well as for specific components of the Project, such as roadway infrastructure. *See* Plan, p. 116. (“...Owner(s) and Developer(s) shall have the right to develop the property in such order and at such rate and time as the market dictates.”) Without a phasing strategy for roadway infrastructure, the Planning Commission and the Board could not evaluate whether the Level B.1 Master Plan’s roadway infrastructure component complies with the “no net expense” requirement. Board Decision, Finding 7 (September 1, 2017).

Not only does the Level B.1 Master Plan fail to identify a detailed phasing strategy for the Project’s roadway infrastructure component, it also fails to identify the share of private, local, and regional public funding for all roadway infrastructure projects needed. *See generally*, Level B.1 Master Plan “On-Site and Off-Site Locations of Interest Traffic Analysis,” (March 31, 2016). The Mid-Region Metropolitan Planning Organization had advised the Planning Commission that the Level B.1 Master Plan needed to identify which roads within Level B Master Plan area and off-site were anticipated to be privately or publically funded in order to conduct a “no net expense” analysis. Planning Commission Hearing, TR-24 (July 21, 2016).

Additionally, Richard Meadows, a transportation planner with the County's Public Works division, testified before the Board that \$250 million is needed to make transportation improvements and mitigate off-site impacts that would be caused by the proposed Santolina development. Mr. Meadows testified, in pertinent part, "And so the one outstanding question that we have that we asked to be addressed as a part of our conditions is how are those – how are those improvements in mitigation of transportation impacts going to be paid for. So we don't know the answer to that question." Board Hearing Transcript, TR-46: 22-25, TR-47: 1-3 (March 14, 2017).

Without this information, the Board clearly could not find that "the plan is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County." Board Decision, Finding 6 (September 1, 2017). Similarly, the Planning Commission could not determine whether "the plan is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County" without this required information. Planning Commission Decision, Finding 6 (January 10, 2017).

The Planning Commission conceded that they did not have the necessary information for a "no net expense" analysis by requiring the developers to provide such information at a later date. Planning Commission Decision, Condition 2 (January 10, 2017) ("The applicant/agent will provide to Public Works a list of 2025 and 2040 transportation projects identifying Level B.1 improvements to be built and the share of private, local and regional public funding for each project within 30 days of BCC approval").

County Staff also conceded to the Board that the Planning Commission failed to

engage in a “no net expense” analysis and that the Level B.1 Master Plan failed to provide the required information necessary for that analysis. County Staffer, Enrico Gradi, testified to the Board, “What we have in front of us is mostly a land use document independent of the decisions having been made or having been worked out regarding infrastructure, *cost*, size and basic allocation of open space. *Those matters will come later.*” Board Hearing Transcript, TR-60: 18-22 (September 1, 2017). A Level B Master Plan is not solely a land use document; it is also a detailed plan for transportation, environment and open space, and government and public services components of a planned community. Planned Communities Criteria, pp. 38-40.

The Board ultimately adopted the Planning Commission’s condition that the Santolina developers provide to Public Works “a list of 2025 and 2040 transportation projects identifying Level B.1 improvements to be built and the share of private, local, and regional public funding for each project within 30 days of BCC approval.” Board Decision, Condition 1 (September 1, 2017). However, the Planned Communities Criteria does not permit satisfaction of Level B requirements through the application of future “conditions of approval.” *See generally*, Planned Communities Criteria.

**c. The Santolina Level B.1 Master Plan does not demonstrate “no net expense” to the County for transportation/roadway infrastructure.**

Albuquerque Public Schools (“APS”) stated in its comments to the Planning Commission on the Santolina Level B.1 Master Plan the following, in pertinent part:

In particular, for the scale of development as proposed by the Santolina Level B Plan, calling for 9,444 dwelling units, the District would need at least 101.6 acres of land, 5 schools (assuming a typical and traditional educational curriculum model) and at least \$162,944,857 for new construction, not including the cost of land .... *All new and future construction is contingent on*

*taxpayer approval.*

APS Memorandum, pp. 4-6 (July 12, 2016) (emphasis added).

As stated above, the “Fiscal and Economic Impact Study” does not include this cost estimate in its analysis of recurring costs to the County. Additionally, the Santolina Developers stated to the Board at the August 30, 2017 hearing that the 101.6 acres of land needed for future schools would not be donated to APS. Therefore, the Board’s finding that the Level B.1 Master Plan “is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County” is based on erroneous assumptions. Board Decision, Finding 7 (September 1, 2017).

***4. The Level B.1 Master Plan does not demonstrate that its proposed siting of industrial land will prevent contamination of ground water.***

As was pointed out above, the Level B.1 Master Plan’s only information about ground water at the site are general statements that the ground water is at a depth of 700 to 1,000 feet below ground surface, that no water supply wells are planned at this time, and that aquifer recharge is not contemplated at this time. Plan, pp. 96-97. The Level B.1 Master Plan provides no information about the quality of the ground water or its gradient, or whether measures will be put in place to ensure that ground water beneath the proposed Santolina development is not polluted by the industries that are expected to be located there.

*5. The Santolina Level B.1 Master Plan does not comply with the requirements of the Planned Communities Criteria addressing government and public services.*

**a. The Santolina Level B.1 Master Plan does not provide the required strategy for funding and maintenance of public facilities and sites, including open space.**

The Planned Communities Criteria for Level B government and public services require developers to provide a “strategy for funding and maintenance of public facilities and sites, including open space.” Planned Communities Criteria, p. 39. A strategy is a careful plan or method. The developers, however, merely provide a list of “available financing mechanisms for Project and System Infrastructure.” Plan, p. 120. As previously discussed, without a strategy for funding and maintenance of public facilities and sites, there is no means for either the Planning Commission or the Board to evaluate whether the Level B.1 Master Plan “is consistent with Reserve Area policies that call for substantial self-sufficiency and economic sensitivity and development that is at no net cost to Bernalillo County.” Planning Commission Decision, Finding 6 (January 10, 2017); Board Decision, Finding 6 (September 1, 2017).

Bernalillo County Planning Manager for Parks and Open Space, Mr. Barney, also raised this concern with the Planning Commission. Mr. Barney stated the following, in pertinent part:

There isn't a strategy, and I – and just to refer back to the planned community criteria, there is – it does require, under D, for – for a Level B plan, under D, Government Services, no. 1, strategy for funding and maintenance of public facilities in sight, including open space. So the strategy would show us, you know, which of these tools are going to be used and how, because otherwise, it's difficult for us to evaluate is there going to be enough revenues to actually support our facilities in the future.

Planning Commission Hearing, TR-52: 15-24 (July 21, 2016).

The Planned Communities Criteria make clear that a strategy for funding and maintenance of public facilities and open space must be provided in a Level B master plan. The Santolina Level B.1 Master Plan fails to comply with this requirement by merely providing a list of potential financing mechanisms for the project.

**b. The Santolina Level B.1 Master Plan does not provide the required facilities plan, including detailed location, phasing of water systems, sewer systems, and drainage systems.**

The Planned Communities Criteria for Level B government and public services require developers to provide “a facilities plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems.” Planned Communities Criteria, p. 39. The Level B.1 Master Plan fails to comply with this requirement by merely providing conceptual plans for water and sewer systems.

The Board had initially required the Santolina Developers to provide a fully executed development agreement with the Albuquerque-Bernalillo County Water Utility Authority (“Water Authority”) before approval of a Level B Master Plan. This was because a development agreement with the Water Authority is the primary mechanism by which detailed plans for water and sewer systems is to be provided. *See* Level B “Water & Sanitary Sewer Master Plan”, p. 3 (January 25, 2016).

The Bernalillo County Interim Director for Infrastructure Planning and Geo-Resources, Mr. McGregor, explained to the Planning Commission the importance and necessity of Planning Commission review of the Water Utility Authority development agreement:

Without a development agreement and without the associated serviceability statement, which outlines the specific water and sanitary sewer improvement needed to serve the

entire development and the Level B plan, then the planned community criteria for a detailed plan including detailed location, phasing of water systems, sewer systems, drainage systems, and mobility systems cannot have been satisfied, nor can the requirement for statements of water availability and availability of public services, including liquid waste, have been – have been adequately addressed either.

Planning Commission Hearing, TR-66:17-25; TR-67: lines 1-2 (July 21, 2016).

When the Level B.1 Master Plan came before the Board of County Commissioners, the Santolina Developers requested that the requirement for a development agreement with the Water Authority be deferred to the Level C phase of development. The Board ultimately approved the Santolina Developers' request. *See* Administrative Resolution AR 2017-48 (August 15, 2017). However, the Planned Communities Criteria still requires the Santolina Developers to provide detailed plans for water and sewer systems, which have not been provided in the Level B.1 Master Plan. Without a development agreement with the Water Utility Authority, the Level B.1 Master Plan and supporting technical documents merely provide conceptual water, sewer and drainage plans.

The Level B.1 Master Plan clearly states that its "Sequencing Map" demonstrating development phasing is "intended to be illustrative" and is not representative of actual sequencing. Plan, p. 113. The developers further concede that they have only prepared a "conceptual Water and Sanitary Sewer Master Plan." Level B.1 Master Plan "Water & Sanitary Sewer Master Plan", p. 12 (January 25, 2016). Finally, the Level B.1 Master Plan "Revised Drainage (Stormwater) Master Plan and Terrain Management Plan" submitted to the Planning Commission on November 2, 2016 also admits it is merely a conceptual plan.

Providing a conceptual facilities plan, which fails to include detailed location and phasing of water, sewer, and drainage systems, does not comply with the Planned

Communities Criteria. Additionally, deferring the submission of such required information to the Level C phase of development does not comply with the Planned Communities Criteria for Level B Master Plans.

- c. **The Santolina Level B.1 Master Plan does not provide required statements of water availability and availability of solid and liquid wastes services, fire and police services, and schools.**

In addition, the Planned Communities Criteria for Level B master plans concerning government and public services require developers to provide, “Statements of water availability and availability of public services, such as solid and liquid wastes ... fire, police and schools.” Planned Communities Criteria, p. 39. The Santolina Level B.1 Master Plan does not provide any of these required statements of availability.

- i. **The Santolina Level B.1 Master Plan does not provide the required statement of water availability and availability of solid and liquid wastes services.**

The Santolina Level B.1 Master Plan does not provide the required statement of water availability and statement of availability for liquid and solid waste services. *See Plan; see also* Planning Commission Decision, Findings 18-19 (January 10, 2017). Moreover, the Level B.1 Master Plan “Water and Sanitary Sewer Master Plan” states that the Water Utility Authority “*may* provide water and sewer service for the project” and:

*If the ABCWUA provides water and sewer service for the project, the Owner(s) and developer(s) will enter into a separate Development Agreement with the ABCWUA concerning the terms of providing such water and sewer service to the project.*

Level B.1 Master Plan “Water and Sanitary Sewer Master Plan”, p. 12 (January 25, 2016) (emphasis added).

These are clearly not statements of water availability and availability of solid and liquid wastes services. Furthermore, the Interim Director for Infrastructure Planning and Georesources at Bernalillo County Public Works, Mr. McGregor, had cautioned the Planning Commission that:

Approving a Level B master plan without an ABCWUA development agreement that at least addresses the general infrastructure associated with the Level A approved plan...would essentially be approving a subsequent plan with no documentation of physical or legal water availability, quantity, and quality.

Planning Commission Hearing, TR-68: 2-9 (July 21, 2016). Both the Planning Commission and the Board approved an incomplete Level B.1 Master Plan without documentation of physical or legal water availability, quantity, and quality, in violation of the Planned Communities Criteria.

**ii. The Santolina Level B.1 Master Plan does not provide the required statement of availability of schools.**

The Santolina Level B.1 Master Plan does not include a statement from Albuquerque Public Schools (“APS”) that there are schools available for students within the proposed Level B.1 Master Plan area. The plan merely states the following, in pertinent part:

There will likely be some need for APS to accommodate initial students within existing facilities until the APS facilities within the Level B Plan are constructed and open for enrollment. Santolina shall continue to work with APS Facilities Planning to ensure sites and school facilities are available in a timely manner, consistent with APS policies and funding.

Plan, page 110; *See also* Planning Commission Decision, Finding 15 (January 10, 2017).

Senior Planner and Manager with APS Capital Master Plan, Alvira Lopez, also advised the Planning Commission that the “Santolina development would exacerbate existing overcrowding” at the schools identified in the Level B.1 Master Plan as servicing Plan area

students. Planning Commission Hearing, TR-35:12-14 (July 21, 2016). Additionally, APS School Member for District 5, Mr. Quezada, informed the Planning Commission that, “This project’s going to be a huge strain on the Albuquerque Public School budget.” Planning Commission Hearing, TR-37: 14-15. These statements contradict the Board’s finding that, “The Level B.1 plan includes a provision for schools within the plan area to be part of the Albuquerque Public School system.” Board Decision, Finding 15 (September 1, 2017).

**iii. The Santolina Level B.1 Master Plan does not include the required statement of availability of fire and police services.**

The Santolina Level B.1 Master Plan does not include a statement of availability from either the City of Albuquerque or Bernalillo County for police facilities and services, yet states that, “Initial development within this Level B Plan will utilize these existing public facilities.” Plan, p. 109. The Plan also asserts that Albuquerque’s City Fire Station 14 “could provide service to the residences and commercial/employment centers within this Level B Plan.” *Id.* However, Bernalillo County Fire Marshall, Chris Gober, advised the Planning Commission, in pertinent part, that:

Our only concerns for the fire safety side, public safety side is that we have the property and the facilities present for – to provide EMS services, fire services and law enforcement services up there, that new development, and it can be in a phased-type of fashion along with the development, *but we need to have those facilities there so we’re not overwhelming the other resources down further in the Valley along with the fire hydrants.* We need to make sure those are in place, so we have water protection, water for the buildings, the homes, and the undeveloped land that’s up in that area.

Planning Commission Hearing, TR-19:16-25; TR-20:1 (June 23, 2016) (emphasis added).

The Fire Marshall’s statement to the Planning Commission is not one of availability of existing facilities and services, but rather a warning that the proposed Santolina

development - without new facilities and services - will overwhelm existing resources.

Therefore, the Level B.1 Master Plan does not demonstrate “substantial consistency with the Planned Communities Criteria in the areas of...Government and Public Service” as the Board has asserted. Board Decision, Finding 7 (September 1, 2017).

**D. The Santolina developers did not comply with other conditions established by the Board of County Commissioners and the Planned Communities Criteria for the filing of the Santolina Level B.1 Master Plan.**

When the Board of County Commissioners approved the Santolina Level A Master Plan it imposed a number of conditions to be met by the Santolina developers in subsequent Level B master plans, in addition to the Planned Communities Criteria Level B filing requirements. *See* Level A Master Plan Decision, Conditions 1-22 (June 19, 2015); Conditions 8, 9 and 11 have been modified by the Board and deferred to the Level C phase of development. *See* Administrative Resolution AR 2017-48 (August 15, 2017). The developers did not comply with a number of conditions imposed by the Board of County Commissioners and by the Planned Communities Criteria for the filing of a Level B Master Plan.

***1. The Santolina developers did not comply with other conditions established by the Board of County Commissioners for the filing of the Santolina Level B.1 Master Plan.***

The developer did not comply with several conditions established by the Board of County Commissioners pertaining to Level B Master Plan filings. The following is a brief discussion of the conditions not met by the developers’ Level B.1 Master Plan.

**a. The Santolina developers did not provide a plan for attaining the 2-1 jobs-to-housing ratio established in the Santolina Level A Master Plan in its Level B.1 Master Plan.**

The Board of County Commissioners established the condition that Santolina developers must provide a plan for attaining a 2-1 jobs-to-housing ratio in Level B Master Plans filed with the County. Level A Master Plan Decision, Condition 3 (June 19, 2015). The Level B.1 Master Plan acknowledged this requirement, yet did not provide the required jobs-to-housing ratio plan. Plan, page 4. The Plan merely states that, “The Level B Plan sets the stage for achieving the jobs to housing ratio set out by the Level A Development Agreement,” and that, “We are anticipating over 9,000 dwelling units for the first Level B Plan, which would commit us to 1.25 jobs per dwelling unit.” *Id.* This is not a plan for achieving a 2-1 jobs-to-housing ratio. Additionally, the Level B.1 Master Plan “Fiscal and Economic Impact Study”, submitted in May 2016, also fails to provide the required jobs-to-housing ratio plan.

It was clearly inappropriate for the Planning Commission and the Board to find that the Level B.1 Master Plan “also includes mechanisms that seek to ensure that the overall gross density is maintained and the jobs-to-housing balance of 1.25 jobs per household is achieved over the course of the development” without this required information. Planning Commission Decision, Finding 10 (January 10, 2017); Board Decision, Finding 10 (September 1, 2017).

**b. The Santolina developers did not provide the coordination of time frames for the Level B.1 Master Plan offsite roadway improvements and Plan phasing.**

The Board of County Commissioners also established the condition that Santolina

developers must provide the coordination of timeframes for the Plan's offsite roadway improvements, along with a phasing plan. Level A Master Plan Decision, Condition 5 (June 19, 2015). The Santolina developers did not provide this required information in either its Level B.1 Master Plan or its supporting technical documents. Plan, p. 116; *See generally*, Level B.1 Master Plan "Transportation Master Plan" (revised September 30, 2016) and Level B.1 Master Plan "On-Site and Off-Site Locations of Interest Traffic Analysis" (March 31, 2016).

- c. **The Santolina developers did not provide a funding plan for Level B.1 Master Plan arterial streets and linkages which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program or the Metropolitan Transportation Plan.**

The Board of County Commissioners established an additional condition pertaining to the transportation element of the Level B Master Plan:

Funding for arterial streets and linkages, which are needed for Santolina and not programmed in the Bernalillo County Capital Improvements Program (CIP) or the Metropolitan Transportation Plan (MTP), shall be identified and submitted to the County for recommendation for inclusion in the CIP or the MTP.

Board of County Commissioners Decision, Condition 6 (June 19, 2015).

As previously discussed, the developers did not provide this required information in their Level B.1 Master Plan or supporting technical documents. The Mid-Region Metropolitan Planning Organization advised the Planning Commission that the Level B.1 Master Plan needed to identify which roads within the Level B Master Plan area and off-site were anticipated to be privately or publically funded through the CIP and MTP programs. Planning Commission Hearing, TR-24 (July 21, 2016). However, the Planning Commission voted to recommend approval of the incomplete Level B.1 Master Plan with the condition

that, “The applicant/agent will provide to Public Works a list of 2025 and 2040 transportation projects identifying Level B.1 improvements to be built and the share of private, local and regional public funding for each project within 30 days of BCC approval.” Planning Commission Decision, Condition 2 (January 10, 2017). The Board has incorporated this condition in its approval of the Level B.1 Master Plan, in violation of Condition 6 of Approval to the Level A Master Plan established by the Board. Board Decision, Condition 1 (September 1, 2017).

**d. The Santolina developers did not provide documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards.**

The Board of County Commissioners also established the condition that prior to any Level B plan approval the Santolina developers must provide “documentation that the proposed development will comply with Albuquerque/Bernalillo County Air Quality Standards.” Board Decision, Condition 13 (June 19, 2015). As previously discussed, the Level B.1 Master Plan did not provide this required documentation. The Plan does not identify what types of industry and manufacturing will be located within the Plan area, what types of emissions will be produced, and the effects of such emissions on the Plan area population.

**2. *The Santolina developers did not comply with other conditions established by the Planned Communities Criteria for the filing of the Santolina Level B.1 Master Plan.***

Under the Planned Communities Criteria’s Level B Master Plan submittal requirements, developers are required to submit the following *prior to* formal submittal of a Level B plan:

A Level B transportation system analysis, including specific traffic studies for the particular plan submittal plus all other approved Level B plan elements in the community, existing and projected demand (phased as appropriate), and *consequential noise and air quality impacts*.

Planned Communities Criteria, page 38, emphasis added.

Though the developers submitted a Level B Transportation Plan with their formal submittal of the Level B.1 Master Plan on January 25, 2016, the Plan failed to include analyses of “consequential noise and air quality impacts.” *Id.* It took the developers five months after formal submittal of the Level B.1 Master Plan to finally submit the required air quality impacts analysis to the Planning Commission. *See* Level B.1 Master Plan “Air Quality Impact Analysis” (May 2016). Such a delayed submission does not comply with the Planned Communities Criteria.

For five months the Planning Commission had before it an incomplete Level B.1 Master Plan application. Yet the Planning Commission proceeded to consider the incomplete application and hold a hearing specifically on the transportation component of the Level B.1 Master Plan without the required noise impacts and air quality impacts analyses. *See* Planned Communities Criteria Hearing, TR-3: 9-12 (April 27, 2016) (As was pointed out by Enrico Gradi, the Bernalillo Planning and Development Service Director, “As you all know, this case is being divided up into various sections pertaining to the different elements of the Level B Planned Communities criteria. Today’s hearing will involve primarily around the issue of transportation”).

The Planning Commission held four more hearings on the Level B.1 Master Plan application after the developers finally submitted at least the Level B Master Plan Air Quality Impacts Analysis. The “Air Quality Impacts Analysis was not considered at any of the four

hearings held after its submission. *See generally* Planning Commission Hearing transcripts for June 23, 2016; July 21, 2016; and November 2, 2016. Additionally, to this date, the developers have failed to submit a noise impacts analysis. Therefore, the Planning Commission's finding that, "The Santolina Level B.I Plan and associated technical appendices have been reviewed and revised to address the requirements of Bernalillo County departments and other commenting agencies" is factually incorrect. Planning Commission Decision, Finding 12 (January 10, 2017). One cannot review and revise a technical document that one does not have.

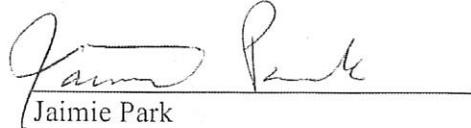
**V. Claim for relief.**

For the reasons outlined above, the Appellants/Petitioners request that the Court:

- A. Vacate the Board of County Commissioners' Decision denying the Appellants/Petitioners' appeal of the Santolina Level B.1 Master Plan;
- B. Vacate the Board of County Commissioners' Decision approving the Santolina Level B.1 Master Plan; and
- C. Grant the Appellants/Petitioners such other relief as is appropriate.

Dated: July 18, 2018.

NEW MEXICO  
ENVIRONMENTAL LAW CENTER

A handwritten signature in cursive script, appearing to read "Jaimie Park", is written over a horizontal line.

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Attorneys for the Appellants/Petitioners

**Certificate of Service**

I certify that on July 18, 2018 copies of this Amended Notice of Appeal and Alternative Petition for a Writ of Certiorari were sent by electronic mail and first class mail to:

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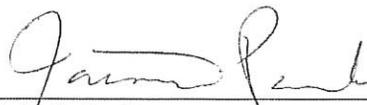
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of Neighborhood Associations



Jaimie Park

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**Planning**

## APPEAL TO COUNTY COMMISSION

Application Date: \_\_\_\_\_  
 Appeal Number: \_\_\_\_\_  
 Hearing Date: \_\_\_\_\_

APPELLANT Javier Benavidez et al.		PHONE 505-247-8832
MAILING ADDRESS 211 10th St. SW	CITY Albuquerque	ZIP 87102

AGENT FOR APPELLANT (if applicable) New Mexico Environmental Law Center ("NMELC")		PHONE 505-989-9022
MAILING ADDRESS 1405 Luisa St. #5	CITY Santa Fe	ZIP 87505

PROPERTY OWNER/APPLICANT FOR REQUEST Western Albuquerque Land Holdings ("WAHL")		PHONE 505-764-9801
MAILING ADDRESS PO Box 56790	CITY Albuquerque	ZIP 87187

SITE ADDRESS	Case # SPR2017-0003
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DIRECTIONS/LOCATION  
 Bounded by I-40 to North, 118 St. and escarpment to East, Parajito Mesa on South and escarpment near Rio Puerco Valley on West

LEGAL DESCRIPTION  
projected sections 1,2,3,4,5,8,9,10,11,12,13,14,15,16&17, T9N, R1E, & sections 6,7,8,16,17&18, T9N, R2E, & sections 32,33,34 35&36, T10N, R1E, & sections 30&31, T9N, R2E, NMPM, Alrisco, Bern. Co.

ZONE MAP PAGE #	CURRENT ZONE(S) A1 rural	PROPERTY SIZE IN ACREAGE 13,700; 4,243 for Level B.1
UPC #	PROPOSED ZONE(S) Level B.1	SUBDIVISION NAME Santolina
EXISTING USE A1 Rural		
PROPOSED USE Santolina Planned Community		

SCOPE OF APPEAL, INCLUDING CASE NUMBER  
 Appeal of Bernalillo County Planning Commission June 7, 2017 Decision, see attached Appeal; SPR2017-0003

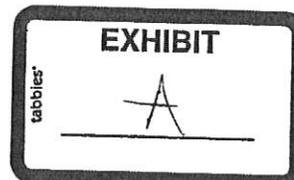
DETAILED INFORMATION (JUSTIFICATION MUST BE PROVIDED PER ZONING CODE REQUIREMENTS, ADDITIONAL INFORMATION MAY BE ATTACHED)  
 Please see attached Appeal

I hereby acknowledge that I have read this entire application and affirm that all of the provided information is correct. I agree to comply with the requirements of Bernalillo County and the State of New Mexico as outlined in all applicable laws, ordinances and regulations.

Jaimie Park  
 Printed Name

Jaimie Park  
 Signature

6/24/17  
 Date  
 6/2017



BEFORE THE BERNALILLO COUNTY, NEW MEXICO

BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,  
NEW MEXICO HEALTH EQUITY WORKING  
GROUP, PAJARITO VILLAGE ASSOCIATION,  
CENTER FOR SOCIAL SUSTAINABLE SYSTEMS,  
SOUTH VALLEY COALITION OF NEIGHBORHOOD  
ASSOCIATIONS, SOUTH VALLEY REGIONAL  
ASSOCIATION OF FACEQUIAS, JAVIER BENAVIDEZ,  
JAMES "SANTIAGO" MAESTAS, ROBERTO ROIBAL,  
KRISTINE SUOZZI, ROD MAHONEY, MARCIA  
BEAUREGARD FERNANDEZ, DANIEL RICHARD  
"RIP" ANDERSON, DR. VIRGINIA NECOCHEA

v.

FILE NO. SPR2017-0003

BERNALILLO COUNTY PLANNING COMMISSION

FIRST AMENDED APPEAL OF THE  
BERNALILLO COUNTY PLANNING COMMISSION  
RECOMMENDATION THAT THE  
BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS  
APPROVE THE SANTOLINA DEVELOPERS' PROPOSED AMENDMENTS  
TO CONDITIONS #8, #9 AND #11 OF APPROVAL TO THE SANTOLINA  
LEVEL A MASTER PLAN