

BEFORE THE BERNALILLO COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

SOUTHWEST ORGANIZING PROJECT,
NEW MEXICO HEALTH EQUITY WORKING
GROUP, and PAJARITO VILLAGE ASSOCIATION,

v.

FILE NO. SPR-20130004

BERNALILLO COUNTY PLANNING COMMISSION

AMENDED APPEAL OF THE
BERNALILLO COUNTY PLANNING COMMISSION
RECOMMENDATION THAT THE
BERNALILLO COUNTY BOARD OF COUNTY COMMISSIONERS
APPROVE THE SANTOLINA MASTER PLAN

Introduction

This is an amended appeal of the Bernalillo County Planning Commission (“the Planning Commission”) recommendation that the Bernalillo County Board of County Commissioners (“the Board of County Commissioners”) approve the proposed Santolina development Master Plan (“the Santolina Master Plan”). This first amended appeal is filed by the SouthWest Organizing Project, the New Mexico Health Equity Working Group, and the Pajarito Village Association (referred to collectively as “the Appellants”).

The recommendation of the Planning Commission (“the Planning Commission’s Recommendation”) was determined by a vote of the Planning Commission on December 3, 2014. For that reason, the Appellants filed their original appeal before 12:00 noon on December 18, 2014. Because the written notice of the Planning Commission’s Recommendation was not issued until December 12, 2014, and because the written notice of the Planning Commission’s Recommendation stated that appeals must be filed within 15 days after the date of the written notice (Planning Commission’s Recommendation, page

9), the Appellants reserved the right to amend their Appeal prior to 12:00 noon on December 29, 2014, which is the first work day following the 15th day after the written notice of the Planning Commission's Recommendation. (The written notice was dated December 12, 2014, and the 15th day after that date is December 27th, a Saturday.) This Amended Appeal therefore is being filed by noon on December 29, 2014.

In addition, the Appellants continue to reserve the right to address the Board of County Commissioners concerning this appeal for themselves and through counsel at any hearing, meeting, or other forum conducted by the Board of County Commissioners addressing the proposed development.

The Appellants request that the Board of County Commissioners reject the Planning Commission's recommendation that the Santolina Master Plan be approved. The Appellants' request is based on the following five reasons.

First, the Santolina Master Plan does not comply with the requirements of the Bernalillo County Planned Communities Criteria ("the Planned Communities Criteria") that a developer provide documentation of physical and legal water availability.

Second, the Santolina Master Plan does not provide an adequate transportation plan for the proposed development.

Third, there is no showing in the Santolina Master Plan that the development will support schools needed for the population of the proposed development.

Fourth, the Santolina Master Plan has not adequately taken into account the impacts that would result from construction of the proposed development on the sand dunes that exist in the area where the development is proposed.

Fifth, the most realistic analysis of the economics of the proposed Santolina development indicates that it cannot be constructed at no net expense to the governments of Bernalillo County and the City of Albuquerque.

Alternatively, the Appellants request that if the Board of County Commissioners approves the Santolina Master Plan, the Board of County Commissioners do so subject to the conditions that the Appellants have outlined on pages 18 to 23 below.

- I. The Board of County Commissioners should reject the Planning Commission's Recommendation that the Santolina Master Plan be approved.
 - A. The Planning Commission's Recommendation fails to address the Santolina Master Plan's lack of compliance with the Planned Communities Criteria concerning physical and legal availability of water.
 1. The Appellants have raised concerns about the physical and legal availability of water for the proposed Santolina development.

The Appellants are very concerned about the proposed Santolina development because of the impact that it would have on other users of water in Bernalillo county, particularly users in the South Valley. These concerns were expressed to the County Planning Commission at various points during its consideration of the Santolina Level A Master Plan. For example, these concerns were raised in a July 21, 2014 email from Roberto Roibal of the Pajarito Village Association to Joe Chavez, Chair of the County Planning Commission. They also were expressed by members of the Santolina Working Group in its submittal with the July 21, 2014 email from Kelly Sanchez to Enrico Gradi, Nano Chavez, and Catherine VerEecke. (These documents are part of Attachment 20 to the County Planning Commission Staff Report dated December 3, 2014 ["the Planning Staff Report"].) Those concerns relate in part to the possible impact of the proposed Santolina development's use of water on acequias and wells in the Rio Grande Valley. *See* articles in *La Voz* attached to Ms. Sanchez's email. The Appellants' concerns also were

raised in the Bernalillo County Place Matters report dated October 1, 2014 and included in Attachment 27 to the Planning Staff Report.

2. The Santolina Master Plan does not provide required information about physical and legal availability of water.

The Planned Communities Criteria make clear that a developer of a proposed planned community must provide documentation of physical and legal water availability for the proposed development at Level A planning. Section 5 of the Planned Communities Criteria provides that a developer must present in a Level A Community Master Plan:

C. Environment and Open Space

6. Identification of depth to groundwater and proximity to production wells; documentation of physical and legal water availability, quantity and quality (existing data).

The Santolina Master Plan fails to comply with this requirement for several reasons. First, the Albuquerque Bernalillo County Water Utility Authority (“the Water Authority”) letter cited by the Plan does not indicate that either water rights or water are available. Second, the Water Authority has no authority to approve water rights. Third, the Water Authority’s own documents indicate that water is not available.

The Santolina Master Plan purports to comply with the requirement that water and water rights be available by stating that:

The ABCWUA [Albuquerque Bernalillo County Water Utility Authority] has provided a letter dated July 29, 2014, indicating they have the capability and capacity to serve the Santolina Master Plan as it develops over its 40-50 year buildout.

Santolina Master Plan (December 1, 2014), page 65.

In fact, however, that is not what was stated in the letter from the Water Authority to which the Master Plan refers. (The letter is Attachment 23 to the Planning Staff Report.) The only positive statement in the letter, which is from Water 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 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’ current guidelines, policies and ordinances, as amended from time to time.

...

If the CPC decides to recommend approval of the 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.

There is therefore no merit to the Santolina Master Plan’s assertion that the Water Authority has stated that it has the capacity and capability to provide the required water.

Moreover, the Water Authority’s ability to make any such guarantees is very limited for two reasons. The first is that the Water Authority has no legal authority to grant the proposed 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’s own 2007 Water Resources Management Strategy indicates that new developments such as Santolina that are outside of the current Water Authority service area must either provide their own water rights or provide funding with which to acquire water rights. The Water Resources Management Strategy was submitted to the County Planning Commission with a July 22, 2014 email from Rod Mahoney to Catherine VerEecke, and is

in Attachment 22 to the Planning Staff's Report. Section L of that Strategy states as a recommendation that:

The [Water] Authority should continue the current no-net-expense policy. Developments outside of the service area should provide water rights or funding for the purchase of new water rights as a condition of service in accordance with the no-net-expense policy.

In addition, the evidence in the record before the County Planning Commission indicates that there is not water available for the proposed development. The July 21, 2014 letter to Joe Chavez of the County Planning Commission from Stephen Glass cites a presentation made in July, 2014 by Bruce Thomson to the effect that water resources in the Middle Rio Grande are over-allocated by approximately 40 acre-feet per year. *See* Attachment 22 to the Planning Staff's Report. There is therefore no additional water available to supply the proposed Santolina development.

In addition, the County Planning Commission staff report too indicates that there are problems with the availability of water for the proposed development. At page 22 of the Planning Staff's Report, the staff commented that the Santolina Master Plan should provide more information about water availability. On page 23 of that Report, the staff stated that the water plan submitted in the Santolina Master Plan is "conceptual". On page 24 of its Report, the staff stated that more detailed information is needed in several areas, including the Environment and Open Space category, which includes availability of water and water rights. Finally, on page 27 of its Report, the staff stated that the Water Authority had commented that "water or service is not currently available to the subject property"

3. The Planning Commission's Recommendation does not adequately address the issues of physical and legal availability of water.

The Santolina Master Plan therefore does not comply with the requirement that a developer demonstrate the availability of water rights and water. Despite that, the Planning

Commission's Recommendation asserts without analysis or support that the Santolina Master Plan complies with the Planned Communities Criteria concerning physical and legal availability of water.

The Planning Commission's Recommendation asserts that applicable requirements concerning availability of physical and legal water have been met:

In accordance with the purpose and intent of its Water Conservation Ordinance to ... encourage responsible use of water, and require conservation measures for new development and preserve water supplies within Bernalillo County, and in accordance with Policy L of the ABCWUAs [Water Authority's] Water Resource Management Strategy, the County has taken water supply availability and cumulative impacts into account in making a land use development decision and in determining the legal and physical availability of water for the Santolina Master Plan.

Planning Commission's Recommendation, Finding 17.

The Planning Commission's Recommendation also alleges:

Through a letter dated 29 July 2014, ABCWUA [Albuquerque Bernalillo County Water Utility Authority] has represented that they [*sic*] are capable of serving the master planned community, contingent upon the developer's ability to comply with ABCWUA current guidelines, policies, and ordinances, as amended from time to time. Through provision of the referenced letter and the associated representation by the ABCWUA, the applicant has demonstrated the physical and legal availability of water and wastewater as required in the Level A Planned Communities Criteria.

Planning Commission's Recommendation, Finding 18.

On the basis of these assertions, the Planning Commission's Recommendation alleges that the Planned Communities Criteria requirements concerning availability of water have been met. This statement is incorrect for several reasons.

First, as was pointed out above, however, the Water Authority letter does not indicate that the Water Authority will provide water for the development. Second, there is no indication in either the Santolina Master Plan or the Planning Commission's

Recommendation that either physical water or water rights are available for the proposed Santolina development.

Third, the assertion that the Planning Commission took legal and physical availability of water into account in accordance with Policy L of the Water Authority's Water Resource Management Strategy is belied by the language of that Policy of the Water Resource Management Strategy. As was pointed out above, Policy L includes the recommendation that:

The [Water] Authority should continue the current no-net-expense policy. Developments outside of the service area should provide water rights or funding for the purchase of new water rights as a condition of service in accordance with the no-net-expense policy.

The Planning Commission's Recommendation simply ignores this language even though the Recommendation purports to address Policy L of the Water Authority's Water Resource Management Strategy.

Fourth, as was also pointed above, the Planning Communities Criteria require that a developer submit:

documentation of physical and legal water availability, quantity and quality (existing data).

In this matter, however, the Santolina Master Plan includes no information indicating that there is any legal or physical water available for the proposed development. The Findings in the Planning Commission's Recommendation never addressed this requirement or the failure of the Master Plan to comply with it.

Finally, although the proposed conditions set forth in the Planning Commission's Recommendation purport to address water issues, none of those conditions would impose a requirement that the proposed Santolina development provide documentation of physical

and legal water availability. *See* Planning Commission's Recommendation conditions 7-12.

The Planning Commission's Recommendation fails to require that the proposed Santolina development comply with the Planned Communities Criteria requirements concerning availability of physical water and water rights. For that reason, the Board of County Commissioners should reject the Planning Commission's Recommendation and should disapprove the Santolina Master Plan.

- B. The Planning Commission's Recommendation does not recognize the failure of the Santolina Master Plan to provide required information concerning transportation.

The Appellants are concerned about the proposed Santolina development's impact on the traffic across the Rio Grande in the South Valley. *See, e.g.*, July 21, 2014 email from Roberto Roibal of the Pajarito Village Association to Joe Chavez, Chair, Bernalillo County Planning Commission, and July 21, 2014 email from Kelly Sanchez to Enrico Gradi, Nano Chavez, and Catherine VerEecke with attachments. (All of these documents are included in Attachment 20 to the Planning Staff Report.) Neither the Santolina Master Plan nor the Planning Staff Report provides information that addresses these concerns adequately.

The Planning Commission's Recommendation does not recognize these concerns. More importantly, the Planning Commission's Recommendation fails to provide any analysis or explanation of its finding concerning transportation. Finding 11 of the Planning Commission's Recommendation asserts:

The Santolina Level A Transportation Plan provides an acceptable transportation network that will adequately serve the proposed development, will connect to existing and proposed future roadways, and will be followed and further elaborated upon in subsequent Level B and Level C Planning.

This Finding presents a conclusion only, and provides no explanation or analysis to support that conclusion. Moreover, the Santolina Master Plan does not provide the information concerning transportation that is required by the Planned Communities Criteria for Level A planning for a new development. The information that must be submitted for a Community Level A Master Plan is spelled out in Section 5.B of the Criteria:

A comprehensive transportation system plan which discusses major street continuity and phased analyses of travel demand and supply, identifies major travel corridors, and considers private and public responsibilities for on-site and off-site improvements must be conducted prior to formal submittal of the Level A plan. Studies supporting the plan will require specification of land use proposals in terms of timing, location, quantity, and type as assumptions underlying the travel demand estimates.

Contrary to these requirements, the Santolina Master Plan contains only general information about proposed transportation plans. *See Santolina Master Plan, pages 92-105.* The need for more information about transportation and revision of the proposed transportation plan was noted by the County Planning staff in its Report at several points. On page 23 of the Report, the staff stated that:

Staff and agencies are requesting modification to the Santolina transportation plan and additional information before the Level A plan is approved.

Similarly, on page 27, the Staff Report noted that the New Mexico Department of Transportation had submitted extensive comments:

NMDOT comments are also extensive. The comments are with regarding of the I-40 frontage Rd. south as a two way collector street, inadequate information on the internal roadway system which should be a grid pattern and tie into the wider system, need to follow requirements for the State roads in the development, signal spacing, maintenance of the roads especially the extensions to the State roads, and the proposed interchanges, particularly at Shelly Rd. In addition the location of the urban center with two major roads through it is inappropriate.

Finally, at pages 62, 69, and 70 of the Staff Report, the staff noted the need for revisions of the Santolina Master Plan and additional information concerning transportation.

Despite the inadequate information that is provided in the Santolina Master Plan concerning transportation, the Planning Commission's Recommendation includes one general statement to the effect that the transportation information is sufficient. Finding 11 of the Planning Commission's Recommendation states:

The Santolina Level A Transportation Plan provides an acceptable transportation network that will adequately serve the proposed development, will connect to existing and proposed future roadways, and will be followed and further elaborated upon in subsequent Level B and Level C Planning.

However, this Finding is contradicted by the Planning Commission's Recommendation Finding 14, which states:

The current version of the Level A Plan shows major arterials cutting through MPOS, which is not consistent with the purposes, policies, and uses for Major Public Open Space in the Comprehensive Plan or the Major Public Open Space Facility Plan. Several of the proposed roads on the east side of Santolina are consistent with the current draft of the Metropolitan [*sic*] Transportation Plan, and those proposed on the west side of Santolina are not.

The Planning Commission's Recommendation endeavors to rectify the deficiencies in the Santolina Master Plan concerning transportation by recommending conditions that require provision of more specific information at later stages of planning. *See* Planning Commission's Recommendation conditions 4-6. However, the Planned Communities Criteria do not provide that the information to be provided at Level A planning can be provided at a later stage of planning. Those criteria indicate that the information that is required for Level A planning be provided at that stage of planning. Because the Planning

Commission's Recommendation does not require this, that Recommendation should be rejected by the Board of County Commissioners.

- C. The Planning Commission's Recommendation should be rejected because it fails to mandate that adequate information concerning schools be provided by the Santolina Master Plan.

Another issue of concern to the Appellants is the impact of the proposed Santolina development on the Albuquerque public schools. The Planned Communities Criteria mandate that a developer provide a "concept plan for provision of schools ...". Despite that, the Santolina Master Plan provides only very general estimates of the numbers of schools that will be needed in 2035 and at full build out of the proposed development. *See* Santolina Master Plan, pages 122-124. These numbers do not constitute a concept plan.

Moreover, according to an October 24, 2013 email from Martin Eckert of the Albuquerque Public School District ("the APS District") to Enrico Gradi and others, the District neither endorses nor opposes the proposed development. (This email is part of Attachment 4 to the Planning Staff Report.) That email notes that all costs of schools for the development would have to be borne by taxpayers. In addition, the Planning Staff Report concludes that the cost to taxpayers of the schools needed for the development (without considering the cost of the land required) would be \$654 million in today's dollars. It is significant that the Santolina Master Plan did not provide these numbers.

The Planning Commission's Recommendation recognizes the lack of information provided by the Santolina Master Plan concerning schools, but fails to act on that failure of the Master Plan to comply with the Planned Communities Criteria. Finding 22 of the Planning Commission's Recommendation states:

The proposed Santolina development is within the Albuquerque Public Schools (APS) district boundaries. The schools anticipated to be needed within the (over the next forty to fifty years) are not included in APS's

current Facilities Master Plan, and APS has not approved any school sites or construction of any schools within the Santolina Plan Area.

Despite this recognition that the Santolina Master Plan does not provide required information about schools, the Planning Commission's Recommendation indicates only that an agreement with the APS District must be entered into prior to any Level B submittal and that Level B and Level C development agreements must be entered into before the proposed Santolina development is developed. *See* Planning Commission's Recommendations conditions 16-17. In effect, the Planning Commission's Recommendation puts off until later planning what should have been provided in the Santolina Master Plan. This is inappropriate, and on that basis the Board of County Commissioners should reject the Planning Commission's Recommendation.

- D. The Santolina Master Plan is flawed because it proposes building the development on land that consists in large part of sand.

The sand base of much of the land on which the Santolina development would be built was noted in several comments submitted to the County Planning Commission. Paul Lusk raised this issue in his letter dated September 22, 2014 that is provided in Attachment 27 to the Planning Staff Report. It was also raised by Laura Gleason in the information that she provided as part of Attachment 26 to the Planning Staff Report; that information includes maps of areas of blowing sand in the La Mesita Negra SE Quadrangle in Bernalillo county. And it was raised by the letter from Jacque Garcia of Bernalillo County Place Matters to Joe Chavez, Chair of the Bernalillo County Planning Commission that is included in Attachment 20 to the Planning Staff Report.

The presence of this sand poses at least two problems. The first of these was noted by Paul Lusk in his September 22, 2014 letter, in which he pointed out that:

The physical basis for this is that much of that area above the escarpment is NOT suitable for fine-grain, urban or suburban development.

A second problem with development on this sand-based land was pointed out in the information provided by Laura Gleason, in which it is stated that:

Activities by man which would involve large-scale disturbance or removal of vegetation and soil could lead to severe problems of wind erosion and blowing sand.

Finally, the adverse health impacts that could result from such blowing sand were pointed out by the Health Impact Assessment conducted by Bernalillo County Place Matters. That Assessment, which is included in Attachment 27 to the Planning Staff Report, pointed out:

Sand dunes – Site development impacts to the fragile desert ecosystem, consisting of large lateral expanses of sand dunes, and the potential for erosion on high wind days to contribute to air pollution, asthma and lower and upper respiratory illness.

...

The development is likely to impact the ancient sand dunes covering the proposed site. The impact is likely to cause short-term soil disturbance and long-term air quality issues resulting from the erosion of sand dunes in high wind events. The particles caught up in the wind have serious health impacts.

Despite these problems, the Planning Commission's Recommendation does not address the issues presented by the sand based land where the Santolina development is proposed.

- E. The proposed Santolina development could not be developed at no net expense to Bernalillo County and the City of Albuquerque.
 - 1. The Santolina Master Plan's assertion that Santolina could be developed at no net expense is based on unrealistic assumptions.

The Albuquerque/Bernalillo County Comprehensive Plan and the Planned Communities Criteria provide that a planned community should provide government and public facilities at no net expense to the governments of Bernalillo County and the City of

Albuquerque. Despite that, the economic and fiscal analyses submitted with the Santolina Master Plan are based on several unrealistic assumptions. Moreover, an analysis based on more realistic assumptions about the population and the economies of the middle Rio Grande Valley indicates that it is not likely that the project will be completed with no net expense to those governments.

The more realistic analysis referred to above was conducted by Ph.D. economist Kelly O'Donnell, who is a former Deputy Cabinet Secretary of the New Mexico Economic Development Department, a past Chair of the New Mexico Spaceport Authority, and a former Superintendent of the New Mexico Regulation and Licensing Department. In her analysis, which is included in Attachment 30 to the Planning Staff Report, Dr. O'Donnell makes several key points about the assumptions used in the economic and fiscal analyses that concluded that the Santolina development could be completed at no net expense to the Bernalillo County and City of Albuquerque governments.

Dr. O'Donnell pointed out that the Santolina Master Plan incorrectly assumed high rates of population growth and job creation in western Bernalillo county during the next 20-50 years. In fact, however, New Mexico's working population is shrinking in large part because the economy here cannot sustain enough good jobs to keep working people here. The University of New Mexico Bureau of Business and Economic Research predicts that by the year 2030 about half of the New Mexico population will be either over 65 or under 18.

Dr. O'Donnell also indicated that, based primarily on its assumption that there will be strong population growth, the Santolina Master Plan predicts that 25,000 new jobs will be created by businesses at Santolina by the year 2035, and 75,000 new jobs will be created there during the next 40 to 50 years. These figures are seriously at odds with the

projections of the Bureau of Business and Economic Research and the Mid Region Council of Governments, which predict that only about 7,700 new jobs will be created in the area that includes Santolina by the year 2035. Moreover, the Albuquerque MSA's economic weaknesses are systemic, which indicates that further population declines and anemic job growth are likely. The State Economic Development Department projects that Bernalillo county's population growth rate will continue to decline, and may be only about 0.8% from 2035 to 2040.

In addition, an analysis of the 2013 census data for western Bernalillo county indicates that two thirds of the people who moved there did so from other locations within the county. And, the majority of the remaining one third of those people moved to the west side of Bernalillo county from counties surrounding Bernalillo county. This means that only about 20% of the people who would move to Santolina would do so from areas other than the middle Rio Grande Valley.

These realistic projections indicate that the projections for the tax revenue that would be created by the Santolina development are unrealistically high. Moreover, the Santolina Master Plan understates the costs that would be incurred by Bernalillo County for the development. The Master Plan's estimates of County costs do not include any expenditures for new infrastructure, infrastructure maintenance, or open space acquisition, even though the Master Plan appears to assume that the County would acquire, develop, and maintain open space for the development. Even more importantly, the Master Plan does not consider the costs that will be incurred for transportation and water.

In addition, although growth at Santolina caused by movement of population from within Albuquerque to the development would benefit Bernalillo county's tax base, such growth would reduce tax revenues for the City of Albuquerque. Finally,

growth at Santolina would increase concerns within the region about the availability and cost of water, which has become a serious issue for businesses that are considering whether to relocate to different areas.

The Santolina Master Plan's assertion that the development would comply with the no net expense requirement is based on unrealistic assumptions. The Master Plan should not be approved unless and until there is a more realistic analysis to determine whether that requirement will be met.

2. The Planning Commission's Recommendation acknowledges that the Santolina Master Plan does not demonstrate that the proposed development could proceed at no net expense.

The Planning Commission's Recommendation addresses the no net expense issue at several points. First, Finding 7 of the Recommendation indicates that a Development Agreement must be put in place to ensure that there will be no net expense to government. That Finding states:

The Level A Development Agreement is being prepared for execution by the Board of County Commissioners and the Developer at the time of approval of the Level A Santolina Master Plan and Planned Communities Zoning to ensure compliance with the Level A Planning Communities Criteria and that the development will be at no net cost to Bernalillo County. Development agreements with other local governments are not required at this stage.

Second, Finding 12 asserts that the development would benefit Bernalillo County economically, but indicates that there is no guarantee that a market exists for the development:

A Santolina Level A Fiscal Impact Analysis and an Economic Impact Analysis have been prepared in conformity with the Level A Planned Communities Criteria and demonstrates substantial benefits to Bernalillo County. However, there are no concrete assurances that market demand currently exists for the development.

Finally, Finding 15 of the Planning Commission's Recommendation indicates that the Santolina Master Plan does not demonstrate that the proposed development could proceed at no net expense to local government. It states:

The Santolina Level A Master Plan provides for a network of parks, recreation and open space facilities consistent with the Bernalillo County Parks, Open Space and Trails Master Plan. However, the current version of the economic analysis does not fully account for all the operational expenses of the proposed Parks and Open Space system at full build-out, including the costs of operating community centers, aquatic centers and the full cost of operating parks and open spaces, and therefore is not consistent with the policy of no net expense to the County. Also, in the current version of the Plan and corresponding fiscal analysis, the connection between phasing of development and the phasing of the conveyance and construction of appurtenant recreation and open space facilities is unclear, and therefore it is not possible to determine whether there will be sufficient funds from development to support the construction and operation of recreation facilities to support this development.

The Planning Commission's Recommendation purports to address the failure of the Santolina Master Plan to demonstrate compliance with the no net expense requirement by mandating the execution of an agreement that would guarantee that there will be no net expense. See Planning Commission's Recommendation Finding 7 and Planning Commission's Recommendation Conditions 1-2. However, that approach merely delays a decision about whether the proposed Santolina development can be constructed at no net expense to local government. The Board of County Commissioners should determine now that the Santolina Master Plan does not demonstrate compliance with the no net expense requirement, and should not accept the Planning Commission's Recommendation.

- II. If the Board of County Commissioners approves the Planning Commission's Recommendation, the Board should do so only subject to the following conditions.

For the reasons outlined above, the Board of County Commissioners should reject the Planning Commission's Recommendation and should disapprove the

Santolina Master Plan. Alternatively, if the Board of County Commissioners approves the Santolina Master Plan, the Board of County Commissioners should do so only subject to the following conditions.

Moreover, in order to protect the rights of individuals and organizations concerned about the proposed Santolina development, the Board of County Commissioners should require that any demonstration made by the developer concerning any of the conditions below be provided to all of the individuals and organizations listed on the service list for the Planning Commission's Recommendation dated December 12, 2014. Furthermore, in order to give the individuals and organizations on that list an opportunity to analyze and prepare responses to any demonstration made by the developer, the Board of County Commissioners should require that the demonstration be provided to those individuals and organizations at least six months prior to the submission of any further planning documents for the Santolina Master Plan or for the zone map amendment tied to the proposed Santolina development.

- A. Approval should be contingent on the Santolina development making the required demonstration as to availability of physical water and water rights and on that demonstration showing that the development would not impair existing users' water rights.

As was explained above, the Santolina Master Plan does not comply with the Planned Communities Criteria requirement that a developer demonstrate the availability of physical water and water rights. Because the Master Plan does not make that showing, it is not clear what the source or sources would be for water for the proposed development. For that reason, and in order to protect existing uses of water in Bernalillo county, the Board of County Commissioners should condition approval of the Santolina Master Plan on the following five conditions concerning water for the proposed development.

First, the developer of the proposed Santolina development should be required to demonstrate the availability of physical water and legal water rights. Second, any demonstration of the availability of physical water should be based on one or more studies by reputable hydrologists or engineers licensed to practice in New Mexico explaining what the source or sources of the physical water would be and the period of time during which the water would be available.

Third, any demonstration of the availability of legal water rights should be based on a determination by the New Mexico State Engineer indicating that the developer of the proposed Santolina development has the legal right to use the water in question and that either: 1) the time period for protests concerning those water rights has expired or 2) any protests concerning those water rights, including appeals of rulings on any such protests, have been resolved in the developer's favor.

Fourth, any demonstration of the availability of either physical water or legal water rights should show that the use of water by the proposed development would not impair the use of water by any existing water user in Bernalillo county.

- B. Approval of the Santolina Master Plan should be conditioned on agreement by the Planning Commission and the New Mexico Department of Transportation to the proposed Santolina development's transportation plans.

As was outlined above, both the County Planning staff and the New Mexico Department of Transportation commented on deficiencies in the Santolina Master Plan's information concerning transportation. Specifically, the developer should be required to provide the following information.

First, the transportation plan should address the problems noted by the New Mexico Department of Transportation. These include: 1) the lack of adequate information about

the internal road system, which should be a grid system and which should tie into the wider transportation system; 2) the inappropriate proposal to have two major roads go through the urban center; and 3) the need to follow State road requirements in the development, particularly at interchanges with State roads, including the interchange at Shelley Road.

Second, the proposed transportation plan should eliminate the current proposal for major arterials to go through Major Public Open Space. Third, the proposed transportation plan should include provisions for the roads on the west side of the proposed development to be in compliance with the Metropolitan Transportation Plan.

Finally, the developer of the proposed Santolina development should be required to demonstrate that the transportation system for the proposed development will be constructed at no cost to either Bernalillo County or the City of Albuquerque.

- C. The developer of the proposed Santolina development should be required to demonstrate that the development would neither cause the APS District to spend additional funds nor add students to existing schools in the APS District.

The proposed Santolina development would be within the APS District, but as was pointed out above, the Santolina Master Plan provides only general information about the schools that would be required for the development. For that reason, it is not clear whether students from the development would attend existing schools within the District or whether new schools would be constructed for those students. However, many of those existing schools are already overcrowded, and it therefore would be inappropriate to add students to those schools. Moreover, the cost of new schools for the proposed development would have to be paid by taxpayers, and the Planning Commission staff estimated the cost of the schools needed for the development would be \$654 million in today's dollars even without considering the cost of the land required.

For these reasons, if the Board of County Commissioners approves the Santolina Master Plan, the Board of County Commissioners should require that the developer demonstrate that the proposed development would not add students to APS District schools and that the cost of schools for students from the proposed development would be covered by the proposed development and not by taxpayers in Albuquerque or Bernalillo county.

- D. Approval of the Santolina Master Plan should be conditioned on monitoring of air emissions from construction to ensure that the sand-based land does not cause health problems.

The proposed Santolina development would be constructed on sand-based land. As explained in the Bernalillo County Place Matters Health Impact Assessment, the blowing sand that would result from construction of the proposed development could cause serious health problems. For that reason, the proposed development should be allowed to proceed only if it is accompanied by air monitors to measure dust from the construction. Those air monitors should be designed and placed subject to the approval of the Bernalillo County Place Matters team that conducted the Health Impact Assessment.

Moreover, this condition should include measures to ensure that construction is either ceased or altered if the monitor readings demonstrate that the levels of dust and other particulates caused by the construction are dangerous to human health.

- E. The Santolina Master Plan should not be approved unless an objective and realistic analysis demonstrates that the development would not result in any net cost to either Bernalillo County or Albuquerque.

The analysis conducted by Kelly O'Donnell demonstrated the flaws in the Santolina Master Plan's assertion that the proposed development would not result in a net cost to either Bernalillo County or the City of Albuquerque. Those flaws include incorrect assumptions about population growth and job creation in western Bernalillo county during the next 25-50 years, inaccurate data about where people moving to the proposed Santolina

development are likely to move from, inappropriate estimates about the fiscal impact of the proposed development on Bernalillo County, and failure to consider the effect on the City of Albuquerque of people moving out of the City to the proposed development. For these reasons, the Santolina Master Plan's assertion that the development would not result in a net cost to local government is not credible.

Because of this failure of the Santolina Master Plan to conduct a realistic analysis of the net cost of the proposed development, the Board of County Commissioners should condition any approval of the Santolina Master Plan on the conduct of a new analysis of the proposed development's net cost to local government. Moreover, the Board of County Commissioners should require that the analysis be conducted by an impartial third party such as the Bureau of Business and Economic Research.

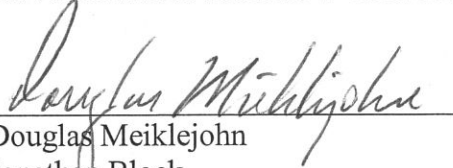
Conclusion

The Santolina Master Plan fails to comply with several of the requirements that apply to such proposed developments. The Bernalillo County Board of County Commissioners should reject the County Planning Commission's Recommendation that the Santolina Master Plan be approved. The Board of County Commissioners also should rule that the Santolina Master Plan is disapproved because of its failure to comply with the applicable Bernalillo County requirements.

Alternatively, if the Board of County Commissioners does vote to approve the Santolina Master Plan, the Board of County Commissioners should require that the developer comply with the conditions spelled out on pages 18 to 23 above.

Dated: December 29, 2014.

NEW MEXICO
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Certificate of Service

I certify that on December 29, 2014 copies of this Amended Appeal were

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ZONING SECTION

APPEAL TO COUNTY COMMISSION

Application Date: _____
 Application Number: _____
 Hearing Date: _____

OWNER/ APPLICANT FOR LAND USE REQUEST Western Albuquerque Land Holdings		PHONE 505-764-9801
MAILING ADDRESS PO Box 56790	CITY Albuquerque	ZIP 87187
AGENT (FOR APPLICANT) New Mexico Environmental Law Center		PHONE 505-989-9022
MAILING ADDRESS 1405 Luisa St #5	CITY Santa Fe	ZIP 87505
APPLICANT SouthWest Organizing Project		PHONE 505-247-8832
MAILING ADDRESS 211 10th St SW	CITY Albuquerque	ZIP 87102
SITE ADDRESS		Case # SPR-20130004
DIRECTIONS Bounded by Interstate 40 to north, 118th St. and escarpment to east, Pajarito 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, Atrisco, BernCo		
ZONE MAP PAGE	CURRENT ZONE(S) A-1	PROPERTY SIZE IN ACREAGE 13700
UPC #	PROPOSED ZONE(S) Master Plan	SUBDIVISION NAME Santolina

CASE # & SCOPE OF APPEAL

Amended Appeal Bernalillo County Planning Commission decision on Santolina Master Plan, see attachment

DETAILED INFORMATION

Please see attached amended appeal document

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.

Douglas Meiklejohn Douglas Meiklejohn 12/29/14
 Printed Name Signature Date