



Bk 1242 Pg 416

APPENDIX B

RESTRICTIVE COVENANTS FOR TIERRA DE ORO SUBDIVISION



RESTRICTIVE COVENANTS
FOR
TIERRA DE ORO SUBDIVISION
OTERO COUNTY, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS

That we, Desert View Investments, Inc., a New Mexico Corporation, Owners of the Tierra De Oro Subdivision recorded in the map of records of Otero County, New Mexico, do hereby create and establish the following restrictive covenants and easements affecting the use and occupancy of the lots and tracts aforementioned.

SECTION ONE
PURPOSE AND ENFORCEMENT

1. These restrictions and restrictive covenants constitute a general plan for the development of all the property in the subdivision aforementioned into a desirable subdivision and are to run with the land and shall be binding on all parties, unless, by Vote of the then owners of a majority of the lots in said subdivision, it is agreed to alter, amend or rescind the same in whole or in part.
2. These restrictions shall be binding upon the owners of all lots in said subdivision and on all persons holding or claiming any rights of possession or other interest therein, each of whom shall be obligated and bound to observe such restrictions and restrictive covenants; and in the event of violation of any of such restrictions with respect to any of such lots, it shall be the legal right of any person owning any interest in any property in the said subdivision to institute and maintain any proceeding at law or in equity against the person or persons violating or attempting to violate any of such restrictions, provided that no person or persons shall be liable in damages for any violation or breach of such restrictions, except in respect to violations of breaches committed during his or her ownership and control of said property.



SECTION TWO

GENERAL RESTRICTIONS

1. This land will NOT be used for the purpose of: (1) raising any kind of animals or fowl for commercial purposes, only one hog per acre will be allowed, and that no offensive noises or odors will arise from the raising of animals; (2) a slaughter house of any type; (3) a dumping ground for rubbish, trash, or junk; (4) mining of sand, gravel, caliche, fill dirt or top soil; (5) a storage area, or storage of automobiles, trucks, buses, etc., junk yard, automobile repair garage, or the housing of stripped down, partially wrecked, or junk motor vehicle, or sizable parts hereof. All automobiles must be in running condition and be licensed with a current license plate; (6) general storage area.
2. No structures of temporary character, tent, shack, barn, or other outbuilding shall be used as a residence.
3. All houses, mobile homes, sheds and/or buildings must be placed parallel to the existing lot lines.
4. No more than one residence will be permitted on said lot.
5. All single-family residences exclusive of open porches, garages and carports, shall be at least eight hundred (800) square feet in main floor area. All purchasers wishing to build must first obtain a building permit from the State of New Mexico. Said building must be completed within one (1) year of the date of said permit.
6. All housing must NOT be more than 10 years old when placed on said lot.
7. All mobile homes must be skirted within ninety (90) days of being placed on the lot.
8. All lavatories, toilets, and bath facilities shall be built indoors and connected with adequate septic systems.
9. All buildings must be set back at least 50 feet from the roadway and 10 feet from all other lot



lines.

10. It shall be the lot owner's responsibility to pond on-site any stormwater run-off in excess of what would naturally drain from the site including adjoining dedicated roadways .
11. No construction is permitted using pallets for buildings, fencing, pens, etc.
12. No converted buses, homemade trailers, or homemade campers will be allowed.
13. All barns, sheds, corrals, and/or pens must be situated on the back half of the lot.
14. Animals shall be confined within the boundaries of each parcel, and they shall not be allowed to wander or graze on adjoining properties.
15. Livestock must be kept in sanitary conditions and shall not create unsightly, or odorous conditions that detract from the lot appearance or property values.
16. All parcels, whether occupied or unoccupied, and any improvements place thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such parcels or the accumulation of rubbish or debris thereon.
17. Any dwelling or outbuilding on any parcel which may be destroyed in whole or in part by fire, windstorm, or for any other cause or act of God must be rebuilt or all debris removed and the parcel restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than ninety (90) days.
18. No public nuisance or offensive, noisy, or illegal trade or calling or act shall be done, suffered or permitted.
19. No animals shall be allowed to run at large.



20. Irrigated areas shall be limited to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture, or the equivalent amount of water.
21. The drilling or use of individual and/or shared domestic wells is prohibited within the subdivision.

SECTION THREE
APPLICABILITY

1. In the event of any violation or threatened violation of any of the covenants herein, any owner of any lot, block or parcel in the subdivision may bring action at law or in equity, either of injunction, action for damages or such other remedy as may be available. In the event that a judgment is obtained, the owner shall also be entitled to recover from such person reasonable attorney's fees and court costs.
2. The failure by any land owner to enforce any restrictions, conditions, covenant, or agreement herein contained shall in no event be deemed to waive the right to do so thereafter as to the same breach or as to one occurring prior to subsequent thereto, nor shall such failure give rise to any claim or cause of action against Desert View Investments, Inc. or the current land owner. Violation of any one or more of such covenants may be restrained by any court of competent jurisdiction, and damages awarded against such violator.
3. If any provisions of this indenture or the application of such provision to any person or circumstances shall be held invalid, the remainder of this indenture or the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.
4. The purpose of the foregoing restrictions is to maintain a high standard in the subdivision. In order to accomplish this purpose and objective, it shall be the right and privilege of any property owner of the subdivision to enforce such restrictions in any manner provided by law. In the



event of a violation or attempted violation of any such restrictions by any purchaser, Desert View Investments, Inc. shall not be in any way responsible, either financially or otherwise.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of this _____ day of _____, 2006.

[Handwritten Signature]
Secretary

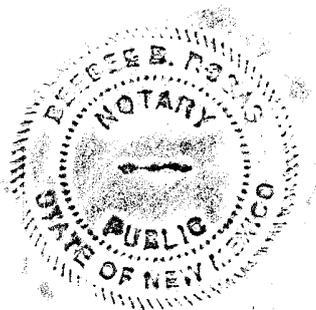
[Handwritten Signature]
President

STATE OF NEW MEXICO)
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 16th day of May, 2006, by Estella Rosencrans-Wright, for the Desert View Investments, Inc. a New Mexico Corporation.

My commission expires: 08/27/09

[Handwritten Signature]
Notary Public





Bk 1242 Pg 422

APPENDIX C

REVIEW AGENCY COMMENTS



Bk 1242 Pg 423

December 22, 2005

Magee & Associates, Inc.
P.O. Box 730
Mesilla Park, NM 88047

Dear Marvin:

I have reviewed all of your submitted materials for Tierra de Oro Subdivision and I have determined that this preliminary plat is ready to begin the review process. Materials have been mailed or hand delivered to the various reviewing agencies on this date.

Sincerely,

A handwritten signature in cursive script that reads "Dale Palkki".

Dale Palkki,
Planning Coordinator, Otero County

Email: oteroadm@co.otero.nm.us
COMMISSION / ADMINISTRATION
(505) 437-7427
FAX (505) 443-2904



1000 NEW YORK AVE., RM 10
ALAMOGORDO, NM 88310-6933

State of New Mexico
County of Otero



Bk 1242 Pg 424

December 30, 2005

Dale Palkki
Planning Coordinator
1000 New York Avenue
Alamogordo, NM 88310

Re: Tierra De Oro Subdivision

Dear Dale:

I have reviewed the proposed preliminary plat and accompanying materials for Tierra De Oro Subdivision in Otero County, New Mexico. I see no problem with this Subdivision. If you need any additional information please call me at 437-7636. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Bill Lee Parker".

Bill Lee Parker
Road Superintendent

MEMO



Bk 1242 Pg 425

TO: Dale Palkki, County Assessor
FROM: Brenda Garcia, GIS DEPARTMENT
DATE: January 6, 2006
RE: Summary Review Subdivision – **TIERRA DE ORO**

Following is a review of the referenced subdivision located in Section 29 and Section 32, T26S, R6E, NMPM, Otero County, New Mexico. The three items reviewed by the Department were road names, physical addresses and signage.

1. After reviewing the subdivision plans, I do not foresee a problem with the proposed road names.
2. Physical addresses have already been pre-addressed.
3. There will be a post and sign installation at the following intersections

Oasis Dr. and Diamondback Dr.
Hermosa Dr. and Diamondback Dr.
State Line Dr. and Diamondback Dr.
Broadmoor Dr. and Paradise Way,
State Line Dr. and Magee Dr.
State Line Dr. and Heaven's Way

Diane Ct. and Diamondback Dr.
Broadmoor Dr. and Diamondback Dr.
Broadmoor Dr. and Magee Dr.
Broadmoor Dr. and Heaven's Way,
State Line Dr. and Paradise Way,
Magee Dr. and Hermosa Dr.

This will include 22 road signs and 12 stop signs. Installation cost will be \$1,295.00.

Attached is an invoice for the new street signs. Installation of the signs will be scheduled when proof of remittance from the Treasure Department is presented in the GIS department.

Please call 439-2655 if additional information is required.

Sincerely,

Brenda Garcia
Rural Addresser

**OTERO SOIL AND WATER
CONSERVATION DISTRICT**

2920 N. White Sands Blvd., Alamogordo, NM 88310 - PHONE (505) 437-3100

Bob Nichols, Chairman
Bill Mershon, Vice Chairman
Robert Bishop, Secretary/Treasurer

Eddie Vigil, Member
Robert Bell, Member
Thora Padilla, Member
Mike Kusmak, Member

January 18, 2006

Dale Palkki, Planning Coordinator
Otero County
1000 New York Ave
Alamogordo, NM 88310



Bk 1242 Pg 426

RE: Tierra De Oro

Subdivision regulation (D.2 B) requires the subdivider to provide sufficient information on the areas contributing runoff to the subdivision to show existing drainage patterns and drainage courses that may affect the subdivision or be affected by the subdivision as shown on USGS maps, using 2000 feet to one inch.

We need to be able to determine the flooding potential around individual home sites, i.e. the depth of water around houses and access roads. The adjoining subdivision (Galaway Otero) installed culverts along Broadmoor, State Line and Hermosa Drives. Will there be any culverts installed to continue the flow of water?

This information must be submitted before we can recommend approval.

Sincerely,

Mike Kusmak

MAGEE and ASSOCIATES, Inc.
Consulting Engineers – Civil and Environmental

P.O. Box 730
Mesilla Park, NM 88047

Phone (505) 523-9613
Fax (505) 523-9614

February 9, 2006

Mr. Dale Palkki
Planning Coordinator
Otero County
1000 New York Ave.
Room 101
Alamogordo, New Mexico 88310-6935



Bk 1242 Pg 427

**Re: Response to Otero Soil and Water Conservation District Comments for
Tierra de Oro Subdivision**

Dear Mr. Palkki:

We received a copy of the letter commenting on the proposed Tierra de Oro Subdivision from the Otero Soil and Water Conservation District. They state that "Subdivision regulation D.2B requires the subdivider to provide sufficient information on areas contributing runoff to the subdivision to show existing drainage patterns and drainage courses that may affect the subdivision or be affected by the subdivision as shown on USGS maps, using 2000 feet to one inch."

"We need to be able to determine the flooding potential around individual home sites, i.e. the depth of water around houses and access roads. The adjoining subdivision (Galaway Otero) installed culverts along Broadmoor, State Line and Hermosa Drives. Will there be any culverts installed to continue the flow of water?"

I met with Mr. Robert Bishop of the Otero Soil and Water Conservation District on February 10, 2006 to discuss the comments. We reviewed the drainage section of the management plans and I identified to Mr. Bishop where the subdivision was shown on the USGS map at a scale of 2000 feet to one inch. As stated in the terrain management section, stormwater flow is overland or sheet flow. Local areas within the area are covered with hummocky dunes (circular mounds of windblown sand that have been stabilized with vegetation). The areas between the dunes are usually depressed and act as holding areas. However, the flow direction is to the east for this area.

Culverts that have been installed in the adjoining subdivision have proven to be ineffective over time. The culverts fill up with wind blown sands and weeds. Typically the county does not maintain the culverts and when rains do occur, they are ineffective. It has been our experience that the borrow ditches and shallow depressions within the roadways at intersections are much more effective. In addition, ponding areas will be constructed within each lot to compensate for the difference in predevelopment conditions and post development



conditions. The ponds were sized based on the 50-year, 24-hour rainfall event utilizing the SCS Runoff Method.

As discussed with Mr. Bishop he suggested that the developer include language in the disclosure statement suggesting to the lot purchaser that building pads be elevated at least 12 inches above the surrounding land. A copy of the proposed changes to the disclosure statement are attached for your review.

If you have any questions please call me at the above telephone number.

Sincerely,
Magee and Associates, Inc.

Marvin Magee, P.E.
President

cc: Estella Rosencrans-Wright, Desert View Investments, Inc.



Identify by lot and block numbers all parcels within the subdivision that are subject to flooding: There are not any lots within the subdivision that are subject to periodic flooding.

Identify by lot and block numbers all parcels within the subdivision located in whole or in part on slopes in excess of 8%: No lots have surface slopes in excess of 8%.

Describe the surface drainage for all lots in the subdivision: Surface drainage at all lots is overland or sheet flow, facilitated by small natural drainage channels. It is recommended that building pads be elevated at least one (1) foot above the surrounding land.

Describe the subsurface drainage for all lots in the subdivision (as per the Natural Resources Conservation Service's soil survey for Otero County): Subsurface drainage is adequate and should not pose any problems.

Describe the nature, location and completion dates of all storm drainage systems constructed or required to be constructed in the subdivision: Stormwater management structures such as borrow ditches, culverts, and retention ponds will be provided to adequately control stormwater run-off. It will be responsibility of each lot owner to pond on-site any stormwater run-off in excess of what would naturally drain from the site and adjoining dedicated roadways due to development. The stormwater management structures will be completed within four (4) years of county approval of the subdivision.

29. **NATURAL RESOURCE CONSERVATION DISTRICT'S OPINION ON TERRAIN MANAGEMENT**

Include here the approved summary of the opinion received by the Board of County Commissioners from the Natural Resource Conservation District on:

Whether or not the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and soil erosion: To Be Completed.

Whether or not the subdivider can satisfy the terrain management proposals made in this disclosure statement: To Be Completed.

Whether or not the subdivider's terrain management proposals conform to the County's regulations on terrain management: To Be Completed.

30. **SUBDIVISION ACCESS**

Name of town or village nearest to subdivision: The subdivision is located in the unincorporated community of Chaparral, New Mexico, which is located adjacent to the northern City Limit of El Paso, Texas.

Distance in miles from nearest town to subdivision and the general route over which that distance is computed: The distance from Tierra De Oro Subdivision to the downtown Chaparral business area is computed via State Line Drive to McCombs Road, and is approximately 3 miles. The Tierra De Oro Subdivision is located within the town limits of Chaparral.

Describe access roads to subdivision, including approximate width and surfacing: Access to the subdivision from Chaparral is via County Line Drive (McCombs Road) to State Line Drive. Access from El Paso is from McCombs Road to Chaparral, then to Tierra De Oro Subdivision via the previously described route. Additionally, traffic from U.S. 54 (from either El Paso, Texas or Alamogordo, New Mexico) is via State Line Dr. west from U.S. 54 to the subdivision or traffic from U.S. 54 (from either El Paso, Texas or Alamogordo, New Mexico) can take Angelina Boulevard south from U.S. 54 to State Line Dr. then to the subdivision. With the exception of Diamondback Drive, all roads described above have a 50-foot right-of-way with a 24-foot

OTERO SOIL AND WATER CONSERVATION DISTRICT

2920 N. White Sands Blvd., Alamogordo, NM 88310 - PHONE (505) 437-3100

Bob Nichols, Chairman
Bill Mershon, Vice Chairman
Robert Bishop, Secretary/Treasurer

Eddie Vigil, Member
Robert Bell, Member
Thora Padilla, Member
Mike Kusmak, Member

March 16, 2006

Dale Palkki, Planning Coordinator
Otero County
1000 New York Ave
Alamogordo, NM 88310



Bk 1242 Pg 430

RE: Tierra De Oro

We have reviewed the information requested. Upon further review the preliminary plans for this subdivision are approved.

Sincerely,

Victoria A. Miller
Mike Kusmak

505 437-9614



New Mexico DEPARTMENT OF
TRANSPORTATION
 MOBILITY FOR EVERYONE



Bk 1242 Pg 431

January 26, 2006

Mr. Dale Palkki
 Planning Coordinator
 Otero County
 1000 New York Ave.
 Room 101
 Alamogordo, NM 88310-6935

RE: Tierra De Oro Subdivision

Dear Mr. Palkki,

Your referenced request has been processed and comment to be addressed are as follows:

District Traffic Engineer: A Site Threshold Assessment (STH) must be completed for this subdivision. A copy of the form may be found in Appendix D of the State Access Management Manual.

If you have any questions regarding this matter please free to contact me at 476-3652.

Sincerely,

Jeremy M. Lujan
 Property Management Unit
 Right of Way Bureau

*faxed to
 McBee
 2-1-06*

Bill Richardson
 Governor

Rhonda G. Faught P.E.
 Cabinet Secretary

Commissioner

Johnny Cope
 Chairman
 District 2

David Schutz
 Vice Chairman
 District 5

Gregory T. Ortiz
 Secretary
 District 6

Norman Assed
 Commissioner
 District 3

Jim Franken
 Commissioner
 District 4

John Hummer
 Commissioner
 District

MAGEE and ASSOCIATES, Inc.
Consulting Engineers – Civil and Environmental

P.O. Box 730
Mesilla Park, NM 88047

Phone (505) 523-9613
Fax (505) 523-9614

February 9, 2006

Mr. Dale Palkki
Planning Coordinator
Otero County
1000 New York Ave.
Room 101
Alamogordo, New Mexico 88310-6935



Bk 1242 Pg 432

**Re: Response to New Mexico Department of Transportation Comment for
Tierra de Oro Subdivision**

Dear Mr. Palkki:

We received a copy of the letter commenting on the proposed Tierra de Oro Subdivision from the New Mexico Department of Transportation. The following was included in their letter:

“District Traffic Engineer: A Site Threshold Assessment (STH) must be completed for this subdivision. A copy of the form may be found in Appendix D of the State Access Management Manual.”

Site Threshold Assessments (STH) were completed and attached in the packet for all traffic access points for the subdivision, including State and County roads. The STH was completed in accordance with the State Access Management Manual and the thresholds were not exceeded. We do not understand the reason for such comments from the New Mexico Department of Transportation.

If you have any questions please call me at the above telephone number.

Sincerely,
Magee and Associates, Inc.

Marvin Magee, P.E.
President

cc: Estella Rosencrans-Wright, Desert View Investments, Inc.



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE



Bk 1242 Pg 433

R/W Bureau

February 9, 2006

Mr. Dale Palkki
Planning Coordinator
Otero County
1000 New York Ave.
Room 101
Alamogordo, NM 88310-6935

RE: **Tierra De Oro Subdivision**

Dear Mr. Palkki,

The appropriate engineers of the New Mexico Department of Transportation have reviewed the material submitted on the above referenced development and do not have any further comments. You may disregard the previous letter submitted with comments from D2 Traffic Engineer.

If you have any questions or need further information please contact me at 476-3652 or by e-mail at Jeremy.Lujan@state.nm.us.

Sincerely,

Jeremy Lujan
Property Management Agent
Right of Way Bureau

XC: File #1549

Bill Richardson
Governor

Rhonda G. Faught P.E.
Cabinet Secretary

Commission

Johnny Cope
Chairman
District 2

David Schutz
Vice Chairman
District 5

Gregory T. Ortiz
Secretary
District 6

Norman Assed
Commissioner
District 3

Jim Franken
Commissioner
District 4

Jon Hummer
Commissioner
District



Bk 1242 Pg 434

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
 Santa Fe

John A. D'Antonio Jr., P.E.
 State Engineer

BATAAN MEMORIAL BUILDING, ROOM 102
 SANTA FE, NEW MEXICO 87504-5102
 (505) 827-6120
 FAX: (505) 827-6682

January 26, 2006

Mr. Dale Palkki
 Planning Coordinator
 Otero County
 1000 New York Ave, Room 101
 Alamogordo, New Mexico 88310-6935

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Anticipated by Fax

Re: Tierra De Oro

Dear Mr. Palkki,

On December 27, 2005, the Office of the State Engineer (OSE) received a request to review the Preliminary Plat for Tierra De Oro, a Type-Two subdivision. The developer proposes to subdivide 267.502 acres into 210 lots, with sizes ranging between 0.880 & 1.857 acres. The proposed subdivision is located approximately 3 miles southeast of Chaparral between Calle Del Norte and Jung Sun Lane within Sections 29 and 32, Township 26 South, Range 6 East, NMPM. The developer proposes to obtain water from Lake Section Water Company. However, individual domestic wells are not prohibited.

This proposal was reviewed pursuant to the Otero County Subdivision Regulations and the New Mexico Subdivision Act. It is the opinion of this office that the developer's water supply proposal satisfies the requirements of Appendix C, Sections C.1.B, C.3.B.3 and E.1.a of the Otero County Regulation but does not satisfy the requirements of Appendix C, Section C.2.D of the County Regulations. Therefore, a **positive opinion is withheld** until the developer amends item # 17 of the disclosure statement to reflect the requirements of Appendix C, Section C.2.D of the County Regulations, which prohibits the drilling or use of individual and/or shared domestic wells for any subdivisions that utilizes a public water system.

WATER DEMAND ANALYSIS & WATER CONSERVATION

The developer has quantified the maximum annual water requirements for the subdivision pursuant to Appendix C, Section C.1.B. of the Otero County Regulations for both indoor and outdoor purposes following the procedures set forth in OSE Technical Report 48 (Wilson, 1996). The maximum water demand was quantified as 0.55 acre-feet per year per

Received 01-26-06 05:42am

From-

To-OTERO COUNTY ADMINIS Page 02



Mr. Dale Palkki
January 26, 2006
Page 2 of 3

Bk 1242 Pg 435

Tierra De Oro Subdivision

lot or 127.8 acre-feet per year for the entire subdivision, assuming 3.5 persons per dwelling (at 80 gpcd), 1400 square feet of Bermuda grass, 600 square feet of trees or horticulture and 10% for distribution system losses.

The water conservation measures under item # 17 of the disclosure statement and Section 2, item 420 of the Restrictive Covenants reflect the assumptions used in the quantification of the water budget, by restricting the outdoor water use to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture.

This office recommends that the developer limit irrigation to 800 square feet per lot. This restriction may be stated as follows: "The total irrigated area shall not exceed 800 square feet per lot. The 800 square feet may be planted in any combination of trees, shrubs, annuals, and perennials, grasses, and garden. Grasses should be selected that are well adapted to local climatic conditions, and non-native grasses are discouraged. Low-water use landscaping techniques applying the principles of xeriscape shall be utilized. Drip irrigation is encouraged whenever possible." Finally, this office suggests that other outdoor uses such as swimming pools, hot tubs, water fountains, and decorative ponds be restricted.

WATER AVAILABILITY ASSESSMENT

The developer proposes to obtain water from Lake Section Water Company (LSWC). A letter by LSWC stating that they are ready willing and able to provide water service to the proposed subdivision was included in the proposal package. Although the letter does not specifically state that LSWC is ready, willing, and able to provide the maximum annual water requirements for the subdivision, the opinion of this office is that the letter is adequate.

The review of the OSE records indicates that LSWC is in possession of enough water rights to supply the proposed subdivision. In fact, while the permitted diversion is not to exceed 8032.8 acre-feet per annum, the annual usage has been between 1974 and 1799 acre-feet per year during the time-period 2003 through the end of 2005.

Under item #17 of the disclosure statement the developer mentions that individual wells are not prohibited. Appendix C, Section C.2.D of the County requires that covenants and land use restriction shall be adopted strictly prohibiting the drilling or use of individual and/or shared domestic wells for any subdivisions that utilize a public water system.

If you have any questions, please call me at 505-827-6790.

Sincerely,

Julie Valdez

Received 01-28-06 09:42am

From-

To-OTERO COUNTY ADMINIS Page 03



Bk 1242 Pg 436

Tierra De Oro Subdivision

Mr. Dale Palkki
January 26, 2006
Page 3 of 3

Julie Valdez
Senior Water Resource Specialist

cc: John W. Longworth, P.E, Water Use & Conservation Bureau Chief
OSE Water Rights Division, Las Cruces Office

MAGEE and ASSOCIATES, Inc.
Consulting Engineers – Civil and Environmental

P.O. Box 730
Mesilla Park, NM 88047

Phone (505) 523-9613
Fax (505) 523-9614

February 9, 2006

Mr. Dale Palkki
Planning Coordinator
Otero County
1000 New York Ave.
Room 101
Alamogordo, New Mexico 88310-6935



Bk 1242 Pg 437

**Re: Response to Office of the State Engineer Comments for
Tierra de Oro Subdivision**

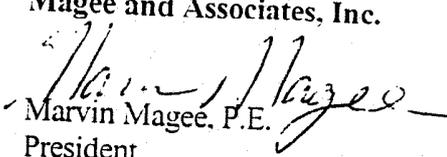
Dear Mr. Palkki:

We received a copy of the letter commenting on the proposed Tierra de Oro Subdivision from the Office of the State Engineer (OSE). They stated that the item # 17 of the Disclosure Statement must be amended to reflect the requirements of Appendix C, Section C.2.D of the County Regulations, which prohibits the drilling or use of individual and/or shared domestic wells for any subdivision that utilizes a public water system. The developer agrees to amend the Disclosure Statement as stated. The amended section is attached.

The OSE further recommended that the developer limit irrigation to 800 square feet per lot and restrict other outdoor uses such as swimming pools, hot tubs, water fountains, and decorative ponds. We based the water demand analysis on the equivalent of 1400 square feet of Bermuda grass and 600 square feet of trees and horticulture. I called Julie Valdez to clarify this recommendation. She stated that it is OSE policy to include this language for all subdivisions except in locations that prohibit outdoor watering. I requested a copy of the policy and she then transferred me to her supervisor Mara. Mara stated that this was not a policy but only a recommendation. The subdivider objects to changing the disclosure statement to include this language.

If you have any questions please call me at the above telephone number.

Sincerely,
Magee and Associates, Inc.


Marvin Magee, P.E.
President

cc: Estella Rosencrans-Wright, Desert View Investments, Inc.



16. WATER AVAILABILITY

Describe the maximum annual water requirements of the subdivision including water for indoor and outdoor domestic uses: The Lake Section Water Company, located in Chaparral, New Mexico will provide water. The maximum annual water requirement for the subdivision is calculated at 127.85 acre-feet. This water requirement is for indoor and outdoor domestic use.

Describe the availability and sources of water to meet the subdivision's maximum annual water requirements: Lake Section Water Company has declared water rights totaling 13,387.07 acre feet per annum. At present the company uses approximately 1,800 acre feet per annum. The total water obligations that Lake Section Water Company has to date are 2,798.39 acre-feet. Lake Section Water Company owns several production wells that provide water for the system and all customers.

Describe the means of water delivery within the subdivision: Water will be delivered to the subdivision by underground piping of sufficient type and size to meet the needs of the subdivision.

Describe any limitations and restrictions on water use in the subdivision: As listed in the Restrictive Covenants, Section Two, No. 20, "Irrigated areas shall be limited to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture, or the equivalent amount of water." The Restrictive Covenants are attached as Appendix B to this Disclosure Statement.

Summarize the provisions of any covenants or other restrictions requiring the use of water saving fixtures and other water conservation measures: Irrigated areas shall be limited to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture, or the equivalent amount of water. The Restrictive Covenants include details of all limitations and restrictions on water use in the subdivision, and are attached as Appendix B.

Describe what measures, if any, will be employed to monitor or restrict water use in the subdivision: The Restrictive Covenants include details of all limitations and restrictions on water use in the subdivision and are attached as Appendix B.

17. FOR SUBDIVISIONS WITH COMMUNITY WATER SYSTEMS

Name and address of entity providing water: Water for the subdivision will be provided by the Lake Section Water Company, 301 Paseo Real Drive, Chaparral, New Mexico 88081, (505) 824-4731. The cost per hook-up is \$310.00 per lot at this time. Rates are subject to change-per PRC approval.

Source of water and means of delivery: The Subdivider will install water service to each individual lot and the Lake Section Water Company will supply water for the subdivision. It will be the responsibility of the purchaser/lessee to install water lines within the lot and to contact the Water Company for installation of the meter. The Purchaser/Lessee has up to 18 months from the date of purchase to request installation of the water service. Once the Purchaser/Lessee requests service, the Subdivider has 3 months to install the service. If the Purchaser/Lessee does not request service within the 18 months then the Purchaser/Lessee and Subdivider will negotiate the change in costs for the service or provide for an extension of time.

Summary of any legal restrictions on either indoor or outdoor usage: As listed in the Restrictive Covenants, Section Two, No. 20, "Irrigated areas shall be limited to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture, or the equivalent amount of water." The Restrictive Covenants are attached as Appendix B to this Disclosure Statement.

Statement that individual wells are prohibited, if such is the case: The drilling or use of individual and/or shared domestic wells are prohibited within the subdivision.



19. No animals shall be allowed to run at large.
20. Irrigated areas shall be limited to 1400 square feet of Bermuda or lesser water requiring grass, and 600 square feet of trees and horticulture, or the equivalent amount of water.
21. The drilling or use of individual and/or shared domestic wells is prohibited within the subdivision.

SECTION THREE
APPLICABILITY

1. In the event of any violation or threatened violation of any of the covenants herein, any owner of any lot, block or parcel in the subdivision may bring action at law or in equity, either of injunction, action for damages or such other remedy as may be available. In the event that a judgment is obtained, the owner shall also be entitled to recover from such person reasonable attorney's fees and court costs.
2. The failure by any land owner to enforce any restrictions, conditions, covenant, or agreement herein contained shall in no event be deemed to waive the right to do so thereafter as to the same breach or as to one occurring prior to subsequent thereto, nor shall such failure give rise to any claim or cause of action against Desert View Investments, Inc. or the current land owner. Violation of any one or more of such covenants may be restrained by any court of competent jurisdiction, and damages awarded against such violator.
3. If any provisions of this indenture or the application of such provision to any person or circumstances shall be held invalid, the remainder of this indenture or the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.



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523-9614

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
Santa Fe

John R. D'Antonio Jr., P.E.
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6120
FAX: (505) 827-6682

March 10, 2006

Mr. Dale Palkki
Planning Coordinator
Otero County
1000 New York Ave., Room 101
Alamogordo, New Mexico 88310-6935

CERTIFIED MAIL
RETURN RECEIPT
REQUESTED

Re: **Tierra De Oro Subdivision**

Dear Mr. Palkki:

On February 17, 2006, the Office of the State Engineer (OSE) received additional documentation regarding the Preliminary Plat for Tierra De Oro, a Type-Two subdivision. The developer proposes to subdivide 267.502 acres into 210 lots, with sizes ranging between 0.880 & 1.857 acres. The proposed subdivision is located approximately 3 miles southeast of Chaparral between Calle Del Norte and Jung Sun Lane within Sections 29 and 32, Township 26 South, Range 6 East, NMPM. The developer proposes to obtain water from Lake Section Water Company.

This office issued a negative opinion on January 26, 2006, for the reason that the proposal did not satisfy the requirements of Appendix C, Section C.2.D of the Otero County Regulations which prohibits the drilling and use of individual and/or shared domestic wells for any subdivision which requires or utilizes a public water system. Please see the previous letter for specific details.

The documents submitted for review are a revised section of Disclosure Statement and a revised section of the Restrictive covenants.

The Office of the State Engineer (OSE) has reviewed the revised proposal, pursuant to the Otero County Subdivision Regulations, and the New Mexico Subdivision Act.

Item No. 17 of the Disclosure Statement is revised to include the statement that the drilling and use of individual and/or shared wells is prohibited within the subdivision. Article Two Item No. 21 of the Restrictive Covenants has been added and contains the same prohibition for wells as Item No. 17 of the Disclosure Statement.

Mr. Dale Palkki
March 10, 2006
Page 2 of 2



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OTERO COUNTY ASSESSOR
Tierra De Oro Subdivision

It is the opinion of this office that the developer's revised water supply proposal is in compliance with the requirements of the Otero County Subdivision Regulation and the New Mexico Subdivision Act. Accordingly, a Positive opinion is issued.

If you have any questions, please call me at 505-827-3845.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Keller".

Jerry Keller
Senior Water Resource Specialist

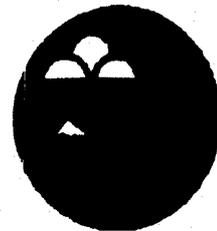
cc: John W. Longworth, P.E, Water Use & Conservation Bureau Chief
OSE Water Rights Division, Las Cruces office



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State of New Mexico
ENVIRONMENT DEPARTMENT

411 Tenth St., Room 106
Alamogordo, NM 88310
Telephone: (505) 437-7115
FAX (505) 434-1813



Bill Richardson
Governor

Derrith Watchman-Moore
Deputy Secretary

Ron Curry
Secretary

Ana Marie Ortiz
Field Operations Director

March 20, 2006

To: Dale Palkki, Otero County Subdivision Coordinator
From: David Kirby, Supervisor-NMED

*Faxed to
Mayer 3-27-06
505-523-9614*

Re: Tierra de Oro Subdivision, Chaparral, Otero County

Sub Divider's Disclosure Statement
Paragraph 24, Liquid Waste Disposal

In the sentence, "The sub-divider will install up to a 1200-gallon residential septic system." the wording should be changed to: "The sub-divider will install a residential septic system sized to comply with New Mexico Liquid Waste Regulations, 20.7.3NMAC." The allowed size of the system, the Gallons-Per-Day Design Flow, will vary by lot size.

Paragraph 25, Liquid Waste Disposal
Sentence 2.

As presented, it appears the subdivision can meet New Mexico Liquid Waste Regulations 20.7.3NMAC.

Sentence 3.

It appears the sub-divider can fulfill the Liquid Waste proposals made in this disclosure statement.

Sentence 4.

Insofar as Otero County has adopted New Mexico Liquid Waste Regulations as guidelines, it appears the sub-divider's proposal conforms to the County's liquid waste disposal regulations.

Paragraph 26, Solid Waste Disposal

It appears the proposal conforms to State regulations for Solid Waste Disposal

Paragraph 27, Solid Waste Disposal

Sentence 2.

It appears there are sufficient facilities to dispose of Solid Waste in conformity with State regulations.



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Sentence 3.

It appears the sub-divider can fulfill the Solid Waste proposals made in this disclosure statement.

Sentence 4.

Change wording to reflect the sentence is addressing Solid Waste disposal.

It appears the sub-divider's proposal conforms to the County's *Solid Waste* disposal regulations.

David Kirby

Cc: Michael Montoya, Dist III LW Specialist; Joe Savage, DWB Hydrologist; Harry Mikel, Dist III SWB Specialist; Frank Fiore, Dist III Staff Manager; Jared White, Environmental Scientist/Specialist, Alamogordo.



OTERO COUNTY ASSESSOR

State of New Mexico
ENVIRONMENT DEPARTMENT
Drinking Water Bureau
Ruidoso Field Office
1216 Mechem
Ruidoso, NM 88345
(505)-258-3272



BILL RICHARDSON
Governor

RON CURRY
Secretary
DERRITH WATCHMAN-MOORE
Deputy Secretary

24 March 2006

Desert View Investments
301 Paseo Real Drive
Chaparral, NM 88021



Bk 1242 Pg 444

RE: Tierra de Oro Subdivision

Dear Madame/Sir:

The Drinking Water Bureau of the New Mexico Environment Department has performed a preliminary review of the subdivision described above. Based upon information and data provided in Section 17, the letter presented by the water supplier, and in response to statements 1, 2, and 3 of Paragraph 23, the Bureau approves the subdivision based upon the intent of Lake Section Water Company to provide water to the entire subdivision. This entity is a public water system in compliance with applicable county, state and federal regulations. If, however, this water system becomes out of compliance or cannot provide potable water of high quality prior to inception of the subdivision, the Bureau reserves the right to retract approval.

Sincerely,

Joseph C. Savage, Hydrologist

CC: Field Office File

Alan Sena, Supervisor, DWB District 4
David Kirby, Supervisor, FOD District 3

STATE OF NEW MEXICO } s.s.
OTERO COUNTY

FILED FOR RECORD IN MY OFFICE

This 25th day of May, 2006

At 1:40 o'clock P M and duly recorded
in Book No. 1242 Page 416-444

The records of Otero County, New Mexico

Robin Silva
County Clerk, Otero County, New Mexico

By Jenya Williams Deputy

5711

