



Planning and Zoning Commission

Summary of Commission Action

Hearing Date: None

CASE NUMBER:	Z 2014-11		
ACTION REQUESTED:	Petition for the Issuance of a Special Use Permit		
PURPOSE:	To permit the use of a Wireless Telecommunications Facility (Cell Tower)		
PETITIONER:	Lyndon Vidrine, representing AT&T Mobility		
PROPERTY LOCATION:	One-half mile north of US 82 [Rio Penasco Road], near the intersection of SR 24, on the Taylor Ranch, 51 miles SW of Roswell		
COMPLIANCE WITH COMPREHENSIVE PLAN:	Yes	COMPLIANCE WITH CHAVES COUNTY ZONING ORDINANCE:	Upon Approval of Special Use Permit
STAFF RECOMMENDATION:	Approval, subject to 9 Conditions of Approval		
PLANNING COMMISSION ACTION	This petition was not heard by the Chaves County Planning Commission due to a lack of a quorum at its November meeting		
CONDITIONS OF APPROVAL:	<ol style="list-style-type: none"> 1. Current and future development of the site shall be in substantial conformance with the information supplied on the site plan submitted with the Special Use Permit petition; 2. A Building Permit and all inspections required by the Building Official shall be accomplished; 3. The tower constructed shall accommodate co-location of at least two other wireless communications antenna arrays, including, if needed, access from public service providers; 4. Access to the site (via the private easement) be designed and constructed to accommodate appropriate maintenance service vehicle traffic; 5. Legal descriptions for the lease area and all access easements shall be recorded with the Chaves County Clerk; 6. A letter of "Determination of No Hazard to Air Navigation" from the Federal Aviation Administration shall be submitted to the Planning Department. 		

	<ol style="list-style-type: none"> 7. Any lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act; 8. The Special Use Permit be granted for a period of thirty (30) years, and will expire on November 1, 2044, unless Condition No. 9 applies; and 9. If the facility remains inoperative for a period of 12 consecutive months, it shall be removed by the owner or petitioner, unless a non-use permit for a prescribed period is granted by Chaves County.
EXHIBITS:	<p>Planning Department Staff Report, November 12, 2014</p> <p>Attachments a. through g.</p>

**CHAVES COUNTY
PLANNING COMMISSION
PLANNING AND ZONING REPORT**

APPLICATION NO: Z 2014-011 **DATE OF HEARING:** November 12, 2014

NAME OF APPLICANT: Lyndon Vidrine/AT&T Mobility

REASON FOR HEARING: Special Use Permit, to erect a new Wireless

 Telecommunications Facility (Cell Tower)

1. REQUEST:

Issuance of a Special Use Permit to erect a Wireless Telecommunications Facility (Cellular Tower), construct a related equipment shelter, and provide a (maintenance) vehicle and utility access easement to the Lease Area.

2. LOCATION OF PROPERTY:

On vacant land located in far southwestern Chaves County, approximately three-eighths ($\frac{3}{8}$) of a mile northwest of US 82 (Rio Penasco Road). The site is 51 air miles southwest of Roswell.

The UPN is 4-099-097-371-251-000000.

The site is addressed as 47 Piñon Dunken Road.

The wireless telecommunications facility is physically located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, Township 16 South, Range 17 East. The proposed facility will be sited on a 50' by 50' (2,500 square foot) lease area located at Latitude 32° 53' 32.908" and Longitude 105° 10' 38.573". The subject property is owned by the Taylor and Scroggin Family of Lovington, and contains 992.37± acres of land. The ground elevation of the subject site is 5,524 feet ASL.

3. NATURE OF REQUEST:

The petitioner (Lyndon Vidrine, New Singular Wireless PCS LLC/AT&T Mobility) proposes to erect a Wireless Telecommunications Facility, which consists of a guyed cell tower measuring 350' in height, and a related equipment shelter. The tower will be designed to support cellular communications and wireless data services. Each of the (3) supporting guy wires will be anchored. The anchoring apparatus will be surrounded by a secure enclosure with a 4' high chain link fence. The tower will be designed to accommodate 4 antenna arrays. The equipment shelter measures 11.5' by 16'. It will be contained within an area surrounded by a 6' high chain link fence, and be secured.

4. **COMMISSION DISTRICT:**

The subject property is located in Commission District Number 2. This District is represented by Commissioner Kim Chesser.

5. **NATURE OF SURROUNDING LAND USE AND ZONING:**

In accordance with *Article V* of the *Chaves County Zoning Ordinance*, this parcel and all adjacent properties are zoned Agricultural. The subject property is located in Area II. The site is in a relatively isolated portion of Chaves County, and the vast majority of the adjacent properties are vacant. The nearest residential dwelling unit is located approximately 1 mile to the south of the subject property (on Piñon Dunken Road).

The Penasco School is located approximately $\frac{5}{8}$ south of the project site.

The closest cellular towers to the subject property are 3.76 miles to the northwest (on a mountain top), and 5.9 miles to the east (just south of US 82).

6. **KEY ISSUES:**

Staff has not identified any significant key issues related to this request.

7. **EXISTING SITE ACCESS:**

Access to the site will be via a proposed 12' wide privately owned access easement which will have direct access to Rio Penasco Road (US 82). This easement will also house underground utility service that will tie into existing electrical utility service located along the Piñon Dunken Road right-of-way to power the proposed wireless telecommunications facility. This service locate is approximately one mile from the proposed project site.

8. **LAND USE HISTORY:**

There are no records of past land use petitions or zoning violations on the subject property.

9. **CHAVES COUNTY COMPREHENSIVE PLAN:**

The proposed land use is in general conformance with the Chaves County Comprehensive Plan, Agricultural Land Use Goals and Policies.

10. **ZONING ORDINANCE AND COUNTY CODE REQUIREMENTS:**

Special Use Permits

Special Use Permits are governed by *Article XVIII* of the *Chaves County Zoning Ordinance*. The Ordinance permits the Planning Commission and the Board of Chaves County Commissioners to impose appropriate conditions and safeguards, which may include a specified period of time for the Special Use Permit to protect the general plan to conserve and protect the property values in the neighborhood.

Section 2, Supplemental Regulations, 11. states, “Before issuance of any special permit for any of the above buildings or uses, the Board of Chaves County Commissioners shall refer the proposed application to the Planning and Zoning Commission, which commission shall be given sixty (60) days in which to make a report regarding the effect of such proposed building or use upon the character of the neighborhood traffic conditions, public utility facilities, and other matters pertaining to the general welfare. No action shall be taken upon the application for the proposed building or use above referred to until and unless the report to the Chaves County Planning and Zoning Commission has been filed. Provided, however, that if no report is received from the Chaves County Planning and Zoning Commission within sixty (60) days, it shall be assumed that approval of the application has been given by said Commission.”

Appeals

Section 2, Supplemental Regulations, 12. states, “Any aggrieved persons or any officer, department, board, or bureau of the Zoning Authority affected by the decision of approval, disapproval, or any conditions required of the Ordinance Enforcement Officer may appeal to the Zoning Authority. The appeal procedure will be in accordance with Article 1, Section 5.H.9.”

Article I, General Statements, Section 5, Zoning Ordinance – Mode of Determination, Establishment, Official Zoning Map, Enforcement, Amendment, Supplementation, Repeal or Appeal, H. Amendment, Supplementation or Repeal 9. Appeals to Zoning Authority – Grounds – Stay of proceedings. states, in part,

- b. “Any aggrieved persons or any officer, department, board, or bureau of the zoning authority affected by a decision of an administrative officer, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. An appeal shall stay all proceedings in furtherance of the action appealed unless the Ordinance Enforcement Officer, commission, or committee from whom the appeal is taken, certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. Upon certification, the proceedings shall not be stayed except by order of district court after notice to the official, commission, or committee from whom the appeal is taken and due cause shown.”
- c. “When an appeal alleges that there is error in any order, requirement, decision, or determination by an administrative official, commission, or committee in the enforcement of Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation, or any ordinance, resolution, rule, or regulation adopted pursuant to these sections, the Board of Chaves County Commissioners by a two-thirds ($\frac{2}{3}$) vote of all its members may:
 1. authorize, in appropriate cases and subject to appropriate conditions and safeguard, special conditions to the terms of the zoning ordinance or resolution;
 - (a) which are not contrary to the public interest;
 - (b) where, owing to special conditions, a literal enforcement of the zoning ordinance will result in unnecessary hardship; and
 - (c) so that the spirit of the zoning ordinance is observed and substantial justice done; or

2. *In conformity with Sections 3-21-1 through 3-21-14 N.M.S.A., 1978 Compilation;*
 - (a) *reverse any order, requirement, decision, or determination of an administrative official, commission, or committee;*
 - (b) *decide in favor of the appellant; or*
 - (c) *make any change in any order, requirement, decision, or determination of an administrative official, commission or committee.”*

Article XIV, Wireless Telecommunications Facilities, Section 2, Application: *“All new and modified wireless telecommunications facilities must apply for a Special Use Permit pursuant to Section 2.5 of this Ordinance and be scheduled for public hearing and approved by the Commission. Special Use Permits for wireless telecommunications facilities will be 30 year permits unless special conditions arise during the application and approval process. In addition to the information already required by this Ordinance, applications must include:*

- A. *Documentation that demonstrates the need for the wireless telecommunications facility to provide service within the County including propagation studies of the proposed site and all surrounding and existing sites.*

Finding: The information supplied by the petitioner demonstrates the need to establish improved wireless communications service in this area. The propagation map submitted in support of the Special Use Permit illustrates a significant gap in current wireless services in this area. The tower is designed at a height to provide enhanced E911 service and to effectively extend the coverage area. This efficiency effectively reduces the number of additional towers in this area needed to serve the anticipated future wireless need.

- B. *Description of the proposed tower and antennas and all related fixtures, structures, and appurtenances, including height above pre-existing grade, materials, colors and lighting.*

Finding: The siting of this facility is removed some distance from residential dwelling units and other potentially incompatible land uses.

- C. *The design of the tower and antennas showing the calculations of the tower's capacity to accommodate multiple users. Applications for new wireless telecommunications facilities shall examine the feasibility of designing a proposed tower to accommodate at least 2 additional antenna arrays equal to those proposed by the applicant. This requirement may be waived if the applicant can demonstrate, in writing, that future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary hardship or practical difficulty.*

Finding: The tower is designed to accommodate up to 4 future co-locates.

- D. *Site plan of the site showing the location of the tower, equipment structures, driveways, fences, etc.*

Finding: The petitioner has submitted a detailed site and elevation plan for public review in support of the Special Use Permit petition.

E. A written statement from the owner of the proposed tower that he/she and his/her successors in interest will negotiate in good faith for the shared use of the proposed tower.

Finding: The petitioner indicates that the facility is designed to accommodate up to four future co-locators.

Section 3. Location. A. Wireless telecommunications facilities shall locate in accordance with the following priorities:

- 1. On existing towers or other structures without increasing the height of the tower or structure.*
- 2. Along major traffic corridors*
- 3. In Agricultural areas*
- 4. In Residential areas*

Finding: The proposed facility will be a new facility, as there are no existing facilities within 5 miles to accommodate a co-locate. The proposed site is located in a sparsely populated portion of Chaves County. US 82 (Rio Penasco Road), a major traffic corridor, is located approximately $\frac{5}{8}$ mile to the southeast of the site. The land use of adjacent properties is predominantly open space and open range agricultural. The proposed site is located some distance (one mile) from residential areas, which is the least desirable area to site wireless telecommunications facilities.

B. The applicant shall submit a written report demonstrating the applicant's review of sites in the vicinity of the proposed location demonstrating the technological reason for the site selection, and a detailed, written explanation why sites of higher priority were not selected.

Finding: A report has been submitted with the petition, and is included within this report as an attachment [Attachment e].

C. An applicant may not by-pass sites of higher priority by stating the proposed site is the only site leased or selected. If co-location is not an option, the applicant must explain why co-location is commercially, or otherwise, impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

Finding: There are no existing wireless telecommunications facilities located a reasonable distance of this site. Therefore, preparing an agreement between providers is not applicable.

D. The Commission may approve any site located within an area in the above list of priorities, provided that the Findings indicate that the proposed site is in the best interest of the health, safety and welfare of the residents of Chaves County and will not have a detrimental effect on the nature and character of the community and neighborhood.

Finding: Staff finds that the site selected for the wireless telecommunications facility is appropriate.

E. The Commission may disapprove the action requested for any of the following reasons:

- 1. A conflict with safety and safety-related codes and requirements.*
- 2. A conflict with the historic nature or character of a neighborhood or historic district.*
- 3. The use or construction of a facility is contrary to an already stated purpose of a specific zoning or land use designation.*
- 4. A conflict with the provisions of the Chaves County Zoning Ordinance or any other County ordinances.*

Finding: Staff finds that there are no issues that have arisen during the review of this petition for a wireless telecommunications facility that may create or have created any conflict with any of the above criteria.

Section 4. Colocation

All new or modified wireless telecommunications facilities should develop their plans to allow reasonable requests by the County to use space on the tower and compound for public service radio facilities such as police, fire, emergency, homeland security, etc., at a reasonable charge. The County should have access to their equipment on a 24/7 basis for maintenance and operating purposes. Condition of Approval Number 3 addresses the Colocation requirement.

Section 5. Height, Lot Size, and Setbacks

Wireless telecommunication facility towers are exempt from height requirements. The facility is proposed to stand at 350' above ground level. Minimum setbacks are as follows:

	Required:	Proposed to tower:	Proposed to Lease Area:
Front Yard:	50'	>1,000'	>1,000'
Rear Yard:	50'	270'	245' from half-Section Line
Side yard (north):	20'	>1,000'	>1,000'
Side yard (south):	40'	205'	180' from half-Section Line

Section 6. Appearance and Visibility

The site is situated on the north facing slope of a gentle ridge that is on land located in the foothills of the Sacramento Mountains. The terrain affords greater vertical relief as one travels west of the subject property. Visual impacts to traffic driving on Rio Penasco Road (US 82) will be mitigated by the distance (2/8 mile) the tower will be set back from this major roadway, coupled with the rolling terrain present in this area. The nearest residential dwelling unit is located approximately one mile to the south of the subject property, on Piñon Dunken Road. Visibility of the subject site will be partially blocked by the ridgeline located north of Rio Penasco Road.

The only artificial lighting that will be attached to the tower that staff is aware of is that which is required by the Federal Communications Commission and the Federal Aviation Administration.

Section 7. Security

The existing facility appears to have been designed to meet industry standards and appears to be in compliance with all federal and local safety requirements. The wireless antenna and equipment shelter “lease area” will be surrounded by a 6’ high chain link fence to prevent unauthorized access.

Finding: Staff finds that the site incorporates adequate security measures.

Section 8. Signs

No new signs are proposed.

Finding: Staff finds that the petition meets this requirement.

Section 9. Abandonment

Condition of Approval 9 addresses this requirement.

Section 10. State and Federal Regulations

The applicant acknowledges this requirement via a letter submitted with the Special Use Permit petition.

Section 11. Exemptions

No exemptions are applicable to this application.

11. STAFF ANALYSIS AND FINDINGS:

General Findings:

Staff finds that there are no wireless telecommunications facilities located within several miles of the subject property.

Staff finds that communication towers are an essential component of life for health and safety purposes, as well as their ability to provide day to day convenience for Chaves County residents. Cell towers also provide an economic benefit to the County.

Staff further finds that the use of existing cellular facilities have not been injurious to the public health, safety, morals and general welfare of the community, and likely will not be so in the foreseeable future. The use or value of the area adjacent to the property does not appear to be affected substantially in an adverse manner by incorporating the proposed land use.

Staff further finds that the site is suitable for the proposed land use and the surrounding properties seem compatible with the proposed land use.

Special Use Permits:

Finding: The land use proposed requires issuance of a Special Use Permit upon a duly noticed public hearing.

Floodplain:

Finding: The subject property is not located within a FEMA floodplain.

Setbacks:

Findings: All required yard setbacks and building separation requirements will be met by the proposal.

Compatibility with the Chaves County Comprehensive Plan:

Finding: Although not regulatory in its scope of authority, the Chaves County Comprehensive Plan contains narrative that supports agricultural and related land uses in this area of Chaves County. Open range ranching is the predominant land use in this portion of southwestern Chaves County. Wireless Telecommunications Facilities are land uses typically locating along major traffic corridors, and as such, are generally in conformance with the goals and objectives of the Chaves County Comprehensive Plan.

Compatibility with Surrounding Land Uses:

Finding: Lot sizes in the immediate area typically range from several hundred to several thousand acres in size. Most of the parcels are undeveloped and consist of open range. Many parcels are owned by governmental entities. Staff finds that the proposed facility will not have a detrimental impact on the character of the immediate area, traffic conditions or public utility facilities, and will likely not have an impact in the future.

Public Participation:

Finding: One inquiry was made by an adjacent property owner, but no comments or protests have been received from the adjacent property owners as a result of public notification and legal advertising of the Special Use Permit petition, as of October 30, 2014.

No comments have been received from the Federal Aviation Administration (FAA).

No comments were received from the Federal Communications Commission (FCC).

Permits:

A Building Permit application will be required, and routine inspections, including an electrical inspection, shall be accomplished prior to the facility becoming operational. A Certificate of Occupancy shall be obtained as part of the Building Permit review process.

12. RECOMMENDATION:

Staff believes that approving a Special Use Permit for the land use on the subject property is appropriate, given its general location.

Staff finds that the only item missing from the application is a letter of determination of no hazard to air navigation from the Federal Aviation Administration (FAA). Towers exceeding an overall height of 200' are subject to review and approval from the FAA.

Staff recommends approval of this Special Use Permit petition, Case No. Z 2014-11, subject to nine Conditions of Approval that are designed to ensure compliance with the Wireless Telecommunications Facilities Ordinance, and to mitigate potential negative impacts on surrounding land uses:

1. Current and future development of the site shall be in substantial conformance with the information supplied on the site plan submitted with the Special Use Permit petition;
2. A Building Permit and all inspections required by the Building Official shall be accomplished;
3. The tower constructed shall accommodate co-location of at least two other wireless communications antenna arrays, including, if needed, access from public service providers;
4. Access to the site (via the private easement) be designed and constructed to accommodate appropriate maintenance service vehicle traffic;
5. Legal descriptions for the lease area and all access easements shall be recorded with the Chaves County Clerk;
6. A letter of "Determination of No Hazard to Air Navigation" from the Federal Aviation Administration shall be submitted to the Planning Department.
7. Any lighting which may be needed for security or other purposes be shielded from surrounding uses and be developed in accordance with the New Mexico Night Skies Act;
8. The Special Use Permit be granted for a period of thirty (30) years, and will expire on November 1, 2044, unless Condition No. 9 applies; and
9. If the facility remains inoperative for a period of 12 consecutive months, it shall be removed by the owner or petitioner, unless a non-use permit for a prescribed period is granted by Chaves County.

13. BOARD OF CHAVES COUNTY COMMISSIONERS PUBLIC HEARING:

The recommendation of the Planning and Zoning Commission will be presented for public review and action at the **November 20, 2014** regular meeting of the Board of Chaves County Commissioners. This public hearing will begin at 9:00AM Mountain Standard Time.

14. ATTACHMENTS:

- a. Petition for Case Review, Chaves County Planning & Zoning Department
- b. Vicinity Map
- c. Assessor's Aerial Map
- d. Site Development Plan
- e. Detailed Reports, Pinnacle Consulting, dated September 29, 2014
- f. Profile Elevation of the Wireless Telecommunications Facility (cellular tower)
- g. Photos of site



CHAVES COUNTY APPLICATION CHAVES COUNTY ZONING ORDINANCE

Case Number: 2 2014-11 Date Received: 10/20/2014 Fee: \$150.00

Type of Request: Rezoning **Special Use** Variance Change of Use

Name of Property Owner: Kevin W Taylor; Kendall J Taylor - Julie Kim Taylor Scroggin Phone Number: Kent M Taylor

Mailing Address: 606 S 13th Lovington NM 88260

Name of Applicant: New Cingular Wireless PCS LLC dba AT&T Mobility represented by Pinnacle Consulting Inc

Mailing Address: 1426 N Marvin St #101 Home Phone Number: _____
Gilbert, AZ 85233 Business Phone Number: 4803073990

Applicant Status: Owner Agent Tenant Other _____

Case Address, Legal Description, and Parcel Number: 47 Pinar Dunken Rd Hope 88250
parcel: 4-099-097-371-251-000000 - R# 13354.

Present Land Use: Agricultural

Intended Use: Agricultural

Present Zoning: Agricultural Requested Zoning: No change

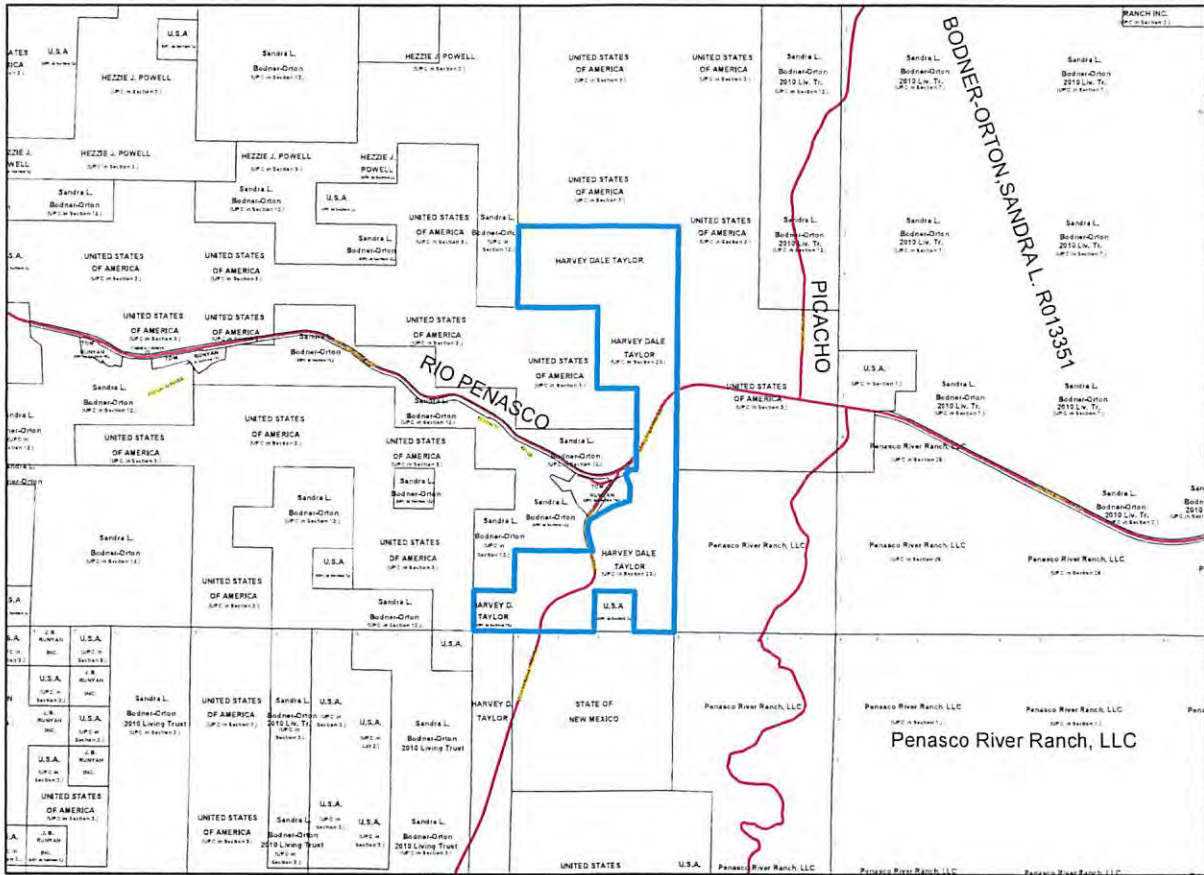
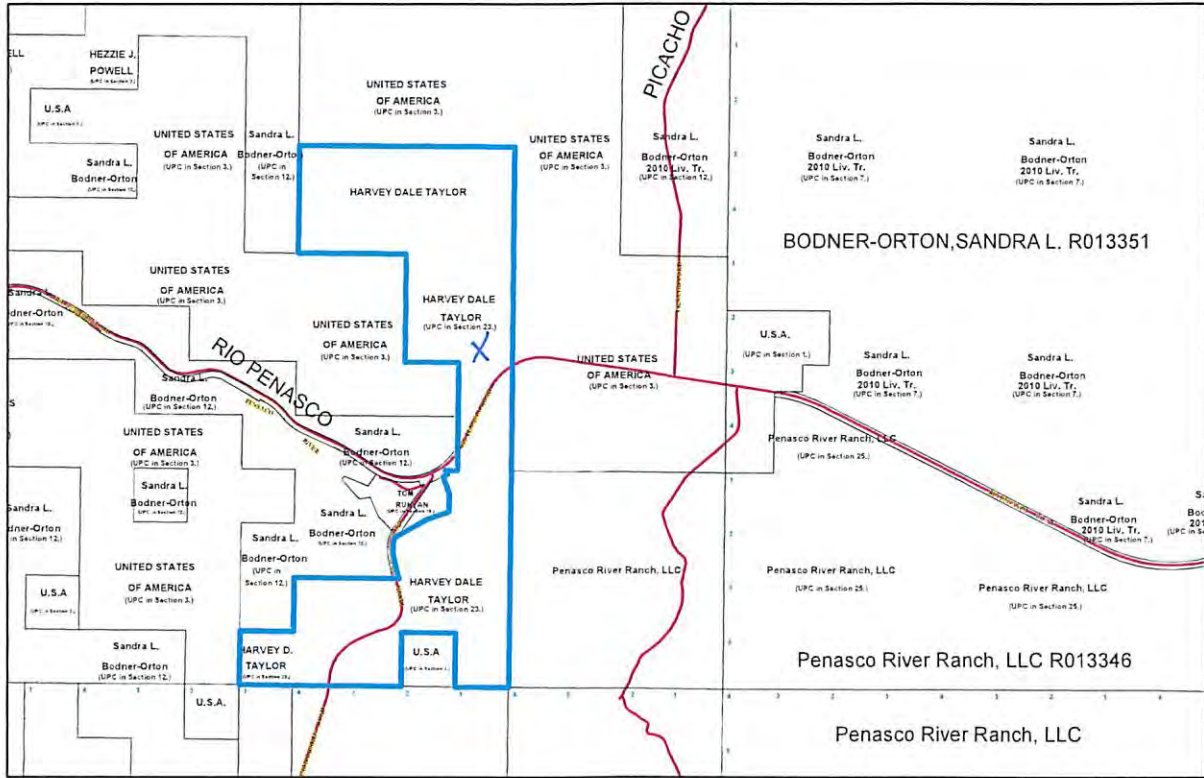
Applicant's Reason for Requested Change: (Use back if more space is needed) No change - special use permit for unmanned wireless Telecommunications facility

I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF THE DATES, TIMES, AND LOCATIONS OF THE PUBLIC MEETINGS WHICH I OR MY AGENT MUST ATTEND IN ORDER TO FULFILL THE REQUIREMENTS OF THIS APPLICATION.

[Signature] _____ Date: 13 Oct 2014

Owner's Signature _____ Date _____

VICINITY MAP

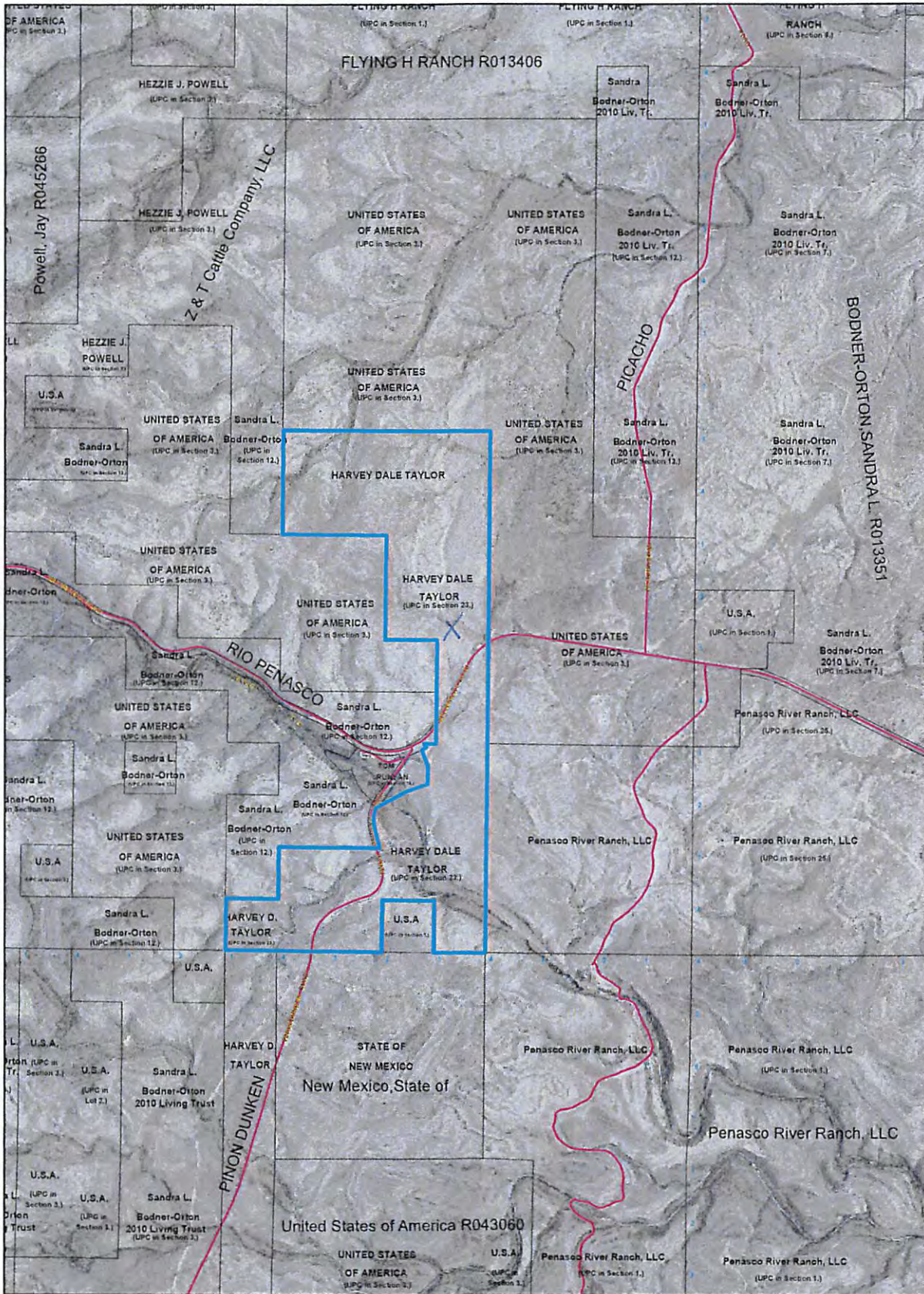


CASE Z 2014-11

b.



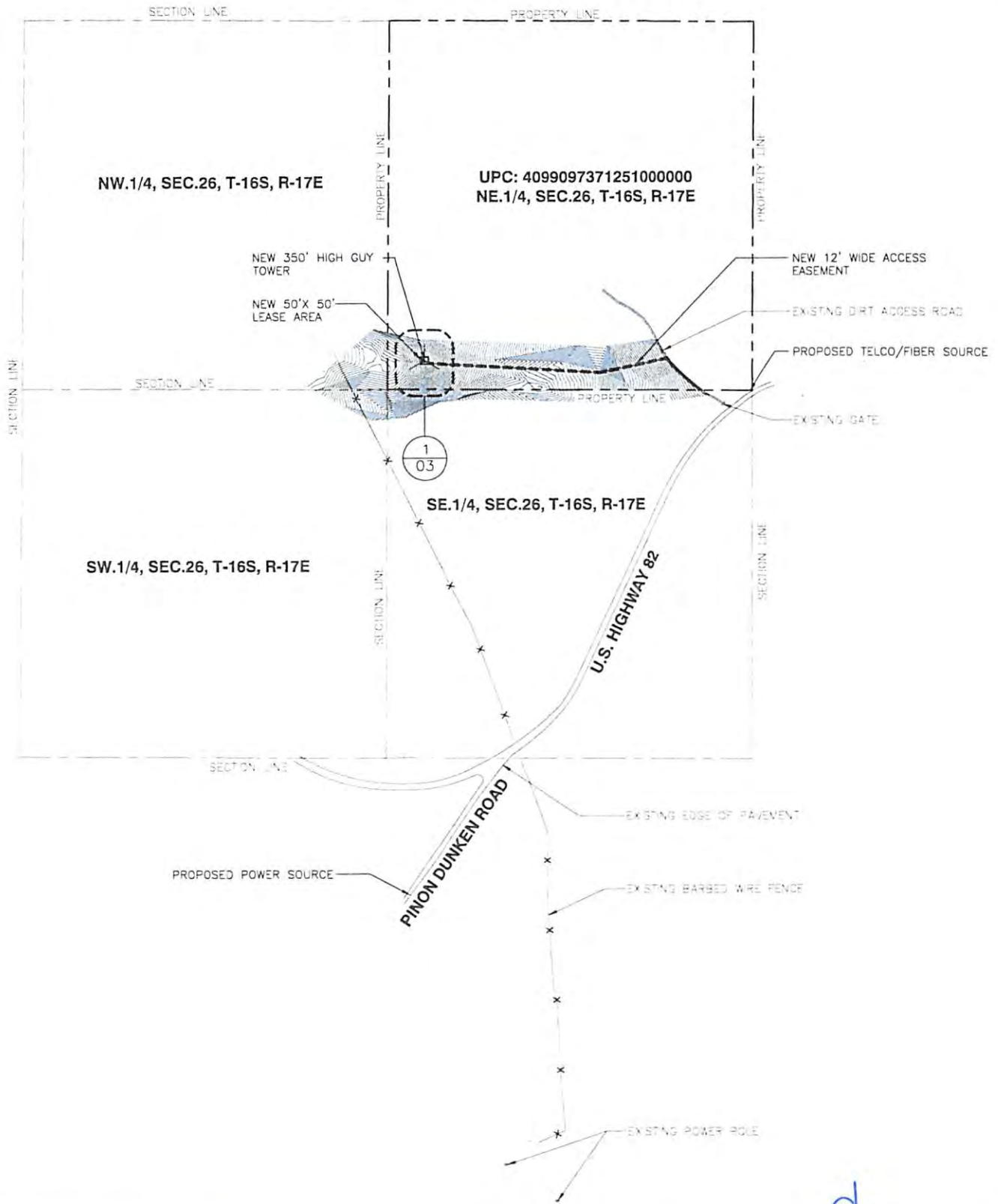
AERIAL MAP



Case Z 2014-11



C.



OVERALL SITE PLAN

22"x34" SCALE: 1" = 500'
 11"x17" SCALE: 1" = 1000'

d.

ACLE
 INC. INC.
 t - Site Development

NMALU1113
 TAYLOR PROPERTY
 FA CODE: 12816050
 USID: 159178
 47 PINON DUNKEN ROAD
 HOPE, NM 88250

 **at&t**
 1355 W. UNIVERSITY
 MESA, AZ 85201

0	8/12/14	CLIENT
A	7/18/14	PRELIM
NO.	DATE	
SCALE: AS SHOWN		

5

4

3



29 September 2014

Chaves County
Attn: Planning & Zoning
#1 St. Mary's Place
Suite #180
Roswell, NM 88203

RE: Project: AT&T Mobility Site NMALU1113 / Taylor Property
Map Code: 4-099-097-371-251-000000

To Whom It May Concern:

Pinnacle Consulting, Inc. ("Pinnacle"), on behalf of New Cingular Wireless PCS, LLC, dba AT&T Mobility ("AT&T Mobility"), in accordance with Article XIV of the County's Zoning Ordinance, respectfully submits the below in support the enclosed Special Use Permit application for AT&T Mobility's proposed unmanned wireless telecommunications facility at the address referenced above.

- **Search Area and Technical Requirements**

- AT&T Mobility identified an approximately a one mile long search area focused in rural southwestern Chaves County along US Highway 82.
- The search is designed to provide coverage for customers in the area around US Highway 82 and Piñon Dunken Rd. As depicted in the enclosed propagation maps, the site will integrate with AT&T Mobility's existing network and is intended to improve coverage to receive and handoff to facilities in the vicinity so customers have a seamless communication experience. The facility will also allow AT&T Mobility to continue delivering better data capability through evolving technologies such as 4G LTE.
- The enclosed propagation maps depict:
 - the proposed site location in relation to AT&T Mobility's existing network
 - the proposed site's projected coverage as a standalone site, with red indicating the best signal around the site, decreasing to blue further out
 - AT&T Mobility's current network coverage without the proposed site
 - And the proposed site's projected coverage as an integrated site within AT&T Mobility's network.

e.
3 pages

- The topography in the area is noted by a valley and various topo reliefs from hilly to somewhat mountainous. As noted on the attached topography map. There are no existing structures in the primary search area on which to collocate nor are there any major traffic corridors within which to site the facility.
- In order to properly cover this rural area of Chaves County and to also properly integrate with AT&T Mobility's existing network, the required height of the tower is 350'. This allows for an antenna and other tower-mounted equipment height of 346'. The height of the tower is also intended to reduce the number of towers AT&T Mobility currently needs in order to serve this area of Chaves County.

- **Subject Parcel Use and Surrounding Parcel Uses**

- **Subject Parcel Use** – The subject parcel is a large vacant/agricultural lot within a rural area of Chaves County.
- **Surrounding Parcel Uses** – The parcel directly north and east is BLM land. The parcel to the west is owned by the same entity.
- **Setbacks** – The facility will meet or exceed the minimum setbacks from all property lines and public rights of way.

- **Design**

- **Equipment and Tower** – AT&T Mobility proposes to install 12-8' panel antennas, 15 remote radio heads, and 3 RAYCAPs at an approximately 346' centerline on a new 350' guy tower constructed at or near grade. Ground equipment will be housed within an 11.5'x16' prefabricated shelter which will include an integrated concrete foundation for an emergency power diesel generator.
- **Utilities and Access** – The facility will require telephone and electrical power. The final interconnection points and routes are subject to final coordination and approval from the local utility companies. The site will be accessed via US Highway 82 through an existing gate to the property.
- **Security** – The tower will be located within an approximately 50'x50' lease area secured with a 6' high chain link fence to prevent unauthorized access.
- **Maintenance and Operation** – The facility will be unmanned. Following construction, a technician will visit the site for routine maintenance and inspection approximately once per month. Except in the event of loss of commercial power, the emergency generator will run approximately once per month for a brief testing cycle.
- **Collocation** – As noted on the enclosed site plan and tower elevations, the facility will be designed to accommodate a minimum of 2 future collocators in accordance with Article XIV, Section 2(C). As a general rule, AT&T Mobility accommodates reasonable collocation requests under commercially reasonable terms, and as such would meet the intent of Article XIV Section 2(E).
- **Abandonment** – The site will comply with the abandonment provisions of Section 9 of Article XIV of the County's Zoning Ordinance; All Wireless Telecommunications Facilities which are not in use for 12 consecutive months must be removed by the Wireless Telecommunications Facility Owner.

- **Health and Safety** – This Wireless Telecommunications Facility will meet the health and safety standards for electromagnetic field emissions as established by the Federal Communications Commission or any successor thereof, and any other Federal or State agency.
- **Interference** – This Wireless Telecommunications Facility will meet the regulations of the Federal Communications Commission regarding physical and electromagnetic interference.
- **Lighting and Signs** – Tower lighting or facility signs will be provided only as required by Federal or State agencies. At the time of this application, other regulatory and due diligence filings are pending and no additional specific information with respect to this requirement currently available.

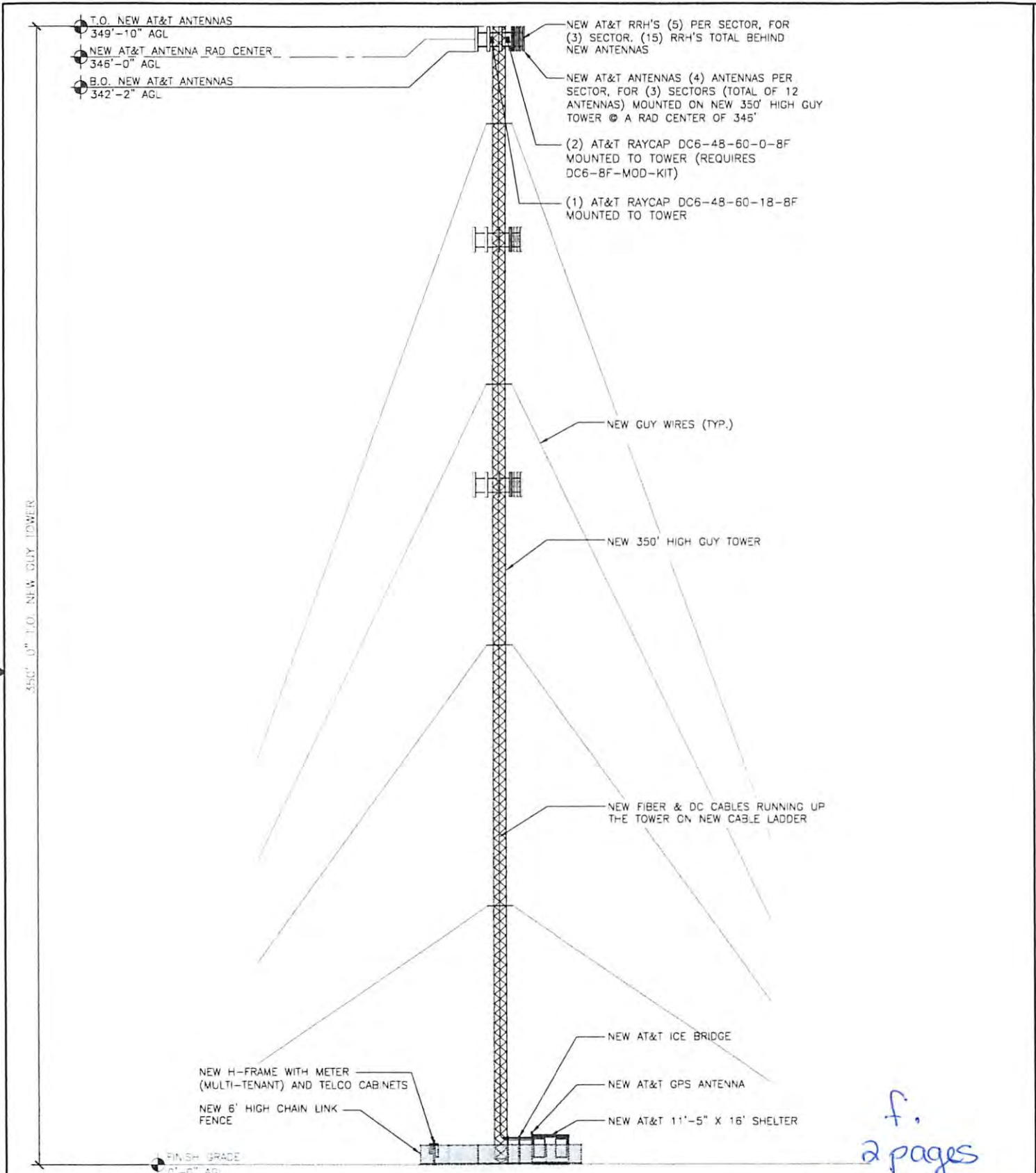
Thank you in advance for your time and assistance in reviewing our application materials.

Regards,



Lyndon Vidrine
Project Manager
Pinnacle Consulting, Inc. on behalf of
New Cingular Wireless PCS LLC, dba AT&T Mobility

Enclosure



f.
2 pages

NORTH ELEVATION

22"x34" SCALE: 1/16" = 1'-0"
 11"x17" SCALE: 1/32" = 1'-0"

2



Construction - Project management - Site Development

NMALU113
 TAYLOR PROPERTY
 FA CODE: 12816050
 USID: 159178
 47 PINON DUNKEN ROAD
 HOPE, NM 88250



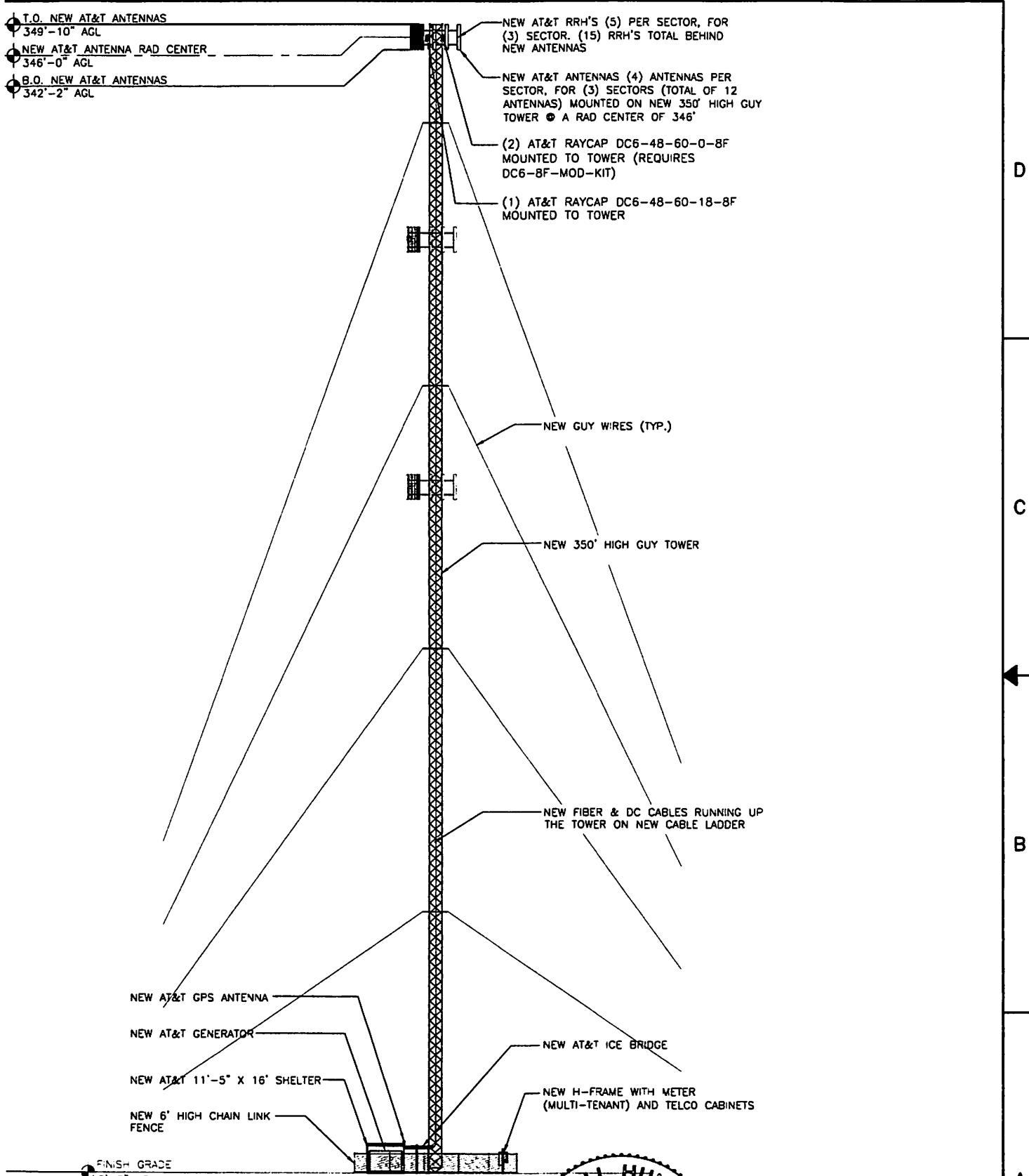
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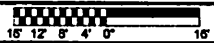
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FINISH GRADE
0'-0" AGL

UTL ELEVATION

22"x34" SCALE: 1/16" = 1'-0"
11"x17" SCALE: 1/32" = 1'-0"



NO.	DATE	REVISIONS	BY	CHK	APP'D
0	8/12/14	CLIENT COMMENTS	CH	GH	GH
A	7/18/14	PRELIM. ZONING DRAWINGS	CH	GH	GH



AT&T MOBILITY		
ELEVATIONS		
DRAWING NUMBER	REV	
NMALU1113	04	0

SCALE: AS SHOWN DESIGNED BY: CH DRAWN BY: CH

ITY
1

3

2

D

C

B

A



Entrance to Easement / Driveway, Off of Rio Penasco Road (US 82)



Subject Property. Closest Cellular Tower is 3.76 Miles Distant



View of Ridgeline from US 82, Penasco River School Site (Looking North); Directly Towards Site



Rio Penasco School, Approximately $\frac{5}{8}$ Mile South of Subject Property



Nearest Residential Homes, Approximately One Mile to the South of the Subject Property



Subject Property. Proposed Facility to Locate Just Left of Center of Photo



Closest Cellular Tower, 3.76 Miles to the Northwest



Closest Cellular Tower, 5.9 Miles to the East

AGENDA ITEM: 6

Public Hearing Regarding Proposed Ordinance
O-088 Relating to Economic Development
Planning

MEETING DATE: November 20, 2014

STAFF SUMMARY REPORT

ACTION REQUESTED BY: Stanton L. Riggs

ACTION REQUESTED: Conduct Public Hearing and Approve Ordinance

ITEM SUMMARY:

Proposed Ordinance O-088 relating to Economic Development Planning is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the county to enter into one or more joint powers agreement with other local governments to plan and support regional economic development projects.

This is a public hearing and has been properly advertised. The proposed Ordinance has been made available to the public in the County Clerk's Office and on the County website.

Staff recommends approval of Ordinance O-088.

SUPPORT DOCUMENTS: Proposed Ordinance O-088

SUMMARY BY: Stanton L. Riggs

TITLE: County Manager

**CHAVES COUNTY, NEW MEXICO
ORDINANCE NO. O-088**

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING.
BE IT ORDAINED BY THE GOVERNING BODY OF THE COUNTY OF
CHAVES, NEW MEXICO:**

Section 1. ECONOMIC DEVELOPMENT PLAN

- 1.1 Short Title.
This Ordinance may be cited as the “Economic Development Plan Ordinance.”

Section 2. Authority.

- 2.1 The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13-1978). This Ordinance is adopted as part of the County’s economic development plan.

Section 3. Purpose.

- 3.1 The purpose of the Economic Development Plan/Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the county to enter into one or more joint powers agreement with other local governments to plan and support regional economic development projects.

3.2 **Local Economic Development Act.**

Local governments are allowed to provide direct or indirect assistance to qualifying business for furthering or implementing economic development plan and projects, furthermore local and regional governments have the authority to contribute assets to development projects; however, the imposition of a tax must be approved by the voters in referendum.

Section 4. Definitions as used in the Economic Development Plan Ordinance:

- 4.1 *Economic development project* means the provision of direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance to a qualifying business and include the purchase, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and

payments for professional services contracts necessary for local or regional governments to implement a plan or project.

4.2 **Qualifying entity** means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or combination of two or more of the following:

- A. An industry for manufacturing, processing, or assembling of any agricultural or manufactured products;
- B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph (D) of this subsection, not including any enterprise for sale of goods or commodities at retail or for the distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;
- C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) of this subsection, not including business primarily engaged in the sale of goods or commodities at retail;
- D. A telecommunications sales enterprise that makes the majority of its sales to persons outside of New Mexico.

4.3 **Project participation agreement** means an agreement between a qualifying entity and the county whereby the county provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

4.4 **Governing body** means the County Commission of Chaves County.

Section 5. Economic Development Plan.

5.1 The County Manager after approval of the governing body may assist Economic Development Projects in any legally permissible manner including but not limited to provisions of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The County may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The county at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The County, at its discretion, may also contribute to the payment of costs for

professional service contracts such as Industry feasibility studies and planning and design services needed to implement a project.

- 5.2 The governing body may consider offering all forms of assistance allowed under this ordinance and any other legally permissible forms of assistance; however, this does not establish any obligation on the County's part to offer any specific type or level of assistance.

Section 6. Chaves County Economic & Community Development Corporation.

- 6.1 The governing body assigns the *EDC* Board of Directors the following responsibilities with regard to the economic development plan for the County of Chaves:

- A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects and
- B. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRB'S).

- 6.2 The *EDC* shall at all times provide for a Board of Directors position for the County of Chaves, the County Manager shall appoint a member of the Board of Directors with the advice and consent of the County Commission.

Section 7. Application Requirements.

- 7.1 Any qualifying entity meeting the definition set forth in subsection 4.2 may propose an economic development project to the county. Meeting the definition of a qualifying entity does not create any obligation on the part of the County of Chaves.

- 7.2 Applications from qualifying entities shall be submitted to the County of Chaves on forms provided by the county.

- 7.3 Applications shall contain the following information for business applicants.

A. Identification information:

- 1) Complete name and address of entity;
- 2) Incorporation papers with by-laws;
- 3) List of board of directors and executive director, with addresses; and resumes of all directors and officers.
- 4) Resumes of all directors and officers.

B. Evidence of financial solvency (personal statement of principals);

- 1) Financial statement (income statement and balance sheets) for the past three years;
- 2) Federal tax number, New Mexico State Taxation and Revenue number and county business license;
- 3) Projected income statement for at least three years.

C. Evidence of organizational capacity:

- 1) Brief history of the entity;
- 2) Organizational chart of the entity;
- 3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis);

D. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

Section 8. Applicable Review Criteria.

8.1 Applications for economic development projects requesting economic assistance from the county, which meet the policies and objectives of the county's economic development plan, shall receive priority.

Examples Include, but are not limited to:

- A) Manufacturing firms (including intellectual property such as computer software);
- B) Projects, which enhance the exporting capacity of companies and/or provide goods and services, which currently have to be imported into Chaves County;
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of Chaves County businesses to operate;
- E) Organizations, which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:
 - 1) Business incubators;
 - 2) Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);

- 3) Public markets for farmers, gardeners, crafts, etc.; and,
 - 4) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs;
- F) Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and,
- G) Qualifying entities with existing contract or projects with the county when this plan is adopted may propose a restructuring of their projects as an economic development project.

Section 8.2 All applications for economic development projects requesting economic assistance from the county shall submit a cost benefit analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The county retains the right to specify a format and methodology for the cost-benefit analysis. The *EDC* shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the county will recoup the value of its donation within a period of ten years. The analysis shall address the following:

- A) The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- B) Pay scale of jobs;
- C) Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Chaves County area;
- D) Total payroll expected at start-up and after one year;
- E) Anticipated impact on local tax base; and,
- F) Anticipated impact on local school systems.

Section 8.3 All applicants for economic development projects requesting economic assistance from the county shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Chaves County area residents. Cultural impacts of projects shall also be considered.

8.4 any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees.

8.5 All applicants for economic development projects requesting economic assistance from the county shall clearly demonstrate the benefits, which

will accrue to the community as a result of the donation of public resources. The county has considerable flexibility in determining what is considered as adequate benefits. Benefits such providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy, may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.

- 8.6 All applicants for economic development projects requesting assistance from the county shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy. The county retains flexibility in defining the “substantive contributions”. The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

Section 9. Public Safeguards.

- 9.1 All economic development projects receiving assistance from the county shall be subject to an annual performance review conducted by the *EDC*. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for their consideration. The governing body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.
- 9.2 The county shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of economic development project and assistance provided by the county. Types of security may include, but are not limited to:
- A) Letter of credit in the county’s name;
 - B) Performance bond equal to the county’s contribution;
 - C) A mortgage or lien on the property or equipment;
 - D) Pro-rated reimbursement of donation if company reduces work force or leaves the community before the term agreed to; and
 - E) Other security agreeable to both parties.

- 9.3 Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the county retains the right to deny any and all assignments, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the county may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the town may reclaim the facility and enter into an agreement with the new qualifying entity.
- 9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten years from the date the ordinance is adopted and the governing body passes the project participation agreement.

Section 10. Project Participation Agreement.

- 10.1 The qualifying entity shall prepare with the county a project participation agreement. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:
- A) The economic development goals of the project;
 - B) The contribution of the county and the qualifying entity;
 - C) The specific measurable objectives upon which the performance review will be read;
 - D) A schedule for project development and goal attainment;
 - E) The security being offered for the county's investment;
 - F) The procedures by which a project may be terminated and the county's investment recovered; and,
 - G) The time period for which the county shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the county shall relinquish interest in and oversight of the project.
- 10.2 Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

Section 11. Project Monies. All project monies shall be kept in a separate account by the entity and the county, with such account clearly identified. These accounts shall be subject to an annual independent audit.

Section 12. Termination. The Governing body may terminate this ordinance and the county's economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any county monies remaining in the county project accounts shall be transferred to the county's general fund.

Section 13. Joint Regional Projects. The county may engage in economic development projects involving one or more other government entities for projects, which encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this ordinance.

ADOPTED BY THE CHAVES COUNTY BOARD OF COMMISSIONERS ON THE _____ DAY OF _____, 2014.

James W. Duffey, Chairman

ATTEST:

Dave Kunko
County Clerk

AGENDA ITEM: 7

Public Hearing Regarding Proposed Amendment to Ordinance #7, Chaves County New Mexico Zoning Ordinance, by Adding Article XX and Adding Definitions to Article II

MEETING DATE: November 20, 2014

STAFF SUMMARY REPORT

ACTION REQUESTED BY: Stanton L. Riggs

ACTION REQUESTED: Conduct Public Hearing and Approve Amendments

ITEM SUMMARY:

Proposed amendments to Ordinance #7 add a new article to be titled Article XX, that regulates the locations, permitting, licensing and operation of sexually-oriented businesses/adult entertainment enterprises; and add definitions to Article II describing and defining such land uses; providing for the licensing, administration and enforcement of such land uses, and providing for the control and inspection of such land uses; identifying performance standards and requirements such land uses shall adhere to when locating within Chaves County and providing for the protection of the health, safety and welfare of all citizens of Chaves County

This is a public hearing and has been properly advertised. The proposed amendments to Ordinance #7 have been made available to the public in the County Clerk's Office and on the County website.

Staff recommends approval of amendments to Ordinance #7.

SUPPORT DOCUMENTS: Proposed Amendments to Ordinance #7

SUMMARY BY: Stanton L. Riggs

TITLE: County Manager

AMENDMENT TO ORDINANCE NUMBER 7

AN AMENDMENT TO THE CHAVES COUNTY NEW MEXICO ZONING ORDINANCE NUMBER 7, ADDING A NEW ARTICLE TO BE TITLED ARTICLE XX, THAT REGULATES THE LOCATION, PERMITTING, LICENSING AND OPERATION OF SEXUALLY-ORIENTED BUSINESSES/ADULT ENTERTAINMENT ENTERPRISES; ADDING DEFINITIONS TO ARTICLE 2 DESCRIBING AND DEFINING SUCH LAND USES; PROVIDING FOR THE LICENSING, ADMINISTRATION AND ENFORCEMENT OF SUCH LAND USES, AND PROVIDING FOR THE CONTROL AND INSPECTION OF SUCH LAND USES; IDENTIFYING PERFORMANCE STANDARDS AND REQUIREMENTS SUCH LAND USES SHALL ADHERE TO WHEN LOCATING WITHIN CHAVES COUNTY, AND PROVIDING FOR THE PROTECTION OF THE HEALTH, SAFETY AND WELFARE OF ALL CITIZENS OF CHAVES COUNTY.

WHEREAS, the Planning Department has defined and provided a minimal amount of regulations to address sexually-oriented businesses/adult entertainment enterprises in order to protect the health, safety, morals and general welfare of the citizens of Chaves County, and to establish reasonable and uniform regulations to prevent the deleterious locations and concentration of sexually oriented businesses within the County; and

WHEREAS, sexually-oriented businesses/adult entertainment enterprises lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism within the Chaves County Code to make the owners of these establishments responsible for the activities that occur on their premises; and

WHEREAS, sexually-oriented businesses/adult entertainment enterprises have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns; and

WHEREAS, sanitary conditions in some sexually oriented businesses/adult entertainment enterprises are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities; and

WHEREAS, the Chaves County Planning Commission, at a properly noticed public hearing, and after taking public testimony, did approve and make recommendations within the scope of their authority of the amendments to the Zoning Ordinance to the Board of Chaves County Commissioners; and

WHEREAS, Article I, Section II, Zoning Authority of County, of the Chaves County Zoning Ordinance, provides the Board of Chaves County Commissioners the power to review and approve all amendments to the Zoning Ordinance; and

WHEREAS, it is the opinion of the Board of Chaves County Commissioners that the amendments proposed herein by the Planning Department are proper and necessary to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the citizens of Chaves County.

NOW, THEREFORE, BE IT RESOLVED by the Chaves County Commissioners

- 1. THAT THE SEVENTH REVISION** to the Chaves County New Mexico Zoning Ordinance shall be recorded on this date, and shall be as follows:

ARTICLE XX

SEXUALLY-ORIENTED BUSINESSES AND ADULT ENTERTAINMENT ENTERPRISES

Sections:

- 20.1 Purpose and intent.
- 20.2 Sexually Oriented Business/Adult Entertainment Enterprise Definition.
- 20.3 Findings.
- 20.4 Applicability.
- 20.5 Special Use Permit Required
- 20.6 Application forms – Information required.
- 20.7 Licensing Requirements, applications, fees.
- 20.8 Performance standards and requirements.
- 20.9 Administration and enforcement.
- 20.10 Control and inspection of premises, general requirements.
- 20.11 Control and inspection of premises, adult encounter centers and motels.
- 20.12 Appeals.
- 20.13 Amortization.
- 20.14 Exceptions.
- 20.15 Public nuisance.

20.16 Severability.

20.17 Effective date.

Section 20.1 Purpose and intent.

The purpose of this article is to regulate the location, licensing and operation of adult entertainment enterprises in order to promote and protect the general public health, safety and welfare of all Chaves County citizens and in order to preserve and protect the quality of life in Chaves County neighborhoods through effective land use planning and reasonable zoning regulation in light of the findings set forth in Section 20.2, and to regulate the display of adult-oriented materials by other commercial establishments.

This article treats sexually oriented businesses/adult entertainment enterprises differently from other commercial enterprises because of potential markedly negative secondary effects upon their surrounding communities and neighborhoods. These distinctions will also provide for reasonable alternative avenues of communication which do not violate the First and Fourteenth Amendments of the United States Constitution.

The regulations set forth in this article are not designed to suppress the expression of unpopular views and behaviors, but rather to minimize children's and the general public's exposure to negative effects associated with sexually oriented businesses/adult entertainment enterprises, to prevent sex-related crimes, vandalism, and criminal activities related to alcohol and drug abuse, to protect the county's retail trade, to maintain property values, to minimize impacts on police services, to minimize sexual harassment of the public, and to protect and preserve the quality of the county's residential neighborhoods, commercial districts, and recreational activities.

Section 20.2 Sexually Oriented Business/Adult Entertainment Enterprise, Definition.

A Sexually Oriented Business/Adult Entertainment Enterprise (hereinafter referred to as an "Adult Entertainment Land Use or an Adult Entertainment Enterprise") means an establishment including but not limited to, an adult arcade, adult cabaret, adult bookstore, adult lounge, adult encounter center, adult lotion or massage parlor, adult modeling studio, adult motel, adult movie, adult movie theater, adult panoram establishment, adult video store, live adult entertainment establishment, massage parlor, nude or semi-nude model studio, sexual encounter center or establishment, or any similar establishment to which customers are invited or permitted access and which, for consideration of any kind, offers sexually-oriented or "adult" materials to such customers when: (a) any live, video or film adult materials are displayed to customers while on the premises of the establishment; or (b) adult materials, constituting either ten percent (10%) or more of the establishment's stock in trade, as computed by items offered for sale, or ten percent (10%) of gross revenue, are offered for the off-

premises display to customers. Adult Entertainment Enterprises and related activities are further defined in Article II, Rules of Construction and Definitions.

Section 20.3 Findings.

The uses and activities defined and regulated in this article may potentially be detrimental to the public health, safety and welfare of the citizens of Chaves County and to the reasonable and orderly growth and development of Chaves County and therefore must be reasonably regulated for the following reasons:

- A. The text of Ordinance Number 7, the Chaves County Zoning Ordinance, contains no provisions nor any regulatory language to identify or address sexually-oriented businesses/adult entertainment enterprises, and therefore needs to be revised;
- B. Numerous communities have experienced negative secondary impacts resulting from adult entertainment land uses;
- C. Chaves County's concern for the adverse secondary impacts of adult entertainment land uses is exacerbated by its proximity to, and interrelationship with, adult entertainment land uses within the Roswell-Chaves County Extraterritorial Zone (ETZ), where reasonable regulations of such uses have been developed and adopted;
- D. The Chaves County Comprehensive Plan strongly supports a policy that adjacent land uses be compatible;
- E. Adult entertainment land uses are incompatible with certain existing land uses such as residences, churches, parks, public building (which the public is authorized to attend); religious institutions, public or private schools, boys clubs, girls clubs, licensed child care facilities, licensed child care centers, or similar existing youth organizations, and similar uses;
- F. Adult entertainment land uses reduce the desirability and value of residential property;
- G. Adult entertainment land uses negatively impact the character of established neighborhoods;
- H. Concentration of adult entertainment land uses degrades the quality of the areas in which they are concentrated and causes a decline in desirability and value of surrounding properties;
- I. Even in dispersal models, adult entertainment land uses may be expected to have adverse secondary impacts on adjacent commercial and business uses unless subject to reasonable regulation relating to exterior decor and signage;
- J. Increased levels of criminal activity occur on and around adult entertainment land uses which implicate health and safety resources of Chaves County;

- K. On-premises criminal activity may occur on and/or near adult entertainment uses, unless such premises are subject to reasonable regulations relating to licensure, interior design and on-premises conduct of licensees;
- L. Utilization of one (1) mile as the requisite spacing between each adult entertainment land use and other adult entertainment land uses, and between adult entertainment land uses and incompatible land uses (defined in Article II), will provide adequate separation of these uses while simultaneously providing adequate locations for prospective adult entertainment land uses;
- M. Implementation of a modified dispersal approach to the regulation of adult entertainment uses, together with reasonable regulation of licensure of such uses, is the least restrictive alternative means available to accomplish the substantial governmental interest in protecting and preserving the quality of the county's neighborhoods while still preserving adequate site opportunities for the siting of adult entertainment enterprises and those who wish to patronize such enterprises/land uses;
- N. Licenses for adult entertainment land uses shall not be issued to convicted felons;
- O. Major routes into and out of Chaves County provide residents and visitors alike with an impression of the County and its environs. As such, Adult Entertainment Enterprises shall not be sited or located immediately adjacent to the following roadways and highways:
 - US Highway 70,
 - US Highway 82,
 - US Highway 285,
 - US Highway 380,
 - State Road 2,
 - State Road 13
 - Roswell Relief Route; and
- P. The public welfare is served by the screening of adult materials from view by minors or from outside of the business establishment.

Section 20.4 Applicability.

Any person proposing to develop an adult entertainment enterprise in the unincorporated area of the county shall first apply for and receive site plan approval from the Director. All subsequent construction shall comply with the provisions of Section 20.7 and Section 20.8, and all applicable county codes, and the approved site plan.

Section 20.5 Special Use Permit Required.

- A. Except as provided in subsection D of this section, after the effective date of this article, no adult entertainment enterprise shall be operated or maintained in the unincorporated areas of Chaves County without first obtaining a Special Use Permit pursuant to the requirements of Article XVIII, and a Land Use Permit, pursuant to the requirements of Article XIX of this ordinance, issued by the Chaves County Planning Department after a public hearing. Prior to obtaining a Special Use Permit and a Land Use Permit, applicants for adult entertainment enterprises shall apply for and have a background check completed by the Chaves County Sheriff's Office.
- B. A Special Use Permit/Land Use Permit shall be issued only for one adult entertainment enterprise located at a fixed location or on one parcel of land. Any person, partnership, or corporation which desires to operate more than one adult entertainment enterprise shall obtain a Special Use Permit/Land Use Permit for each such enterprise.
- C. No Special Use Permit/Land Use Permit or interest in a Special Use Permit/Land Use Permit may be transferred to any person, partnership, or corporation. If an operator wants to transfer an adult entertainment enterprise license, in accordance with the provisions of section 20.7 of this article, he or she shall first make application for a new Special Use Permit/Land Use Permit.
- D. All adult entertainment enterprises existing at the effective date of the ordinance codified in this article must submit an application for a Special Use Permit/Land Use Permit within one (1) year of the date of the passage of the ordinance. If an application is not received within the one (1) year time period, the existing adult entertainment enterprise shall immediately cease operation until such permits are obtained. Adult entertainment enterprises are subject to the amortization requirements of Section 20.13.
- E. Applications for Special Use Permits/Land Use Permits shall be required to meet the following conditions:
 - 1. Location Requirements. Adult entertainment enterprises shall be permitted only within the unincorporated areas of the county that are zoned for Commercial, Zone C, Type I (Article XI), or Industrial, Zone D (Article XIII), and only if they meet all of the locational requirements set forth in this section.
 - 2. Adult entertainment enterprises shall apply for and obtain a Special Use Permit/Land Use Permit, per the requirements of Article XVIII and Article XIX, respectively.
 - 3. Adult entertainment enterprises shall be prohibited within one (1) mile of any incompatible land use, as defined in Article II, Section 2, of the unincorporated areas of the county.
 - 4. Adult entertainment enterprises shall be prohibited from locating within one (1) mile of any other adult entertainment enterprise.

5. Adult Entertainment Enterprises shall be prohibited from locating within 1,500 feet of the rights-of-way of the roadways identified in Section 20.3 (O).

Section 20.6 Application forms – Information required.

Application forms for obtaining the required Special Use Permit and site plan approval for any adult entertainment enterprise shall be provided by the Department. A complete application shall contain the following information:

- A. Name, address, and telephone number of the applicant and/or operator, and all persons owning an interest including all individuals having a corporate or partnership interest in the property and operation of the enterprise, including officers, directors, significant shareholders in the business operation (individuals or entities owning 10% or more of the business enterprise).
- B. Type of Enterprise. The applicant shall identify the type or types of adult enterprises to be operated by the prospective licensee (e.g., arcade, bookstore, lounge, encounter center, lotion or massage parlor, modeling studio, motel, adult movie theater, video store, etc.), and shall specify whether the enterprise will involve live on-premises display or other on-premises display.
- C. Owners and Operators. The applicant shall furnish the following information regarding owners and/or operators of the enterprise:
 1. Date of birth, street and mailing address of the intended operator, together with any and all aliases used by the intended operator;
 2. The name, date of birth, street and mailing addresses of any owner, together with any and all aliases used by any such owner;
 3. The name under which the enterprise is to be operated and the form of business under which the enterprise will operate; and
 4. Certified copies of assumed business name certificates, articles of incorporation with current amendments, certificates of authority, certificates of limited partnerships and qualification documents shall, as applicable, be furnished with the application.
- D. Employee Information. The applicant shall furnish the names, dates of birth, street and mailing addresses of all present or intended employees.
- E. Location and Related Information. The applicant shall furnish the address and legal description of the parcel of land on which the enterprise is to be located, including section, township and range, parcel and tax lot numbers, and acreage, together with the identification of the estate which the enterprise holds in the land, and shall furnish the planned hours of operation during which the enterprise will conduct any business.

- F. The ingress and egress from existing and proposed private or public roads;
- G. A current assessor's map, including the scale, of the property and all surrounding parcels located within one (1) mile of the subject property;
- H. Adjacent land uses and zoning of all properties located within one (1) mile of the boundaries of the subject property;
- I. A site plan drawn to scale showing the proposed building(s) and all elevations, details of entrances and windows, the location of advertising signs, the location of parking areas and the number of parking spaces, lighting plans for parking areas, entrances, exits, and fences. The site plans shall illustrate all proposed exterior and interior signage, and include drawings, elevation renderings and dimensions of all elevations and signage. All interior plans shall be drawn to scale and be accurate to plus or minus six (6) inches, and shall also include the applicable requirements contained within Sections 20.7, 20.8, and Article XIX, Land Use Permits, of this ordinance.
- J. Documentation that no other adult entertainment enterprise or non- adult entertainment enterprise is operating in the same building, structure, or portion thereof of the building; and
- K. A completed background check report from the Chaves County Sheriff's Office.

Section 20.7 Licensing requirements, applications, fees.

In addition to obtaining a Special Use Permit, no person shall engage in or conduct any business constituting an adult entertainment enterprise without having a current and approved adult entertainment license issued pursuant to this section.

Applications for a license, whether original, transfer or renewal, must be made to the Department by the intended operator of the adult entertainment enterprise. If the subject property is not owned by the operator, a certified copy of all lease agreements signed by the property owner, under oath, shall be made a part of the application. Applications shall be made by hand delivery to the Department during regular business hours, Monday through Friday, excluding holidays. Applications for licenses shall be made on a form to be furnished by the Department. The application shall be accompanied by an application for site plan review pursuant to sections 20.6 and 20.8 of this article.

A. License applications—Contents.

- 1. Upon Special Use Permit approval, the applicant shall make application for an Adult Entertainment Enterprise License with the Department. The applicant shall provide the same information on the License application as is contained in section 20.6.

B. License applications, fees.

The application shall be accompanied by payment in full in accordance with the fee schedule contained in Appendix A.

C. License applications, signatures and affirmations.

No application will be accepted for filing unless signed by each owner and/or operator, as defined in this ordinance, and unless accompanied by a statement under oath by the intended operator that he or she has personal knowledge of the information contained in the application, that the information furnished therein is true and correct, and that the intended operator has read the provisions of this article.

D. License, Issuance and denial.

Within thirty (30) working days of acceptance for filing of an application, the Director shall classify the type(s) of adult entertainment activity proposed by the applicant/operator within the categories set forth in Section 20.2, and shall grant or deny an adult entertainment enterprise license to the applicant/operator, and provide written notice to the applicant/operator of his or her decision. The Director shall issue an adult entertainment enterprise license to the applicant/operator unless one or more of the following conditions exist:

1. The adult entertainment enterprise fails to obtain a Special Use Permit;
2. The adult entertainment enterprise fails to meet the location requirements set forth in Section 20.8 of this article;
3. Site plans submitted in support of the application fail to demonstrate compliance with applicable requirements of this article;
4. The intended operator, any owner, or any present or intended employee has been convicted of any of the following offenses:
 - a. Any of the offenses set forth in NMSA 1978, § 30-37-1 et seq. (Sexually Oriented Material Harmful to Minors), NMSA 1978, § 30-6A-1 et seq. (Sexual Exploitation of Children), NMSA 1978, § 30-8-8.1 (Abatement of House of Prostitution), NMSA 1978, § 30-9-1 et seq. (Sexual Offenses).
 - b. The equivalent of the aforesaid offenses outside the State of New Mexico.
5. The applicant/operator failed to supply all the information required on the application;

6. The applicant/operator knowingly gave materially false, fraudulent or untruthful information on the application;
7. The applicant, operator, or any owner has, within one (1) year of the date of filing of application, had an adult entertainment enterprise license revoked under this article or a substantially similar ordinance or law.
8. Any individual convicted of any felony, regardless of the jurisdiction in which it was committed.

E. License, term and renewal, transferability.

1. Term and Renewal. Each adult entertainment enterprise license shall be valid for a period of one (1) year and shall expire on the anniversary of the date of issuance of the license, unless sooner revoked, or surrendered. Each adult entertainment enterprise license shall be subject to renewal as of its expiration date by the filing of a permit and license renewal application with the Director. Renewal applications must be filed at least thirty (30) days prior to the expiration date of the permit that is to be renewed.
2. Transferability.
 - a. An adult entertainment enterprise license is personal to the operator and owner or owners designated in the application, but may be transferred pursuant to this section. A transfer application must be filed within thirty (30) days prior to any change in owners or operators designated in the application. A transfer application shall be made by hand delivery to the Department during regular business hours, Monday through Friday, excluding holidays. Applications for transfers shall be made on a form or forms to be furnished by the Department.
 - b. The form of application for transfer shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein, that the information is true and correct, and that the person signing the application has read this article.
 - c. No transfer application shall be accepted for filing unless accompanied by payment of the fees prescribed in Section 20.7(B).
 - d. Transfer approval shall be valid for the remaining term of the original license.
 - e. In the event that a transfer application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the adult entertainment enterprise, and any transfer shall thereafter be treated as an original application.

F. License, validity, posting requirements.

Any adult entertainment enterprise license furnished pursuant to this article shall be valid only at the location for which it is issued. Each such license must be prominently posted at or near the entrance of the adult entertainment enterprise at a location where the same is clearly visible to customers and law enforcement personnel. Any such license shall be posted in a manner to prevent damage or alteration.

G. License revocation.

1. The Director shall initiate revocation of any adult entertainment enterprise license issued pursuant to this article for any one or more of the following reasons:
 - a. The owner or operator of the adult entertainment enterprise has knowingly allowed a person under eighteen (18) years of age to enter the premises;
 - b. The adult entertainment enterprise no longer conforms to the requirements of Sections 20.8 or 20.9;
 - c. Two (2) or more separate violations of the provisions of Sections 20.7(8), 20.10 or 20.11 have occurred within a consecutive twelve (12) month period; PROVIDED, that convictions shall not be deemed separate if they arise from a single inspection;
 - d. The operator of the adult entertainment enterprise knowingly gave materially false, fraudulent or untruthful information on the original application, transfer application or renewal application;
 - e. The adult entertainment enterprise has been closed for business for a period of thirty (30) consecutive days, unless such closure is due to a casualty beyond the control of the owner and the owner is proceeding with due diligence to reopen the adult entertainment enterprise;
 - f. The adult entertainment enterprise has undergone a change of ownership or operator for which a transfer application was required, but not timely filed pursuant to this article;
 - g. The operator or any owner of the adult entertainment enterprise is convicted, or knowingly retains the services of an employee who has been convicted, without regard to appellate review, of any offense set forth in Section 20.7 (D) of this article.
2. Prior to the revocation of any adult entertainment enterprise license, the Chaves County Sheriff shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, the Director shall notify the operator or owner in writing of the reasons for the proposed revocation, and shall grant such operator or owner the opportunity to appear before the Chaves County Board of County Commissioners at a time

and place specified within such notice. Such hearing shall be in conformity with Article 1 (6) (C) of this ordinance.

H. Unlawful practices.

1. No person or commercial establishment shall:
 - a. Engage in or conduct any business as an adult entertainment enterprise without first acquiring an adult entertainment enterprise license in accordance with this article;
 - b. Forge, alter or counterfeit, or possess a forged, altered, counterfeit or expired adult entertainment enterprise license as defined by this article.
2. No adult entertainment enterprise shall:
 - a. Engage in or conduct any business except as classified in or where authorized by a current and valid adult entertainment enterprise license;
 - b. Fail to comply with or maintain compliance with any express terms or conditions of an adult entertainment enterprise license issued pursuant to this article or with any of the interior or exterior requirements set forth in this article;
 - c. Fail to report a change in operators or owners or to conduct any business after such change without filing an application for transfer as required by this article;
 - d. Fail to post any current and valid adult entertainment enterprise license as required by this article;
 - e. Fail to surrender any adult entertainment enterprise license within thirty (30) days of the cessation of business, transfer, expiration, suspension or revocation thereof.

Section 20.8 Performance standards and requirements.

A. Application of Standards. After the effective date of the ordinance codified in this article, any building, structure, or tract of land developed, constructed, or used for any sexually oriented business or adult entertainment enterprise purposes as defined in this article shall comply with the following performance standards. However, these standards are only minimum, and stricter standards may be required by other regulations, including building codes, fire codes, or regulations governing sewage disposal or water service.

1. Building Facade. All adult entertainment enterprises building facades, exteriors, and exits must generally resemble surrounding buildings. All window areas shall be covered or made opaque and no signs shall be placed in any window. Illustrations or other representations depicting partially or totally nude male and/or female figures shall not be posted or painted on any exterior wall of a building used for adult entertainment, or on any door or apparatus attached to such building.

2. Signs. All adult entertainment enterprises shall comply with the following sign regulations:
 - a. No off-premise signage shall be permitted.
 - b. The amount of total allowable sign area shall not exceed a total of 60 square feet. No signs, either on-premise or off-premise, shall be placed within 1,500 feet of the highways and roadways specified in Section 20.3 (O).
 - c. No merchandise or pictures of the products or entertainment on the premises shall be displayed on signs or in window areas or any area where they can be viewed from outside the building.
 - d. A one-square foot sign may be placed on the door to state hours of operation and admittance to adults only.
3. Parking and Lighting Regulations. On-site parking shall be required and regulated in accordance with Article XVI, and in addition shall meet the following requirements:
 - a. All parking areas must be visible from the fronting street. All on-site parking areas and premises entries shall be illuminated from dusk until dawn with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and walkways. An on-premises exterior lighting plan shall be submitted to the Department with the site plan.

Section 20.9 Administration and enforcement.

- A. Administration. All applications for site plan approval under this article shall be made to the Department. It shall be the duty of the Director or his or her designee to process any application pursuant to this article, and to administer the provisions of this article. The Director shall prepare any forms necessary to administer the provisions of this article.
- B. Final Site Plan Approval. The Director shall grant final site plan approval provided the application complies with the performance standards and requirements listed in Article I Section 5. As a condition of final site plan approval and before the issuance of any building permits, the applicant shall obtain a background clearance from the Chaves County Sheriff's Office. The background clearance shall become part of the Special Use Permit/Land Use Permit Case File. A copy of the report shall also be kept on file with the Adult Entertainment Enterprise License.
- C. In the event an adult entertainment enterprise is legally established in accordance with the requirements of this article and (1) a sensitive land use locates within the required separation distance or (2) boundaries for residential zones in the county are modified, a legally established adult entertainment enterprise shall be considered conforming. Proprietors of such enterprises shall apply for and obtain a Certificate of Non-Conforming Use from the Department. However, if

the adult entertainment enterprise ceases to be in operation for a period exceeding sixty (60) days, then the use shall be considered non-conforming. Decisions as to the conformity of the adult entertainment enterprise shall be rendered by the Director, and may be appealed in accordance with the provisions contained in Article II (H) (9) of this ordinance.

- D. Enforcement. It shall be the duty of the Director to see that this article is enforced through the proper legal channels. The County Building Official shall issue no permits for the construction, alteration, or repair of any building or part thereof, unless such plans and intended use of such building conform in all respects with the provisions of this article.
- E. Fees. The fees for processing applications, appeals, and for other administrative actions under this article are contained within the Appendix, and shall be from time to time established by resolution of the Board.
- F. Violations – Penalties. It is a civil infraction for any person to violate this article or assist in the violation of this ordinance. Violations are subject to the provisions of Article I Sections 5 and 6. Any violation shall be a public nuisance. Each day a violation exists is a separate violation. Payment of any penalty imposed for a violation does not relieve a person from the duty to comply with this article.

Section 20.10 Control and inspection of premises, general requirements.

It shall be unlawful for any adult entertainment enterprise or any employee, operator or owner thereof:

1. To refuse to permit inspection of the premises of an adult entertainment enterprise, other than adult motels, at any time during business hours by representatives of any state or Chaves County fire, health, building or law enforcement agencies;
2. To permit or allow the obstruction of view of any customer at any location on the premises, other than restrooms;
3. To provide for, or to permit or allow, the locking of any restrooms on the premises available to customers;
4. To knowingly fail to comply with any exterior, interior site or signage requirements of this article;
5. To permit or allow the live, on-premises display of adult material in any portion of the premises other than the area or areas designated and approved for such display by the permit of occupancy;
6. To permit or allow customers to enter or occupy the area designated and approved as "setback" in the permit of occupancy;

7. Except for adult encounter centers and adult motels, no adult entertainment enterprise nor any employee, operator or owner thereof shall provide, permit or allow any sleeping quarters nor the placement of any bed, mattress or similar object in any portion of the premises to which customers are permitted or allowed access.

Section 20.11 Control and inspection of premises, Adult encounter centers and motels.

It shall be unlawful for any adult encounter center or adult motel, or any employee operator thereof:

1. To rent, let or sublet any portion of the premises without acquiring and maintaining current and accurate records of customer registration, including name, address and age, as verified by current photographic identification;
2. To pay to, or receive from, any person other than a customer a fee or consideration of any kind which in any way relates to the presence of the customer on the premises;
3. To refuse to permit inspection of the unoccupied portions of the premises, observation of patrons from the manager's station or stations, or the inspection of registration and identification materials required to be maintained by Sections 20.7 (H) and 20.10.

Section 20.12 Appeals.

- A. A person aggrieved by the decision of the Director may appeal the decision to the Zoning Authority, appointed pursuant to Article I, Section 5, as amended. Any such appeal shall be filed in writing with the Department within thirty (30) days of the issuance of the decision. The appeals shall specify the reasons therefor. The Director shall provide the Zoning Authority with findings and documentation relating to the decision being appealed. An appeal shall stay all proceedings in furtherance of the action appealed unless the Director and/or Code Enforcement Officer or Commissioner certifies that by reason of facts stated in the certificate, a stay would cause imminent peril of life or property. The Zoning Authority, following a public hearing, shall affirm, modify or reverse the Director's decision. The appellant carries the burden of proof on appeal.
- B. Upon filing of an appeal with appropriate fee, the Director shall set the public hearing before the Zoning Authority on the matter. The appellant shall attend that public meeting set by the Director.
- C. Notice of the time, date and place of the hearing shall be sent to the appellant and the operator by first class mail, certified with return receipt, prior to the public hearing. Legal notice of the hearing shall be published in a newspaper of general circulation and the subject property shall be posted with the notice in accordance with the provisions of Article I, Section 5.
- D. Inclusion of Findings of Fact. The Zoning Authority shall, in making an order, decision or determination, include in the written record of the case, the findings of fact upon which the action

is based. Appeals of the Zoning Authority decision shall be to a court of competent jurisdiction, pursuant to Sections 3-21-1 through 3-21-14, N.M.S.A. 1978 or as amended.

Section 20.13 Amortization.

- A. Adult entertainment enterprises which are nonconforming uses on the site on which they are located on the effective date of the ordinance codified in this article shall be discontinued within one (1) year of the date on which the ordinance codified in this article becomes effective or upon the expiration of the leasehold period in existence as of the effective date of this article.
- B. In the event a nonconforming adult entertainment enterprise operator determines that one (1) year does not provide a reasonable period of amortization, then no later than 180 days prior to the expiration of the period, the nonconforming enterprise operator shall make application to the Planning Commission for an extension of time. Accompanying the application shall be a fee in the amount established in Section 20.7(B). In determining whether or not to grant the extension, the Planning Commission shall determine whether or not the harm or hardship to the nonconforming adult entertainment enterprise outweighs the benefit to be gained by the public from termination of the use. Factors to be considered by the Planning Commission include the secondary adverse impacts on the enterprise to the neighborhood/community, the location of the enterprise in relation to sensitive land uses, initial capital investment, the existence or nonexistence of a lease obligation, as well as a contingency clause permitting termination of the lease, or whether a reasonable alternative use of the property exists. The action of the Planning Commission shall constitute a final decision which is appealable to the Board in accordance with the provisions of Article I, Section 5.
- C. Adult entertainment enterprises which are nonconforming cannot be expanded, enlarged, or intensified through the special use procedures listed in this ordinance. Any building containing a nonconforming adult entertainment enterprise may be maintained with only ordinary repair.
- D. If an established nonconforming adult entertainment enterprise is destroyed by any natural or accidental cause, the provisions for rebuilding the structure(s) listed in this ordinance, also do not apply. Any change in a nonconforming adult entertainment enterprise shall be to a use which is legally permitted within the zone in which it is located.
- E. All nonconforming adult entertainment enterprises which are in existence as of the effective date of this article shall provide the Director with copies of their current leasehold document(s) which sets forth their existing leasehold time period or, in the case of a non-leasehold interest, the Director shall be provided other documents which show record of ownership. These documents shall be provided to the Director within sixty (60) days of the effective date of this article.

Section 20.14 Exceptions.

A. This article shall not be construed to prohibit:

1. A chance showing of a film, single film showing, or film showings in a clinical setting under the control of a licensed psychologist, psychiatrist, physician, or a registered nurse practitioner; or
2. Plays, operas, musicals, artwork, or other dramatic works which are not obscene; or
3. Classes, seminars, and lectures held for serious scientific or educational purposes; or
4. Exhibitions or dances which are not obscene.
5. Any person appearing in a state of nudity within a modeling class operated:

- A. By a proprietary school, licensed by the state of New Mexico; a college, junior college or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates education programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

C. In a structure:

1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
2. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
3. Where no more than one nude model is on the premises at any one time.

B. Nothing in this article shall apply to the circulation of any such material by any recognized historical society or museum, the state law library, any county or city law library, the state library, the public library, any library of any college or university, or to any archive or library under the supervision and control of the state, county, municipality, or other political subdivision.

C. Nothing in this article is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any statute of the State of New Mexico regarding public moral nuisances, sexual conduct, obscenity or pornography, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

Section 20.15 Public nuisance.

Notwithstanding any other provisions of the Chaves County Zoning Ordinance, any violation of any of the provisions of this article is declared to be a public nuisance per se, which shall be abated by the Prosecuting Attorney by way of civil abatement procedures or by criminal prosecution.

Section 20.16 Severability.

If any section, subsection, sentence, clause, phrase, or any portion of this article is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The Board declares that it would have adopted this article and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 20.17 Effective date.

This article shall become effective immediately.

2. THAT ARTICLE II, SECTION 2 OF THE CHAVES COUNTY ZONING ORDINANCE BE AMENDED AS FOLLOWS:

ARTICLE II, RULES OF CONSTRUCTION AND DEFINITIONS, Section 2, DEFINITIONS, is hereby amended to include the following additional definitions:

ADULT ARCADE means an enterprise where, for any forms of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial enterprise, whether or not alcoholic beverages are served, which features: (a) persons who appear nude or semi-nude; or (b) live performances which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT ENTERTAINMENT EMPLOYEE means any and all persons, including managers, entertainers, and independent contractors who work in, render services to, and have direct interaction with clientele of the sexually oriented business or adult entertainment enterprise.

ADULT ENTERTAINMENT ENTERPRISE means any commercial or retail enterprise which (a) offers entertainment or services, including rooms, readily available for purchase, rental, viewing, or use by patrons of the establishment; and (b) is represented to be or is primarily in the business of offering services which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas and exclude minors by virtue of age. “Adult entertainment enterprises” shall include, but not be limited to, the following: adult arcade, adult cabaret, adult mini theater, adult motel, adult motion picture theater, adult panoram establishment, adult theater, live adult entertainment enterprise, massage parlor, nude or semi-nude model studio, sexual encounter center, and sexual encounter establishment.

ADULT MINI THEATER means an enclosed building with a capacity of less than 50 persons, a portion of an enclosed building with a capacity of less than 50 persons, or an outdoor theater with a capacity of less than 50 persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media, distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this chapter for observations by patrons therein.

ADULT MOTEL means a hotel, motel, or similar commercial enterprise which:

- a. Offers accommodations to the public for any form of consideration and provides patrons with (1) closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; and (2) which has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- b. Offers sleeping rooms for rent on an hourly basis; or
- c. Allows tenant(s) or occupant(s) of a sleeping room to sub-rent on an hourly basis.

ADULT MOTION PICTURE means an enclosed building with a capacity of 50 or more persons, a portion of an enclosed building with a capacity of 50 or more persons, or an outdoor theater with a capacity of 50 or more persons used for presenting motion picture films, video cassettes, cable television, or any other such visual media distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein for observation by patrons therein.

ADULT PANORAM ESTABLISHMENT means any building or portion of a building which contains device(s) which for payment of a fee, membership fee, or other charge, is used to exhibit or display a picture, view, or other graphic display distinguished or characterized by emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined therein.

ADULT THEATER means a concert hall, theater, auditorium, or similar commercial enterprise which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are distinguished or characterized by emphasis on matter depicting, describing, or

relating to specified sexual activities or specified anatomical areas as defined in this chapter for observation by patrons therein.

BOARD means the Board of Commissioners of Chaves County.

COUNTY means Chaves County, New Mexico.

DIRECTOR means the Director of the Chaves County Department of Planning and Zoning or designee.

DEPARTMENT means the Chaves County Planning and Zoning Department.

DISTANCE, SEPARATION BETWEEN ADULT ENTERTAINMENT ESTABLISHMENTS means the amount of space or interval measured by following a straight line, without regard to intervening buildings, from the nearest point on the parcel boundary of the parcel upon which an adult entertainment enterprise is to be located, to the nearest point on the parcel boundary of the parcel containing an incompatible land use or another adult entertainment enterprise or adult entertainment land use.

GOVERNMENTAL BUILDING means any structure that houses a branch of government, government administrative offices, a town hall, a courthouse, a library, or a structure designed to accommodate the public for purposes of public assembly or for public meetings or hearings.

INCOMPATIBLE LAND USE means those land uses which are particularly sensitive to the negative secondary impacts associated with sexually oriented businesses and adult entertainment enterprises, and include the following:

- a. Residences;
- b. Residentially zoned areas located either in the county or the ETZ;
- c. Public and private schools and day care institutions;
- d. Public parks and playgrounds and commercial recreational uses;
- e. Churches or other religious facilities or institutions;

LIVE ADULT ENTERTAINMENT ENTERPRISE means any building or portion of a building which contains any exhibition or dance wherein any employee or entertainer is unclothed or in such attire, costume, or clothing so as to expose to view any portion of the female breast below the areola, or male or female genitals, vulva, anus, and/or buttocks, or any portion of the pubic hair and which exhibition or dance is for the benefit of member or members of the adult public, or advertised for the use or benefit of a member of the adult public, held, conducted, operated, or maintained for profit, direct or indirect.

MASSAGE PARLOR means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or a licensed massage practitioner operating pursuant to Chapter 7 NMAC. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

MILE means a statute mile, a unit of distance on land equal to 5,280 feet, or 1,760 yards.

NONCONFORMING ADULT ENTERTAINMENT USE means a sexually oriented business or an adult entertainment enterprise which lawfully existed prior to the enactment of this chapter, and is maintained after the effective date of this chapter although it does not comply with the sexually oriented business and adult entertainment enterprise land use regulations set forth in this chapter.

NUDE OR SEMI NUDE MODEL STUDIO means any building or portion of a building where person(s) appear nude or semi-nude or displays specified anatomical areas, for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons, unless specifically exempted by Article XX.

NUDITY means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areolae, or the depiction of covered male genitals in a discernibly turgid state.

OBSCENE means an act or expression which:

- a. The average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and
- b. Explicitly depicts or describes patently offensive representations or descriptions of:
 - i. Ultimate sexual acts, normal or perverted, actual or simulated, or
 - ii. Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area, or
 - iii. Violent or destructive sexual acts including but not limited to human or animal mutilation, dismemberment, rape or torture; and
- c. When considered as a whole, and in the context in which it is used, lacks serious literary, artistic, political or scientific value.

PLACE OF ASSEMBLY means a building, or portion thereof, excluding residential dwelling units, in which a specified number of persons may gather for recreational, educational, political, social, or other purposes, such as to await transportation, or to eat and drink. A place of assembly may also include an outdoor space where a number of persons may gather for any of the above purposes.

SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration specified sexual activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

SEXUAL ENCOUNTER ESTABLISHMENT means an establishment other than a hotel, motel, or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate, or consort to perform specified sexual activities. This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in sexual therapy.

SEXUALLY ORIENTED BUSINESS means the same as an ADULT ENTERTAINMENT ENTERPRISE.

SPECIFIED ANATOMICAL AREAS means and includes any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, vulva, or female breasts below a point immediately above the top of areolae; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, vulva, or female breasts; or
- b. Sex acts, actual or simulated including sexual intercourse, oral copulation, or sodomy; or
- c. Human masturbation, actual or simulated; or
- d. Human genitals in a state of sexual stimulation, arousal, or tumescence; or
- e. Excretory functions as part of or in connection with any of the activities set forth in this subsection.

3. THAT THE APPENDIX OF ORDINANCE NO. 7 BE AMENDED TO ADD THE FOLLOWING FEES:

The following fees shall be added to Appendix A of Ordinance No. 7, for Adult Entertainment Enterprises:

1. If the enterprise or a segment thereof, is to be a bookstore, video store, or a similar use, without on-premises display of adult material, as defined in this article: five hundred dollars (\$500) for

an original application, three hundred seventy-five dollars (\$375) for a transfer application, or two hundred fifty dollars (\$250) for a renewal application;

2. If the enterprise, or a segment thereof, will involve the on-premises display of adult material, other than live displays: one thousand dollars (\$1,000) for an original application, seven hundred fifty dollars (\$750) for a transfer application, or five hundred dollars (\$500) for a renewal application;
3. If any segment of the enterprise will involve the live, on-premises display of adult material: one thousand dollars (\$1,000) for an original application, seven hundred fifty dollars (\$750) for a transfer application, or five hundred dollars (\$500) for a renewal application;
4. If the enterprise will involve any combination of activities under subsections (1), (2) or (3) of this section: one thousand five hundred dollars (\$1,500) for an original application, one thousand dollars (\$1,000) for a transfer application, or seven hundred fifty dollars (\$750) for a renewal application.

4. UPON THE ADOPTION OF THIS ORDINANCE AMENDMENT, it shall be the duty of the Planning Director to immediately effectuate changes to incorporate this Article within the Chaves County Zoning Ordinance, Ordinance No. 7, and to post a copy of this ordinance in the Chaves County Courthouse, followed by legal publication of said resolution one time in a newspaper of general circulation within the County.

PASSED, APPROVED, ADOPTED AND SIGNED this ____th day of _____, 2014.

BOARD OF CHAVES COUNTY COMMISSIONERS

James W. Duffey, Chairman

Kyle D. "Smiley" Wooton, Vice-Chairman

ATTEST:

Kim Chesser, Member

Dave Kunko
County Clerk

Robert Corn, Member

Greg Nibert, Member