

Graeser & McQueen, LLC
— ATTORNEYS AT LAW —

Tuesday, May 27, 2014

Board of County Commissioners of Santa Fe County
102 Grant Ave
Santa Fe, NM 87501

Re: Buena Vista Estates, Inc. and Rockology [Limited] LLC Case #ZMXT 13-5360

Dear Board Members,

This firm represents the Rural Conservation Alliance, an unincorporated association of community organizations and individuals dedicated to the preservation and protection of the natural resources and rural character of the Galisteo Basin area of Santa Fe County.

The application in front of you is seriously deficient, does not meet Code requirements, and would result in an environmental, economic, health and aesthetic nightmare for the residents of Santa Fe County.

We firmly believe that a Commission decision denying the application is both just and necessary. We have prepared detailed proposed findings of fact and conclusions of law supporting the ultimate decision that we trust the Commission will make.

We thank you for your time and consideration in reviewing this important matter.

Sincerely,



Christopher L. Graeser



Matthew McQueen

Attachments: Proposed findings of fact and conclusions of law
Listing brochure for subject property ("5,200 acres of aggregate")
Letter requesting County Hydrologist review of the application
(no County Hydrologist review has been completed to date)
SGMP excerpts
2005 application draft staff memo
2008 application and staff memo
Relevant press clippings
Secretary of State information re: Buena Vista and Rockology
Economic analysis from Laird Graeser
Research from Kim Sorvig, including www.sandatlas.com excerpt
Buena Vista OSE application
CDRC description

Before the Santa Fe County Board of County Commissioners

**In the matter of Buena Vista Estates, Inc. and Rockology [Limited] LLC
Case #ZMXT 13-5360**

**Rural Conservation Alliance's
Proposed Findings of Fact and Conclusions of Law**

Applicants Buena Vista Estates, Inc. and Rockology, LLC seek approval under Santa Fe County Land Development Code Article XI to create a mining zone to allow the extraction of aggregate for use as a construction material. The proposed mine site is located south of Interstate 25 and west of Waldo Canyon Road at La Bajada Mesa.

The application is reviewed for compliance with the prescriptive requirements and performance standards of the Code. The Commission also exercises its discretionary review that includes consideration of how approval or denial of the application affects the public health, safety and welfare. It is within the Commission's sound discretion to deny a zoning request on that basis.

Review of the application indicates that no substantive changes to the nature of the proposed use have been made since staff recommended denial of similar applications in 2005 and 2008. However, now the owners are marketing the property as containing 5,200 acres of aggregate.

The record in front of the Commission contains substantial, compelling evidence of the, incompatibility of mining with other uses of the land, unsuitability of the proposed site for mining uses, net economic loss associated with approval of the mine, significant adverse impacts on the public health, safety and welfare and nonconforming water supply. The record lacks substantial evidence of demonstrated mineral resources or significant mining activity. The Applicants' reclamation plan is inadequate. Applicants failed to comply with Code requirements regarding mineral rights ownership. The traffic impact assessment submitted fails to adequately analyze the proposed use. Proposed lighting violates Code restrictions. An application like this should provide an Environmental Impact Statement, and the Commission cannot adequately review it until EIS regulations are adopted. The blasting impacts of the proposed mine cannot be determined from the submitted application. Finally, the application violates several important provisions of the Sustainable Growth Management Plan. This application constitutes a Development of Countywide Impact and should be reviewed as such.

The formal recommendation to the Commission by the County Development Review Committee was for denial, and that application should be upheld. The proposal is

deficient, not in compliance with the Code, and should be denied for the reasons described below.

The Applicants

1. Buena Vista Estates, Inc. (Buena Vista) is a New Mexico domestic profit corporation incorporated May 26, 1980 and located in Albuquerque, New Mexico, whose directors and officers include Jerry Geist, Peter Naumberg, Neida Naumberg, and Hugh Jack Graham.
2. Buena Vista Estates, Inc. owns the subject property.
3. Rockology Limited, LLC (Rockology) is a New Mexico domestic limited liability company organized November 29, 2007 and located in Albuquerque, New Mexico, organized by Steve Hooper and owned by Mr. Hooper and the owners of Buena Vista Estates, Inc.
4. Rockology proposes to operate the mine.

The Subject Property

5. The proposed mine site is located south of Interstate 25 and west of Waldo Canyon Road at La Bajada in Section 22, Township 15 North Range 7 East.
6. The subject property is currently zoned agricultural/residential and has been assessed as agricultural property.
7. The area to be mined consists of a 50-acre portion of a 1,359 acre parcel owned by Buena Vista Estates LLC.
8. Overall Applicants and related entities own over approximately 5,400 acres.

The Application

9. Applicants seek to create a mining zone under Code Art. XI and to operate an aggregate mine.
10. The operation is proposed to last 25 years, in three phases.
11. The hours of operation would be 7:00 AM to 5:00 PM on weekdays (starting at 9:00 in the winter) and 7:00 AM to 12:00 PM on Saturdays.
12. However, in times of higher demand the mine would operate for longer hours, including operating after dark with temporary lighting.
13. The operation would include three segments: pit operation, plant processing, and loading/distribution.
14. Pit operation includes removal and stockpiling of overburden, drilling, and blasting.
15. Blasting would occur 1-2 times per month, with 10,000 – 20,000 cubic yards at a time.

16. Applicants propose to ship 250,000 – 300,000 tons per year using a 500-ton per hour plant. In total they proposed to excavate 3.6 million cubic yards of material
17. Reclamation would follow completion of each phase of mining.

Prior Applications

18. The present application is at least the third time the County has faced an application for the same mine, in the same location, from the same property owners.
19. In 2005 Rockology owner Steve Hooper filed an application for aggregate mining in the current location on a larger, “initial” 108-acre area.
20. After review, county staff drafted a memorandum advising “Staff’s position is that this location is not compatible or suitable for mining” because the “1,060-acre tract . . . is too close to the county’s Cerrillos Hills Historic Park [now Cerrillos Hills State Park] and to Buffalo Head Mountain” and “Staff is concerned about the potential impacts of this project on adjacent lands in this area. . . Also, Staff has major concerns regarding the applicant’s water supply plan.”
21. Therefore, the memorandum stated “Staff recommends denial on the application based on the reasons stated above.”
22. The applicant withdrew the application prior to formal action by the CDRC or the Board of County Commissioners.
23. In 2008 Rockology made another application identical to the current 2013 application reduced to 50-acre initial area.
24. Staff again recommended denial, stating in a June 19, 2008 memorandum:

Due to the proposed project duration, the magnitude and impact of the proposed development, combined with the lack of water availability needed to support reclamation and create landscape buffers to reduce site visibility, compounded by the potential long term impacts to riparian habitat, archeological sites and historic land use in the area, along with the lack of proven market need for the product as required under Article XI, 1.5.1(f), staff believes that when considering these aspects of this operation, the Applicant has not adequately demonstrated that area designated is suitable for mining activity.

[W]hen considering the criteria set forth in Article XI, Section 1.2.2 the proposed location is not reasonably compatible with the area and is not particularly suitable for mining as required by Article XI, Section 1.2.4.

Staff does not support the creation of a Mining Zone. . . staff recommends **denial** of this request. (emphasis theirs)

25. The Applicant tabled the application, and never pursued it, rather than face denial by the Board.
26. It would also appear that Applicants have no intention of limiting the overall mining activity to 50 acres and thus future applications are likely if this one were to be approved. The 2005 application was for an "initial" 108 acres. The subsequent 2008 application and the current one were for 50 acres. However, the current real estate listing for the property states that the property "includes 5,200 +/- acres of rich aggregate deposits for possible mining."

Staff Recommendation

27. On this third nearly identical application county staff recommended to CDRC approval conditioned on the procedural requirement to record the master plan and the substantive condition to submit financial guaranty for completion of reclamation.
28. County staff analysis supporting the recommendation was:

Building and Development Services staff has reviewed this project for compliance with pertinent Code requirements and has found that the following facts presented support the request for the creation of a Mining Zone: the Application is comprehensive in establishing the scope of the project; existence of significant mineral resources has been demonstrated by the Applicant; the use of 50 acres of land, within a 1,359 acre parcel, for a mining use is reasonably compatible with other uses in the vicinity; the designated 50 acre site is particularly suited for mining uses, in comparison with other areas of the County; the review comments from State Agencies and County staff have established that this Application is in compliance with State and County requirements and Article XI, § 1 of the Land Development Code. *Id.*

29. There is no articulable basis on which to find that conditions have changed such that approval of the project is now compatible with the Code. Neither the salient features of the mining proposal nor the character of surrounding lands have changed since 2005 or 2008.
30. As is clear from the Applicant's asking for approval for a 50-acre mine site while simultaneously advertising the property as containing 5,200 acres of aggregate, there is no basis for stating that "the Application is comprehensive in establishing the scope of the project" and, in fact, that the Application purposefully obscures the intended scope of mining operations.

CDRC Recommendation

31. The application was submitted to the County Development Review Committee (CDRC) for review and recommendation at a hearing on March 20, 2014.
32. The CDRC is “responsible for attending monthly public hearings on the third Thursday of every month, where CDRC members listen to County staff recommendations, project application presentations and testimony from the public. The CDRC subsequently makes land development related decisions and recommendations to the Board of County Commissioners (BCC). Projects heard by this committee range from non-residential development plan requests to master plans for large subdivisions.”
33. The CDRC is appointed by the Board of County Commissioners.
34. The CDRC meeting on the application lasted several hours, generating a transcript that ran to 50 pages.
35. After giving the Applicants a full opportunity to present the case, hearing staff’s recommendation, comments from the public and having the opportunity to ask questions of all parties, the CDRC voted 5-2 to recommend denial.
36. No written order was issued, but several committee members made oral comments explaining their votes:

Committee Member Katz: I’m in favor of the motion to deny because I would find that the proposed mining activity would have a significant adverse effect on the general welfare of the citizens of the area. And I base that on the policy of the County to not allow development near prominent landmarks, natural features, distinctive rocks and landforms and of that sort. And I think that really comes to the crux of what the problem with the proposal is. I absolutely agree we need construction materials. I think that the applicant has done a somewhat thoughtful job on how mining occurs. This is just not the place to do it. It is just a – it’s an incredibly prominent place that is seen. It’s in everybody’s backyard in this County and for that reason I think it’s inappropriate to have a mine here. Dust does go up way more than 20 feet. It would be terribly visible. I don’t think it’s compatible with the transportation aspect of I-25 going right by it. I don’t think it’s an area that’s suited for mining because of the visibility. The history of mining is not in that area. It’s somewhat removed and that’s history in its old mining and it’s not modern mining with modern machinery. And I also feel that the water supply and would find that the way they want to obtain their water is simply not acceptable. And it’s possible they could use non-potable water but that’s not what they’re asking for. And, I would ask that those findings be included in the motion.

Committee Member Booth: First of all, I want to thank everyone for coming. This is democracy in action and it’s wonderful to see. I would also vote to deny this and I’m looking at Article 11 where it says, the land for mining is reasonably compatible with other uses in the area, not just on their property, affected by the

mining use including but not limited to traditional patterns of land use and recreational uses. And I just really believe that when you look at all of the testimony and all of the data that this is truly a historic landscape, a cultural heritage, a scenic byway and that this is just not compatible for a mining use.

Committee Member Martin: I just have a comment. I would like to thank the audience to for your generosity of information. And it was the League of Women Voters that said that they and Santa Fe County residents, the environmental community and many concerned citizens had worked very hard and very many years on the Sustainable Growth Management Plan and the Sustainable Land Development Code and the latter does require further implementation but this is a development of countywide impact and should not be approved in this manner.

37. The CDRC recommendation supersedes the staff memo, and therefore the formal recommendation going to the Board is for denial. In the absence of compelling evidence or legal imperative to the contrary, the Board is bound to uphold the determination of the CDRC.

***Creation of Mining Zones Under the Land Development Code
and Discretion of the Board of County Commissioners***

38. Code Art. XI controls zoning for extraction of construction materials.

39. New mining zones *may* be created by the Commission so long as the following location standards are met:

1.2.1 Demonstrated existence of significant mineral resources.

1.2.2 Use of the land for mining uses is reasonably compatible with other uses in the area affected by the mining use, including but not limited to traditional patterns of land use, recreational uses, and present or planned population centers or urban and metropolitan areas.

1.2.3 A history of significant mining activity in the area, if mining has been conducted in the area (not required for creation of new mining zones).

1.2.4 The area designated is particularly suited for mining uses, in comparison with other areas of the County, as set forth in Sections 1.2.1, 1.2.2 and 1.2.3, *supra*.

40. In addition to Code submittal requirements, the Code also contains a performance standard for mining (Art. XI, Sec. 1.6):

No mining use activity will be permitted if it is determined that the use will have a significant adverse affect on health, safety, morals or general welfare of the County or its residents.

41. Only if the application meets the location *and* performance standards may the Commission approve creation of a new mining zone and mining uses.
42. However, it is essential to note that even if the application does meet all location and performance standards, the Commission has the discretion to deny the application for prudential reasons, thus the Art XI, Sec. 1.2 language that the Commission “may” create new mining zones – not that it *shall* do so.
43. For instance, in *Hyde Park Co. v. Santa Fe City Council*, 226 F.3d 1207 (10th Cir. 2000) the application in question was reviewed by all relevant city departments and found to be in compliance with the city code, and the City of Santa Fe’s Planning Commission granted final approval of the application. However, the City Council then reviewed that approval and reversed it. The 10th Circuit Court of Appeals upheld the federal district court finding that:

Without clearly defined limitations on the City Council's exercise of discretion to assist us in our construction of local law, we hesitate to infer such limits and involve this federal court in a land use regulation dispute which is purely a matter of local concern. Because the ordinances as written contain no standards governing the City Council's exercise of discretion, the ordinances simply do not impose significant substantive restrictions on the City Council's power of review. Accordingly, the district court properly concluded that Hyde Park has no protectible property interest on which to base its due process claims. *Id.* at 1213 (internal citations removed).

44. The Tenth Circuit Court of Appeals also considered when an applicant has a right to rezoning in *Jacobs v. City of Lawrence*, 9127 F.2d 1111 (1991), stating: “Appellants must therefore demonstrate that there is a set of conditions the fulfillment of which would give rise to a legitimate expectation to the rezoning of their property. Otherwise, the city's decision making lacks sufficient substantive limitations to invoke due process guarantees.” *Id.* at 1116.
45. In *Norton v. Village of Corrales*, 103 F.3d 928 (1996) the Tenth Circuit Court of Appeals was unable to find any substantive New Mexico law giving rise to such an expectation.
46. There is no legitimate expectation to have the subject property zoned for mining.
47. Similarly, in *Muslim Community Association v. Pittsfield*, 947 F.Supp.2d 752, 763 (E.D. MI 2013) the court found:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. As such, a person cannot claim a protectable property interest in the receipt of a benefit

when the state's decision to award or withhold the benefit is wholly discretionary. It is only once the benefit is conferred that the person obtains a property interest. *Id.* at 763 (internal citations and punctuation omitted).

48. In short, Applicants have no legitimate claim of entitlement or right to approval of their zoning request. Rezoning rests in the sound discretion of the Commission, which may deny the zoning request on the basis of the record in front of it.

Art. XI, Sec. 1.2.1

Demonstrated Existence of Significant Mineral Resources

49. The Applicants base the existence of demonstrated significant aggregate on a test 20' deep backhoe excavation and the their own sampling.
50. The Applicant does not offer any evidence that the basalt it proposes to mine is itself suited to meet applicable requirements. In fact, the application states that the specific gravity the basalt they would be mining (2.69) to be less dense than typical ranges for basalt (2.8-3.0)
51. In the absence of more in depth analysis and research (*i.e.*, test bores, *etc.*) there is a real concern that the site may in fact lack the significant resources the Applicant claims, which would result in leaving a large scar in exchange for minimal benefit to either the Applicants or the community.

Art. XI, Sec. 1.2.2

Use of the land for mining uses is reasonably compatible with other uses in the area affected by the mining use including but not limited to traditional patterns of land use, recreational uses, and present or planned population centers or urban and metropolitan areas

52. Visibly intrusive, environmentally destructive, and unnecessary mining at the proposed site is diametrically opposed to and incompatible with historical, cultural, and recreational uses in the area.
53. In 2003, the New Mexico Heritage Preservation Alliance presciently ranked La Bajada Mesa as one of its most endangered places. A little over a decade later, NMHPA's concerns have been validated.
54. La Bajada Mesa is a New Mexico landscape that sustains artists, photographers, filmmakers and travelers. It is a frequent subject for artists and photographers alike. Movies are filmed on the mesa and at two closely adjacent "movie ranches" including "No Country for Old Men" with some evidence that "Butch Cassidy and the Sundance Kid" and "Easy Rider" may also have been filmed nearby.

55. La Bajada Mesa is also the primary gateway to both Santa Fe and to the Cerrillos Hills State Park, as recognized by historians and writers.
56. "La Bajada has been kept as the entrance to Santa Fe, clean and clear, for centuries and has been kept that way deliberately. As far past as Governor Juan Bautista de Anza this was so. When giving out the entrance to the city as a [land] grant, he said, Cognizance that the issuance of the grant would offer the greatest protection of the vicinity to the capitol made the requested concession in the name of the King and for the sole purpose of pasturing stock." -- *John Pen LaFarge, President, Old Santa Fe Association, speaking at the CDRC meeting, March 20, 2014.*
57. "La Bajada Mesa in northern New Mexico contains cultural, historical, environmental, and scenic features of considerable significance, all worthy of permanent preservation." --*Marc Simmons, Ph.D. (U.N.M., ret.), July 4, 2012.*
58. "There is no more important geographical landmark of our state, and none with more historical significance." --*William Baxter, Sept. 4, 2005.*
59. "La Bajada Hill . . . is still one of those approaches, those arrivals, that seems mythical, impossibly grand . . . a place that could change not only one's external life but also one's inner, spiritual life . . . 'You will never be the same again.' " -- *Henry Shukman, The New York Times, February 7, 2010.*
60. Because of its open landscapes, vast panoramas, and pronounced topography, the scenic quality of Santa Fe County as a whole is very vulnerable. Maintaining the integrity of viewsheds is a priority with regard to tourism, real estate, and the movie industry and all art-related workshops, visitation, and art markets. This means that if development is not carefully planned it could easily degrade the County's scenic beauty and economic vitality.
61. The "Potential Gateway Corridor" designated by the Sustainable Growth Management Plan (SGMP) completely encompasses the proposed mine site and all of the mesa that is currently for sale by Buena Vista. Recognition of this area as a gateway rather than a mine zone, is testimony to the wisdom of Santa Fe County, its staff, elected officials and residents.
62. A substantial portion of the mine would be visible from the Camino Real de Tierra Adentro National Historic Trail, part of the historic Spanish colonial route that linked Mexico City to Santa Fe and beyond.
63. One of the best-preserved remnants of this federally-designated National Historic Trail is located on land directly adjacent to the proposed mine site. Comprehensive analysis shows that a branch of this historic trail, the Juana Lopez segment, passes directly within view of the proposed 50-acre pit.
64. "A portion of the newly federal-designated Camino Real de Tierra Adentro National Historic Trail either passes directly over land within the mining project or over adjacent lands. The escarpment itself has a long history associated with early travel, and the massive earth removal, as proposed, threatens to seriously compromise not

only the viewscape from Interstate 25, but also the cultural and natural integrity of the La Bajada feature." --*Historian, Marc Simmons, Ph.D, Nov. 12, 2002.*

65. County staff's analysis confirms that "the site will be visible on I-25 going west/headed towards Albuquerque" and "the site will be visible on County Rd. 57 at the entrance to the site."
66. The SGMP displays Conceptual Major Wildlife Corridors showing the area of Applicant's site surrounded by such corridors. The proposed mine site is located right in the middle of two areas of high habitat value according to a map produced by the Galisteo Watershed Conservation Initiative, as well as in line with a potential cougar corridor.
67. Wildlife Network lists the Upper Rio Grande Watershed (including La Bajada) as one of the twenty priority wildlife corridors in all of North America. Other resources confirm the importance of this specific part of the mesa to be crucial to local ecology and wildlife.
68. Finally, once a mining zone is created, that zoning allows "Industrial, manufacturing and related office uses not related to mining." Code Art. XI, Sec. 1.1.1.
69. For these reasons, the application is not reasonably compatible with other uses in the area.

Art. XI, Sec. 1.2.3

A history of significant mining activity in the area, if mining has been conducted in the area (not required for creation of new mining zones)

70. The parenthetical of Article XI, Section 1.2.3 (above) makes no sense, as it occurs in a section entitled "Creation of New Mining Zones." Moreover, the first and second clauses appear contradictory, unless it means that *if* there is a history of mining, it must be a significant one but that no such history is necessary, which is not a logical rendition of the regulation. A correct grammatical reading of the provision is that "A history of significant mining activity in the area" is a requirement, and that "if mining has been conducted in the area" is not relevant for creation of new mining zones.
71. Applicants have not shown a history of *significant* mining activity on the La Bajada Mesa at all.
72. Rather, the application references non-specific historic small-scale metal mining in the historic period in the Cerrillos Hills adjacent to the La Bajada Mesa. There is no demonstrated history of mining and of the size and impact of the proposed use.
73. Applicants must expand the term "area" to encompass locations that do not present the same visual and environmental impacts in the location proposed to be able to show significant mining activity.

74. The historic 1880s "Cerrillos Mining District" was placed on the State Register of Cultural Properties in 1973, due to its association with a historic precedent of the California Gold rush. It is not an active mining zone and has no legal status as such.

Art. XI, Sec. 1.2.4

The area designated is particularly suited for mining uses,
in comparison with other areas of the County

75. Applicants claim, without substantiation, that the "quality of the aggregate pits in the Santa Fe area generally does not meet the requirements for these types of construction projects."

76. However, conforming basaltic material is being extracted elsewhere in Santa Fe County already.

77. In particular, the Caja Del Rio mine currently operated by Delhur Industries already produces basalt gravel within the County. That quarry uses piped (not truck-hauled) effluent water, is well-situated near the county landfill, and its mining cavity might later be filled with county refuse. According to its manager, this quarry contains approximately 3.5 million cubic yards of basalt or a projected ten-year supply.

78. Basalt is, according to any major geology text, the most common type of rock on this planet; basalt mines are equally common throughout most of the world.

79. There is no need for additional production of gravel. Figures from the New Mexico Department of Energy, Minerals Natural Resources show that Santa Fe County alone produced an oversupply of more than 107,000 tons of gravel and base course over the past five years. It is worth noting that these over-production figures do not include the additional production and stockpiles at the Caja del Rio quarry.

80. In fact, the application contains no analysis of any substance regarding the comparative resources located in other areas in the County, as required by the Code.

Art. XI, Sec. 1.5.1(f)

An estimate of the annual average payroll, ad valorem taxes, gross receipts
and other economic benefits from the proposed mining uses

81. Applicants make a minimal showing of net positive impact to offset the significant environmental and social cost of the proposed mine. However, even that estimate lacks credibility in the face of qualified analysis.

82. Economic analysis indicates that the Applicants' estimate is deficient because:

- The expected annual production of the proposed La Bajada mine exceeds the *total demand* for the product in the Santa Fe market by perhaps as much as 80,000 tons.
- The produced material – construction aggregates – would be largely non-taxable, since the vast bulk of the production would be sold to licensed contractors, to the State or County governments, or for manufacturing cement.
- The most likely effect for at least the first five years would be a *DECREASE* in gross receipts tax collections attributed to sales within Santa Fe County, since volume demanded would be approximately fixed and the price per ton would be lower because of economies of scale of this mine.
- The 100,000 tons annually displaced from other producers in the Santa Fe area would cause a reduction of 12 to 15 production jobs and three to four transportation jobs. Since the Applicant asserts that no more than seven jobs would be created (a figure also without substantiating detail), the net employment impact would be a loss of three to seven jobs in the Santa Fe economy.

83. Moreover, the potential economic detriment of the project must be considered.

84. SGMP 5.3.1.3 (Visual Resources) identifies I-25 coming up La Bajada as a “scenic vista” and states:

Siting a mine in as prominent a location as La Bajada Mesa threatens the local tourist industry and the Cerrillos Hills State Park. The “Cerrillos Hills/Galisteo Basin State Parks Feasibility Study”, 2006, indicates that “the best access [to the Cerrillos Hills State Park] would be from the I-25 corridor”, i.e. via Waldo Canyon Road. This new and growing sustainable parkland resource needs to be protected and nourished, not burdened with a strip mine on its gateway access road.

85. In addition, the arts economy, film-making, and the property value and tax base derived from quality real-estate with clear air and vistas are essential parts of the Santa Fe economy which would be diminished by a large mining operation on this major gateway.

86. Recreation impacts are also important to our economy. Visitors to New Mexico national parks and monuments spend millions of dollars, both in the parks and surrounding communities and this revenue supports a thousand jobs in the state.

87. The Cerrillos Hills State Park was recently listed in The Guardian, US as one of New Mexico's top 10 national and state parks. This type of recognition can be expected to dry up in the face of ongoing, intrusive mining activity right on its access road.

Art XI, Sec. 1.6

No mining activity will be permitted if it is determined that the use will have a significant adverse affect (sic) on health, safety, morals or general welfare of the County or its residents

88. Impacts of the mine can be expected to include:

- Dust and diesel fumes generated on the haul road to and from the mine.
- Fugitive dust blowing from the uncovered or partially covered dump trucks.
- Fugitive dust from poorly monitored crushers and out-of-compliance operations. Increased traffic (highways) . . . with a concomitant increase in air pollution from more vehicles (highways and rural roads) and more disturbed land (building construction).
- Increased air pollution from some sand and gravel mines *after* they are abandoned and until natural re-vegetation stabilizes the surface soil. Areas of bedrock exposed by blasting are generally exempted from reclamation requirements, but can contribute to dust and wind turbulence affecting surrounding areas.

89. "Each of the impacts listed above produces real-world effects that are difficult to measure." --*Steve Blodgett, M.S.*

90. As noted under "reclamation" below, there are also substantial problems associated with fugitive dust from improperly "stockpiled" topsoil.

91. Dust from disturbed soil was recently implicated in the traffic deaths of seven people in southern New Mexico. The proposed mine is only 1/2 mile from Interstate 25, so blowing dust is a potential highway safety issue.

92. The Cerrillos Hills State Park and villages of Cerrillos and Madrid are seasonally downwind from this proposed site with La Cienega just to the north also subject to downwind conditions at times. Basalt dust has been shown to cause pneumoconiosis, similar to asbestos inhalation, in basalt mine crusher workers. Dust from soil disturbances in desert regions is known to spread Valley Fever, a potentially fatal disease. The County has an obligation to do everything in its power to protect the health and welfare of its residents. One way to do that is to deny this application for another unneeded mine that would only exacerbate the air quality issues and endanger residents.

93. The application proposes to mitigate night lighting impacts on County Road 57 by angling the lights southward. However, this exacerbates the problem for those residents south of the mine site, and potentially for travelers on I-25.

94. The Applicant's submitted plans show "silt fence for dust control" (sheet 11, SWPPP plan for Phase II.) Silt fence is the 18"-tall black tarp-like material seen around construction sites, designed to filter silt from water runoff when installed on the ground. It is completely ineffective and unsuitable for the control of airborne dust.

95. The grading and stormwater drainage plans submitted by the Applicant are highly questionable (sheet 9). They appear to show identical calculations for all three Phases of operation, despite the fact that the area of exposed blasted bedrock will expand during each Phase. They appear to use the same "coefficient of runoff" for undisturbed soil and for exposed basaltic bedrock. (The coefficient of runoff is the percentage of rainfall that is not absorbed into a surface and thus runs off. A completely impervious surface has a runoff coefficient of 1.0, or 100% runoff.) The applicants appear to claim that native soil has an 82% runoff rate, and that the bedrock exposed by mining has only an 84% rate. Exposing bedrock is more comparable to completely paving the mine site, with the potential of 100% runoff. If the Applicant's calculations are indeed skewed, it could result in the entire operation being non-compliant with NPDES stormwater management requirements. Failure to control mine runoff would result in such runoff ultimately entering the Rio Grande and the deep aquifers beneath the river, which supply water to more than 50% of New Mexico's population. The public health and safety impacts are potentially grave.
96. There are sufficient concerns with the Applicants' submittal that the Commission cannot accept their engineering assertions and assumptions. In the absence of an independent third-party engineering review,
97. Other impacts discussed herein are equally applicable to this general health, safety and welfare analysis.

Art. XI, Sec. 1.7

The applicant shall submit evidence that the applicant has obtained an adequate water supply as evidenced by appropriate permits issued by the State Engineer's Office/Interstate Stream Commission of the State of New Mexico

98. The Applicants have amended their application to use treated effluent purchased from the City of Santa Fe water treatment plant.
99. Code Art. XI, Sec. 1.7.2(e) requires compliance with Art. VII, Sec. 6 (Water Supply).
100. Art VII, Sec. 6 in (Table 7.4) in turn requires:
- water availability assessment (Art VII, Sec. 6.4)
 - submittal of a water conservation report (Art VII, Sec. 6.6)
 - fire protection plan and requirement improvements (Art VII, Sec. 6.7)
101. Of these mandatory requirements, none have been met, except a rudimentary fire-protection diagram (sheet 8 of the submittal).
102. It appears that the Applicants might be relying on the exception "if the mining use... will utilize permitted water rights for its water supply." Art. XI, Sec. 1.7.2(e). However, this exception does not apply.

103. Code Art. III, Sec. 10.1.1 (Water Policies Governing Lot Sizes Where the Development will Utilize Permitted Water Rights) makes it clear that the term “permitted water rights” refers specifically to those water rights “recognized and permitted” by the Director of the Water Rights Division.
104. The applicant has not submitted evidence of permitted water rights or that the treated effluent meets such a definition.
105. Moreover, the water supply proposed is clearly inadequate as County staff previously analyzed the Applicant’s proposed source of water and found it unacceptable.
106. The August 18, 2005 draft staff report recommending denial of a prior application states:

The applicant proposes to utilize non-potable water from the City of Santa Fe Water Treatment Plant for dust control purposes. Water will be hauled by truck from City of Santa Fe Sewer Treatment Plant located at Airport Road, to the site...

The County Hydrologist has reviewed this application, and commented that even though the applicant states that the proposed project is to utilize City effluent; no letter of commitment from the City was included with the submittal. The County Hydrologist states that for the applicant to meet the water availability requirements, the applicant must provide documentation from the City committing to supplying water to this project for the time period they expect to run this operation. Also the water budget did not reflect whether any water would be needed in the utilization of the crusher and conveyor sprays.

107. Applicants have amended the current application to use the same City of Santa Fe treated effluent previously rejected by the County Hydrologist, and still lacks any commitment from the City of Santa Fe to supply adequate water for the life of the project.
108. The County Hydrologist has not reviewed the current application, although it is unclear why not. Given the prior County Hydrologist opinion, it would be arbitrary and capricious to approve the current application in the absence of County Hydrologist review.
109. Just as in 2005, Applicants have failed to meet the Code requirements and the application is deficient.
110. The 2008 application similarly relied on hauled-in water. In that case, staff wrote:

Staff does not support the use of trucked in water... The reclamation needs associated with a project of this magnitude, landscaping needed to buffer the

visibility of the project, and water required for long-term dust control requires a sustainable supply which can not be maintained under the Applicant's proposal. A geohydrology study must be prepared to prove water availability sufficient to accommodate the long term needs of the proposed development.

Further, this Application does not meet the criteria established in Article VII, Section 6 (Exhibit "O", Water Supply).

111. The Applicants' water budget also appears deficient. The water budget has water for dust control but not for "sand and gravel washing" as stated in Buena Vista's application with the State Engineer to move water rights to the site.
112. Applicants provide no support for their calculation that 2.19 acre feet per year would be sufficient for dust suppression.
113. Mining Engineer Jim Kuipers writes "Under moderate duty approximately 20 gpm would be consumed per crusher and associated drop points (e.g., conveyor transfer points). Depending on the spray system, material properties, wind, shrouding and other factors this can be as low as 10 gpm and as high as 50 gpm or more." In dry, windy conditions this could be even more, and the mesa top is notoriously windy. The application's statement of 5 crushers and 4 screeners implies that two systems would be in operation. Assuming they are used 40 hours per week, this amounts to as much as 12,480,000 gallons per year, or 38 acre feet.
114. In addition, there is no estimate for other ancillary needs for water. For example, dust control of dry, disturbed soil at the mine site, or the water required to establish vegetation to reclaim a wind-scoured and deeply pitted mesa. The applicant's estimates are merely the water requirements for the crushing equipment alone.

Other Code Requirements

Reclamation Plan

115. The amount of topsoil needed for reclamation is not addressed. There is no assessment of what amount might be sufficient for reseeding. But in any estimation, the small amount of topsoil put aside seems woefully insufficient to the task at hand and draws into question the probable success of reclaiming a 60' deep mine site.
116. Best practices in the landscape construction industry discourage soil stockpiling for more than one month; piles must be no deeper than four feet, covered, and kept moist. Soil is a living material, and the microbes that give it the ability to support vegetation and retain water and nutrients die if these guidelines are not followed. The application does not take any of these issues into account. It is highly unlikely

that the applicant would follow these guidelines, nor could do so without additional water and other investments. As such, stockpiling is offered as a gesture, but would fail to protect the site. In fact, it would increase dust problems when incorrectly attempted as is described.

Mineral Rights

117. Code Art XI, Sec. 1.5.1(i) requires "Submission of an affidavit of ownership of mineral rights in a form supplied by the Code Administrator."
118. Applicants have not submitted an affidavit identifying the mineral rights owners as required.
119. Instead, what the applicants have submitted is an affidavit stating that they do not own the mineral rights, and an argument attempting to misdirect the Commission by stating that aggregate is not subject to mineral rights. They have also submitted a legal opinion partially describing who owned those rights at one point in time, but they have not done the work to determine current ownership as required by the Code.
120. The essential step Applicants have not done is to connect the dots to ensure that the mineral rights owners are on notice that the Applicants intend to excavate to sixty (60) feet. This is more than the surface estate, and could easily impact mineral rights owners without their knowledge. This is exactly why the County requires information about rights owners.
121. The Application is deficient in not identifying the mineral rights owners.

Traffic

122. The Code requires submission of a traffic generation report. Art. XI, Sec. 1.5.1.c.7.
123. Applicants submitted a Traffic Impact Assessment (TIA) by Jorge Gonzales, P.E.
124. The TIA asserts that the ITE Trip Generation Manual "does not have a category that accurately reflects traffic generated by a sand and gravel operation."
125. Therefore the TIA apparently estimated trip generation based on information from Rockolgy itself for a "similar sand and gravel operation."
126. There is no indication of the specific size, employment, production capacity or any other salient characteristics of the comparison mine that might indicate whether the estimate is reasonably accurate. Moreover, there is no indication of when the counts were done (if in fact actual counts were done) and whether the comparison mine was producing in relation to its actual capacity.
127. The TIA does not include traffic generated by water hauling trucks.

128. In 2008 at a public meeting held in La Cienega, applicants estimated that the truckloads per day were thought to be up to "100 to 150 a day."
129. The Commission uses the traffic generation report to assess levels of service on roads, but it is also important evidence to consider when analyzing the impact of the operation on the community. Without an accurate report, the Commission is unable to accurately assess that impact.
130. The application is deficient in meeting the requirement for an accurate traffic generation report.

Lighting

131. Art III, Sec. 4.4.4.h (Outdoor Lighting) contains standards applicable to all development in the County, without exceptions applicable to this application.
132. Art III, Sec. 4.4.4.h.4 specifies the type of cut-off luminaires required, and states that light sources shall not be directly visible from "any adjacent lot or public roadway" and also contains significant restrictions on light spillover.
133. The temporary construction lights specified by Applicant do not comply with the Code's lighting restrictions.
134. Similarly, the New Mexico Night Sky Protection Act, NMSA 1978, Section 74-12-1 *et. seq.*, prohibits unshielded outdoor lighting fixtures. The exemption for worker safety, 74-12-7(A)(4) does not apply to equipment security, and is unnecessary if the operator does not choose to operate at night in any case.

Environmental Impact Statement

135. Code Art. XI, Sec. 1.5.1.j states: "the Board of County Commissioners may require that the applicant provide an environmental impact statement for the proposed mining use."
136. Given the high potential for environmental impacts of the proposal, an EIS is an essential submittal to permit the Commission to adequately review the impacts of the proposal.
137. However, "No impact statement shall be required until specific regulations are adopted by the Board setting forth the requirements for the scope, format, and content for environmental impact statements." *Id.*
138. Therefore, this application should not be considered until the Board adopts specific regulations regarding the EIS process (which may be incorporated into the Sustainable Land Development Code), and the Applicant submits a conforming EIS for Board review.
139. There are several aspects of this Application that present serious and troubling environmental impact potential that must be considered in a mandatory EIS.

140. Fugitive dust is a particular issue in the proposed area but no mitigation plan has been presented.
141. Various rock and mining dusts are well-known public health hazards. Basalt crusher dust has been shown to pose similar hazards for exposed workers as silica and asbestos, which are classified as human lung carcinogens that result in disabling and potentially fatal lung disease, and increase susceptibility to other pulmonary diseases such as tuberculosis.. Such lung diseases are generally incurable.
142. Dust production in this dry, windy, exposed location is a public health hazard and the County has an obligation to mitigate those impacts to protect the health of its residents.
143. The application lacks any site-specific study on blasting but simply includes a brochure from the blasting subcontractor. There is no consideration or analysis of site-specific impacts of blasting and other noise upon neighboring uses or wildlife, for whom this area is an important migration corridor. See above concerning the site's location with major wildlife corridors. This impact study should also include consideration of the detrimental effects that noise pollution and dust would have on tourism and park visitation
144. The inclusion of night lighting suggests that the applicants intend to operate at night, raising an entirely new level of potential impacts that are ignored in the application, as well as further underestimating the water use calculations above.

Sustainable Growth Management Plan

145. The County adopted the Sustainable Growth Management Plan (SGMP) as its general comprehensive plan in November 2010. The SGMP constitutes the County's statutorily adopted master plan. "The regulations and restrictions of the county or municipal zoning authority are to be in accordance with a comprehensive plan." Section 3-21-5.
146. A primary Code purpose is "to implement the policies of the Santa Fe County General Plan" Art. I, Sec. 5 and there is a general requirement that "The Code shall be liberally interpreted to carry out the objectives of the County General Plan." Art. I, Sec. 6.
147. Several SGMP provisions directly impact the proposed mine.
148. SGMP Principle 1.4.1.1.12 (Environmental Responsibility/How we Conserve and Protect) is to "Enhance gateways and corridors."
149. Visibility from Waldo Canyon Road, the Turquoise Trail National Scenic Byway, and locations to the south of the mesa must be assessed along with views from I-25, the Railrunner, and the Southeast branch of the Camino Real de Tierra Adentro. Each of these, except Waldo, is a major gateway for any of the thousands of

Albuquerque airline passengers annually who visit Santa Fe, as well as motorists not arriving by air. Waldo Canyon Road is designated to be the gateway to the acclaimed Cerrillos Hills State Park and the Galisteo Parklands.

150. Opponents submitted a comprehensive viewshed analysis employing a digital elevation model showing that at a vertical offset of 1.5 meters (representing eye-level for an average height hiker) a substantial portion of the mine would be visible from the Camino Real de Tierra Adentro.
151. No similarly comprehensive visual impact analyses have been provided to assess the impact on other major corridors of concern, such as Interstate 25, the Turquoise Trail National Scenic Byway, the Railrunner, or Waldo Canyon Rd.
152. What the application calls "vacant" land is a profound panoramic open space with the proposed mine zone visible from portions of I-25, the I-25 frontage road, Waldo Canyon Rd (CR 57), the Turquoise Trail National Scenic Byway (NM 14), and many roads and homes to the south.
153. SGMP 2.1.1.8 (Land Use Element/Key Issues) states, "Mining, quarrying or extraction activities impact communities, roadways and scenic landscapes. Locations for resource extractive developments should not adversely impact existing communities, infrastructure and tourist economy."
154. As described above, the mining would directly and irreversibly affect both the community and the tourist/arts economy.
155. SGMP 2.1.2.12 (Keys to Sustainability): "Mining and other natural resource development areas impact the County and should be regulated through an overlay district mechanism." See also SGMP Goal 5, Policy 5.2.
156. In addition to the need for an appropriate overlay, one of the fundamental aspects of the SGMP is the concept of Developments of Countywide Impact (DCI's) that "have a potential for far-reaching effects on the community." DCI's include "mining, quarrying, and excavation of soil or gravel products for commercial use." SGMP 2.2.6 explains:

DCI's should be regulated generally to: protect the health, safety and welfare of the citizens, residents and businesses of Santa Fe County from the harmful or hazardous adverse impacts or effects of, or nuisances resulting from, mineral, ore, rock, sand, gravel, limestone, bedrock, landfill, mining, quarrying, excavation or fill activities.

157. County staff confirmed at the CDRC meeting that "the zoning designation for a mining operation would be considered a development of Countywide Impact so it would be a different procedure that they would have to follow under the Sustainable Land Development Code."

158. The application is a DCI that should be considered under the SLDC's DCI provisions. Allowing it to slip "under the wire" and be approved under the Land Development Code dishonors the SGMP, the SLDC and the county staff and residents who worked so hard on them.
159. SGMP 5.1.1.8 (Resource Conservation Element) contains "key issues" affecting the County, including "Lack of emphasis on gateways."
160. The application is to locate a mine directly in the most important and popular gateway to Santa Fe.
161. SGMP 5.3.1.3 (Visual Resources) identifies I-25 coming up La Bajada as a "scenic vista" and states:

Because of its open landscapes, vast panoramas, and pronounced topography, the scenic quality of Santa Fe County as a whole is very vulnerable. Maintaining the integrity of view sheds is a priority with regard to tourism and the movie industry. This means that if development is not carefully planned it could easily degrade the County's scenic beauty and economic vitality.

162. SGMP 5.3.1.4 (Historic Road Network, Scenic Roads and Byways) identifies Santa Fe County as being "deeply rooted" in the early transportation network including the Camino Real de Tierra Adentro, from which the mine site is clearly visible.
163. Steve Blodgett, M.S., a mining engineer and author of "Environmental Impacts of Aggregate and Stone Mining in New Mexico" writes about the Cumulative and Associated Environmental Impacts of such mining as proposed in this mesa vicinity.
164. After having walked over the Mesa, in a letter to Ross Lockridge (Aug. 15, 2005), Mr. Blodgett wrote, "Even though the crusher will be out of sight in the bottom of one of the cells once the mine is developed, there will always be a dust plume emerging from this property, especially during the spring winds." Adding, "Again, you won't have to see the actual mine to know it's there because there will be a dust plume marking its location."
165. In addition to the ever-enlarging pit itself, would be all the structures mentioned on page 10 of the application, including several trailers, screening and several pieces of crushing equipment with belt conveyor systems, water and fuel tanks, several dozers, pole-mounted lights, portable toilets, storage piles and the trucks. Although crusher equipment would be placed in the pit in Phases II and III, most other equipment listed would remain on the mesa-top surface, at the southwest corner of the proposed mining site, throughout the projected 25-year operation.
166. The evidence is clear and inescapable that the proposed mine would stand in stark contrast to the protections sought in the SGMP.

All of these cumulative impacts must be considered by the Commission in exercising its review obligations under the Code. The Application fails to meet numerous required standards. It runs counter to the essential performance standard. It violates the SGMP. A zoning application seeks discretionary approval from the Commission, which is under no obligation to grant such approval. Rather, here the Commission is under an obligation to protect the public health, safety and welfare by denying the application. In accordance with the substantial, compelling evidence and the recommendation of the CDRC, the Commission must deny the request.