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May 7, 2019

Via Electronic Submittal
Members of City of Albuquerque
Environmental Planning Commission

Re: *Project No. 2019-002265; Case No. RZ-2019-00112*
Limited clarifying material in support of request by Four Hills Ranch
Investment, LLC for reimbursement of excess open space credits

Dear Members:

This law firm represents Four Hills Ranch Investment, LLC ("Four Hills") in connection with the appeal of the denial of its request for reimbursement of its excess open space credits which is set for hearing on May 9th. This letter is a submittal of limited clarifying material as contemplated by EPC Rule 12.

The facts in this matter are not in dispute. Four Hills has met all requirements for the requested reimbursement. It had complied with all requirements to properly appeal the denial of its request. The Staff Report filed with respect to this appeal clearly supports Four Hills' appeal and the granting of its request for reimbursement of excess credits for open space facilities credit in the amount of \$245,931.64.

The sole reason given for the denial of Four Hills' request for reimbursement is a reference to Section 14-19-19(J)(7)(c) that there is "no unencumbered account balance in the City's impact fee account for the appropriate service category and service area." Exhibit D to the Staff Report reflects that the "Fund 345 Impact Fees" account had a sufficient "unencumbered balance" to pay Four Hills and the two other requestors for reimbursement during the entire period from the date of submittal of Four Hills' request for reimbursement on November 9, 2018 through March 19, 2019 when the Impact Fee Administrator sent his denial of the request.

Pursuant to the City's Development Process Manual, the Impact Fee Administrator is "authorized to interpret and enforce tall provisions of the Rules and appropriate Impact Fee Ordinance of the City of Albuquerque and to carry out the general administration of all impact fees enacted by the City of Albuquerque." Although the Impact Fee Administrator has made "no recommendation" on Four Hills' request, the discussion in the Staff Report and the exhibits attached to the

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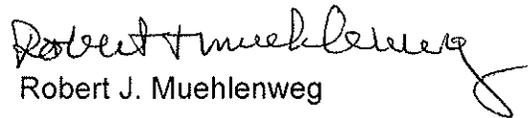
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Report clearly reflect the Administrator's "interpretation" that supports the granting of Four Hills' request. The Administrator has been placed in the uncomfortable position of denying Four Hills' request in response to improper "internal requests" made to the Administrator to deny the reimbursement request in order to give the City's Parks Department the opportunity to encumber the open space accounts. The efforts do not support a viable argument that there are insufficient unencumbered funds. This conduct implicates due process concerns should it be allowed to create an encumbrance and result in a denial of the requests for refund.

Four Hills respectfully requests that the Commission grant its appeal and order reimbursement of its excess open space credits.

Thank you.

Very truly yours,


Robert J. Muehlenweg

RJM/ms

cc: Mr. Tony Loyd, Impact Fee Administrator *via e-mail* TLoyd@cabq.gov
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Four Hills Ranch Investments, LLC