# City of Las Cruces®
PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

**Item #** 13 **Ordinance/Resolution#** 11-059 **Council District:** ___

**For Meeting of** October 18, 2010
**(Adoption Date)**

**TITLE: A RESOLUTION REQUESTING APPROVAL OR DISAPPROVAL OF A SPECIAL REQUEST FOR USE OF INDIVIDUAL SEPTIC SYSTEMS WITHIN THE FUTURE DEVELOPMENT KNOWN AS THE OVERLOOK.**

**PURPOSE(S) OF ACTION:** To request an approval or disapproval of a special request submitted by a developer for use of individual septic systems within the future development known as The Overlook.

| **Drafter and Staff Contact:** Marcia B. Driggers | | **Department:** Legal | | **Phone:** 541-2128 | |
|---|---|---|---|---|---|
| **Department** | **Signature** | **Phone** | **Department** | **Signature** | **Phone** |
| Department Director | | | Budget | | 541-2107 |
| Other | | | Assistant City Manager | | 541-2271 |
| Legal | | 541-2128 | City Manager | | 541-2076 |

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** Utilities Department staff received a request for authorization to allow individual septic systems for the future development known as The Overlook, which is located west of South Fairacres Road, within City limits.

The City of Las Cruces Municipal Code, Chapter 28, Article III, Sewers states:

> Sec. 28-121. Use mandatory.
> (a) It shall be mandatory for owners or occupants within the city to connect to the city sewer system unless such premises commence at a point beyond 200 feet from the nearest point to which a connection with the sewer system could be made or unless access to the city sewer system is not available due to insufficient grade or right-of-way limitations.
>
> Sec. 28-122. Septic tanks.
> Owners or occupants of premises which do not adjoin streets and alleys where sewer pipes are laid or whose premises lie more than 100 feet beyond such sewer pipes shall construct and install plumbing to proper septic tanks in a manner prescribed by the city manager and in compliance with the state code.

City staff does not interpret these Municipal Code sections to allow developers to develop City subdivisions with septic tanks. These Code sections do not provide for a formal

(Continue on additional sheets as required)

variance. Therefore, if the Council approves the developer's request, it will be concluding that these Code sections do not prohibit the use of individual septic systems within the future development known as The Overlook. If the Council disapproves the developer's request, it will be concluding that these Code sections prohibit the use of individual septic systems within the future development known as The Overlook.

Bright View Land Company, the developer, is asking for the special request in consideration of the overall neighborhood, economical constraints, and in his maintaining environmental regulations as set forth is its letter dated June 4, 2010.

The Developer, on behalf of itself and its successors, has agreed that:

- All residential and commercial lots within The Overlook will have a minimum lot size of 3.000 acres;
- All developed residential and commercial lots will have the septic tank installed between the building structure and the dedicated roads, which would allow for easier future upgrade to a sanitary sewer system, if and when one becomes available;
- Depending on when development of The Overlook moves forward and what the City's plans are at that time for extension of City sewer service to the area, the Developer will consider installation of sewer mains within proposed roadways of the development along with sewer stub-outs to each lot; and
- All proposed septic tanks will meet or exceed current Environment Department regulations.

Utilities Department staff has determined that this special request for the use of septic systems is unique in that this situation has not surfaced previously and is unprecedented. Staff presented the special request to the Las Cruces Utilities Board of Commissioners at their June 10, 2010 regular meeting and the item was tabled.

Additionally Utilities staff recommends that Municipal Code Sections 28-121 and 28-122 be modified in order to address similar requests in the future, and that staff work with the City's Legal and other affected Departments and submit proposed wording to the City Council.

**SUPPORT INFORMATION:**

1. Resolution.
2. Las Cruces Utilities Board Resolution No. 09-10-027, tabled on June 10, 2010, with support information attached.
3. Letter dated August 10, 2010 from the developer's engineer.

(Continue on additional sheets as required)

**SOURCE OF FUNDING:**

| | | | |
|---|---|---|---|
| **Is this action already budgeted?** | | | |
| | Yes | ☐ | See fund summary below |
| | No | ☐ | If No, then check one below: |
| **N/A** | *Budget Adjustment Attached* | ☐ | Expense reallocated from: _____ |
| | | ☐ | Proposed funding is from a new revenue source (i.e. grant; see details below) |
| | | ☐ | Proposed funding is from fund balance in the _____ Fund. |
| **Does this action create any revenue?** | | | |
| | Yes | ☐ | Funds will be deposited into this fund: _____ |
| | No | ☒ | There is no new revenue generated by this action. |

**FUND SUMMARY:**

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|---|---|---|---|---|---|
| N/A | | | | | |

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Resolution and approve the special request for use of individual septic systems within the future development known as The Overlook. This action will also direct City staff of affected Departments to work with the City's Legal Office to modify the current Municipal Code Sections 28-121 and 28-122.

2. Vote "No"; this will not approve the Resolution and not approve the special request for use of individual septic systems within the future development known as The Overlook.

3. Vote to "Amend"; this would amend the Resolution and approve as amended.

4. Vote to "Table"; this would postpone consideration.

**REFERENCE INFORMATION**

N/A.

(Continue on additional sheets as required)

**RESOLUTION NO. 11-059**

**A RESOLUTION REQUESTING APPROVAL OR DISAPPROVAL OF A SPECIAL REQUEST FOR USE OF INDIVIDUAL SEPTIC SYSTEMS WITHIN THE FUTURE DEVELOPMENT KNOWN AS THE OVERLOOK.**

The City Council is informed that:

**WHEREAS,** the Utilities Department has received a request for authorization to allow individual septic systems for the future development known as The Overlook, located west of South Fairacres Road, which is within City limits; and

**WHEREAS,** City Municipal Code, Chapter 28, Article III, Sewers, states:

Sec. 28-121. Use mandatory.

(a) It shall be mandatory for owners or occupants within the city to connect to the city sewer system unless such premises commence at a point beyond 200 feet from the nearest point to which a connection with the sewer system could be made or unless access to the city sewer system is not available due to insufficient grade or right-of-way limitations.

Sec. 28-122. Septic tanks.

Owners or occupants of premises which do not adjoin streets and alleys where sewer pipes are laid or whose premises lie more than 100 feet beyond such sewer pipes shall construct and install plumbing to proper septic tanks in a manner prescribed by the city manager and in compliance with the state code.

**WHEREAS,** City staff does not interpret these Municipal Code sections to allow developers to develop City subdivisions with septic tanks; and

**WHEREAS,** the Developer is asking for the special request in consideration of the overall neighborhood, economical constraints, and in his maintaining with environmental regulations; and

**WHEREAS**, the Developer on behalf of itself and its successors has agreed that:

- All residential and commercial lots within The Overlook will have a minimum lot size of 3.000 acres;
- All developed residential and commercial lots will have the septic tank installed between the building structure and the dedicated roads, which would allow for easier future upgrade to a sanitary sewer system, if and when one becomes available;
- Depending on when development of The Overlook moves forward and what the City's plans are at that time for extension of City sewer service to the area, the Developer will consider installation of sewer mains within proposed roadways of the development along with sewer stub-outs to each lot; and
- All proposed septic tanks will meet or exceed current Environment Department regulations.

**WHEREAS**, approval of septic tanks for the future development known as The Overlook shall not constitute City approval of the proposed development, and that development plans for the proposed development shall follow the required formal staff review, public hearing process and zone change process as set forth in Chapter 37 and/or Chapter 38 of the Las Cruces Municipal Code; and

**WHEREAS,** Utilities staff has determined that the special request is unique in that this situation has not been previously addressed; and

**WHEREAS**, Utilities staff further recommends that the City's Municipal Code be modified in order to address similar future requests.

**NOW, THEREFORE**, be it resolved by the governing body of the City of Las Cruces:

**(I)**

**THAT** the City Council approves this special request for use of individual septic systems in the future development known as The Overlook.

**(II)**

**THAT** approval of septic tanks for the future development known as The Overlook does not constitute City approval of the proposed development and that development plans for the proposed development shall follow the required formal staff review, public hearing process and zone change process as set forth in Chapter 37 and/or Chapter 38 of the Las Cruces Municipal Code.

**(III)**

**THAT** City staff is directed to jointly work on modifying Sections 28-121 and 28-122 of the current Municipal Code.

**(IV)**

**THAT** City staff is hereby authorized to do all deeds necessary to accomplish the intent of this Resolution.

**DONE AND APPROVED** on this 7th day of September, 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst City Attorney

TABLED INDEFINITELY

**LAS CRUCES UTILITIES BOARD RESOLUTION NO. 09-10-027**

**A RESOLUTION RECOMMENDING CITY COUNCIL APPROVE OR DISAPPROVE THE SPECIAL REQUEST FOR USE OF SEPTIC SYSTEMS WITHIN THE OVERLOOK SUBDIVSIION.**

The Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces, is informed that:

**WHEREAS,** Utilities Department staff has received a request for authorization to install a septic system for the Overlook Subdivision, generally located west of South Fairacres Road, within City limits; and

**WHEREAS,** the City's Municipal Code states:

Sec. 28-121. Use mandatory (a) It shall be mandatory for owners or occupants within the city to connect to the city sewer system unless such premises commence at a point beyond 200 feet from the nearest point to which a connection within the sewer system could be made or unless access to the city sewer system is not available due to insufficient grade or right-of-way limitations.

Sec. 28-122. Septic tanks. Owners or occupants of premises which do not adjoin streets and alleys where sewer pipes are laid or whose premises lie more than 100 feet beyond such sewer pipes shall construction and install plumbing to proper septic tanks in a manner prescribed by the city manager and in compliance with the state code.

**WHEREAS,** City staff does not interpret these Municipal Code sections to allow developers to develop City subdivisions with septic tanks; and

**WHEREAS,** the Developer is asking for the special request in consideration of the overall neighborhood, economical constraints, and in his maintaining with environmental regulations; and

**WHEREAS,** Utilities staff has determined that the special request is unique in that this situation has not surfaced prior; and

**WHEREAS,** Utilities staff recommends that the Las Cruces Utilities Board further the special request for use of a septic system to the City Council for approval or disapproval; and

**WHEREAS,** Utilities staff further recommends the City's Municipal Code be modified in order to address similar future requests.

**NOW, THEREFORE,** be it resolved by the Board of Commissioners for the City of Las Cruces Utilities, on behalf of the City of Las Cruces:

**(I)**

**THAT,** the Board of Commissioners for the City of Las Cruces Utilities recommends the City Council approve or disapprove the special request for use of septic systems within the Overlook Subdivision.

**(II)**

**THAT,** the City's current Municipal Code Sec. 28-121 and Sec. 28-122 be reviewed and modified in order to address similar future requests.

**(III)**

**THAT,** Utilities Department staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

**DONE AND APPROVED** this 10th day of June 2010.

By Leeann DeMouche
Board Chair

ATTEST: Gilbert Miles 6-11-10
Acting Secretary

Moved by Sorg

Seconded by Pedroza

APPROVED AS TO FORM:
Utilities Attorney

VOTE:

| | |
|---|---|
| Chair DeMouche: | Naye |
| Vice-Chair Cadena: | Naye |
| Commissioner Ericson: | Absent |
| Commissioner Little: | Naye |
| Commissioner Pedroza: | Aye |
| Commissioner Ries: | Aye |
| Commissioner Sorg: | Aye |
| Ex-Officio Garza: | Aye |

# Bright View Land Company

**4935 Ocotillo Road Las Cruces, NM 88011**
**575-496-7115 info@brightviewland.com**


RECEIVED
JUN - 4 2010
UTILITIES
DIRECTOR

June 4, 2010

Dr. Jorge A. Garcia
Utilities Director
City of Las Cruces
680 Motel Blvd.
Las Cruces, NM 88005

Dear Dr. Garcia,

Please find below the facts to support my request for the City to allow individual septic systems in the future development known as The Overlook. For your reference, I am including with this letter a vicinity map showing the location of The Overlook just west of S. Fairacres Road, approximately one-half mile north of Raasaf Hills.

*Fitting the Neighborhood.* Due to the lack of any sewer system in the area, all lots within nearly 2 miles of The Overlook are currently served by individual septic systems. The Overlook is being redesigned as an extremely low-density development in which the minimum lot size will be 3 acres and the average lot size will be 5 acres. The use of septic systems in such a low-density development conforms to all neighboring properties.

*Equal Treatment.* A number of recent developments—including San Ban and Helios Farms—within just a few hundred yards of The Overlook have been approved as ETZ subdivisions (with participation by the City) with 1-acre minimum lots using individual septic systems.

*Economic Realities.* A development project with a maximum of 50 residential lots cannot support the expense of more than $1,250,000 to extend sewer service to the property. Furthermore, pending sale of the property to a buyer committed to a low-density plan depends on permission for use of septic systems in the development.

*Non-contamination.* Located on large lots spread over 341 acres of land with soil dominated by sand and gravel, a maximum of 50 professionally designed septic systems will comply with all applicable environmental regulations.

*Benefit to the City.* In order to put to beneficial use the water rights on the West Mesa recently purchased by the City from Jornada Water Co., the Utilities Department has requested that we provide 1 acre of land in The Overlook for a City well site, since the only two well permits that have been approved for these water rights are on property within The Overlook. With a low-density project using individual septic systems, we can justify cooperating fully with this request because giving 1 acre to the City will not decrease the number of lots to be developed, and we can ensure that no septic system will be close to the well.

Please let me know if you want any additional information. Thank you very much.

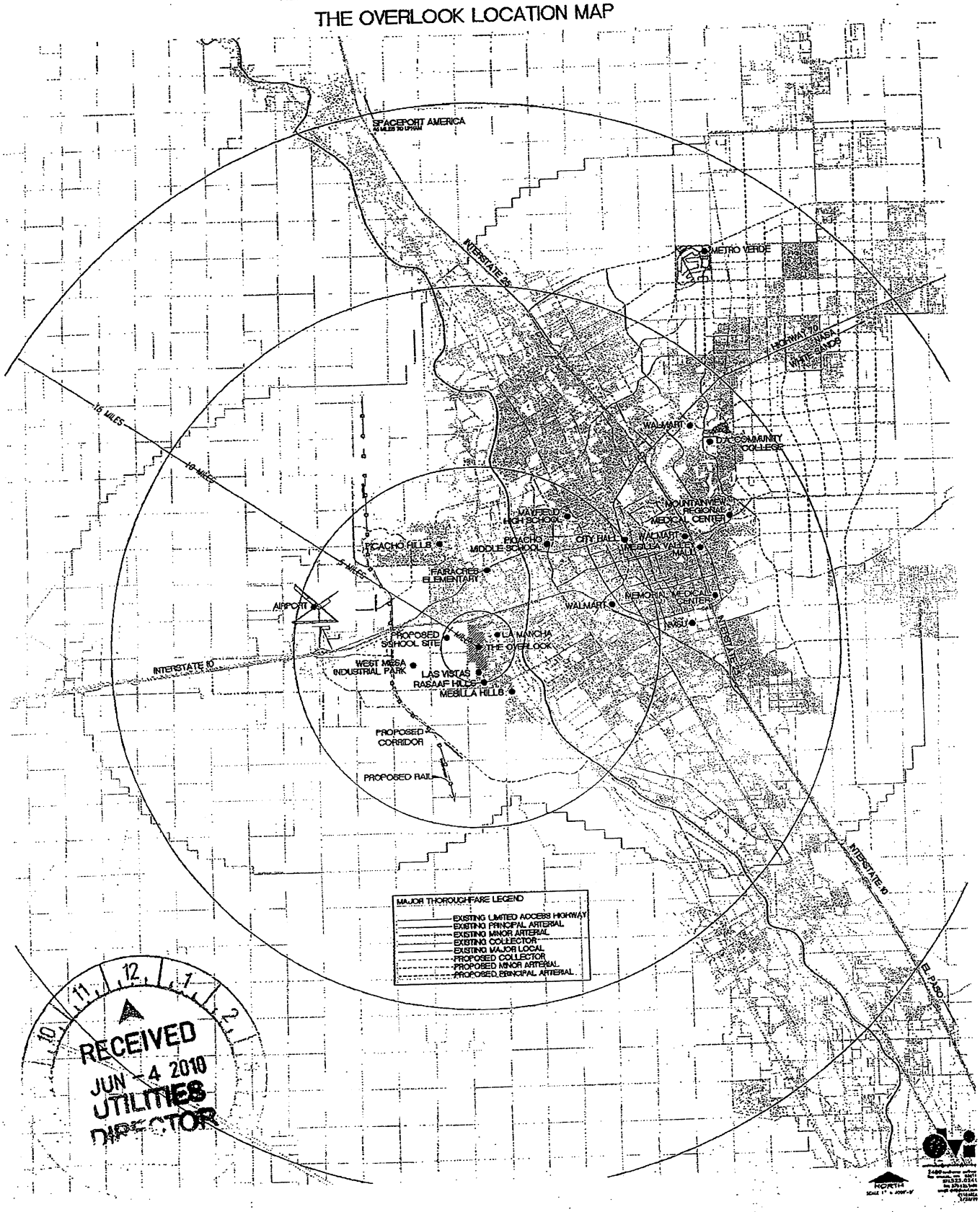
Very truly yours,

Ishu Moscato
President

enclosure

# LAS CRUCES, NEW MEXICO

## THE OVERLOOK LOCATION MAP

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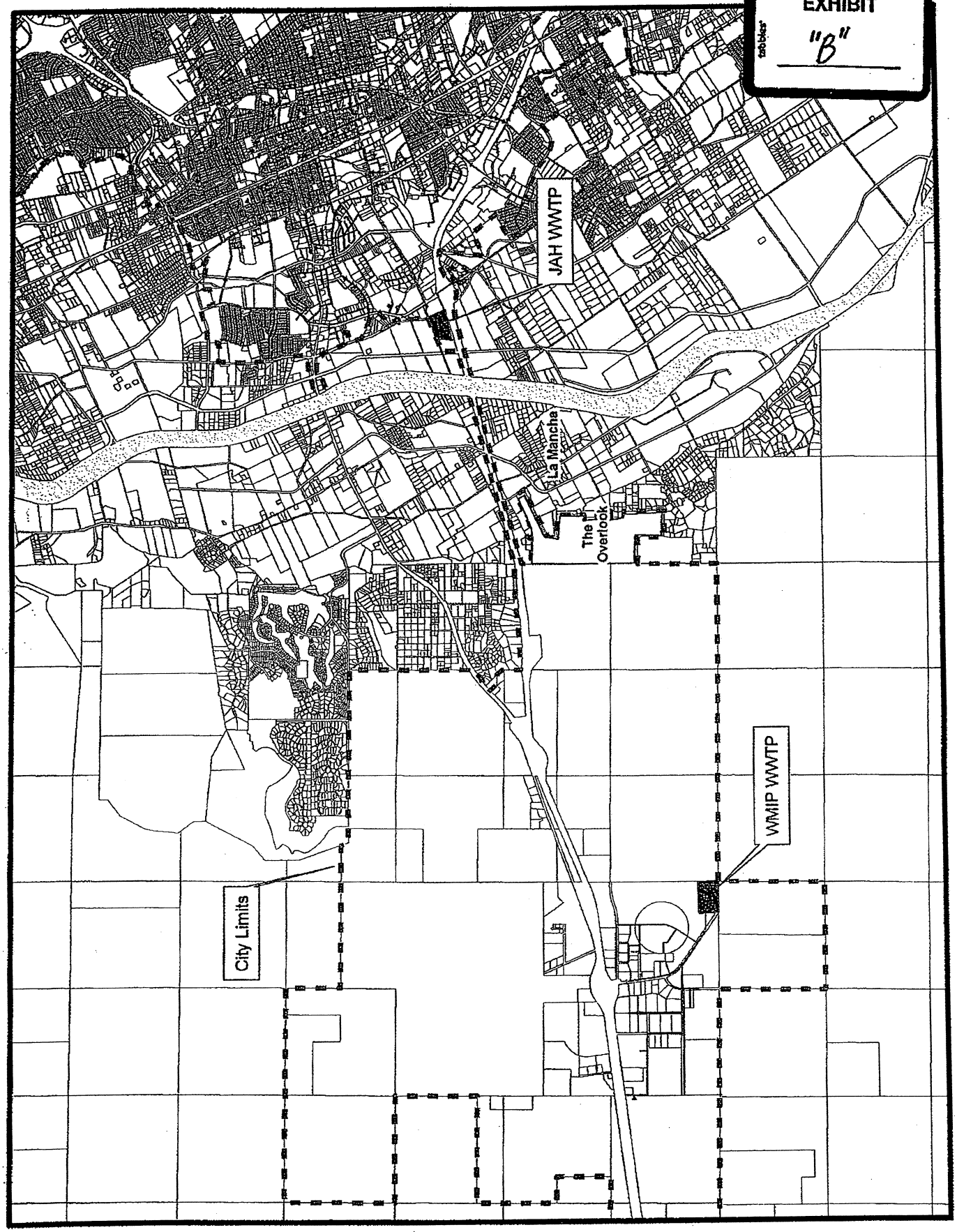
JUN - 4 2010
UTILITIES
DIRECTOR

EXHIBIT
"B"



**Sec. 28-90. Refunds and interest; enforcement.**

(a) All deposits required by this division shall at a customer's request be refunded or applied to the customer's account after 13 consecutive, prompt monthly payments. Where a deposit has been refunded and the customer is subsequently delinquent for two consecutive months, a new deposit shall be required.

(b) Interest shall be credited on all deposits at a rate to be set forth by the city council by resolution from time to time, and may be credited to the customer's account on an annual basis. Unrefunded deposits and interest accumulated thereon shall be applied to final billings. Interest shall not be paid on any deposits that are refunded within 90 days of the deposit date.

(c) Interest on deposits shall be earned from the deposit date to the final service date.

(d) Unclaimed deposits and interest refunds shall be handled as specified by law.

(e) Failure to make a deposit as set forth in this division shall result in refusal or termination of services.
(Code 1988, § 29-65)

**Sec. 28-91. Effect of transfer, moving.**

There shall be no transfer or so-called transfer from one location to another of deposits made for utility service, and in each case the transfer shall be considered a new application for service and shall be treated as such. When premises are vacated, any amounts due for water service shall be paid in full, and utility service shall not be commenced at another place until this is done. Such removal from one place to another shall be considered as a new request for utility service, and applicants shall be required to make the current deposit that shall be in effect at the time such request is made.
(Code 1988, § 29-66)

**Secs. 28-92—28-120. Reserved.**

## ARTICLE III. SEWERS

**Sec. 28-121. Use mandatory.**

(a) It shall be mandatory for owners or occupants within the city to connect to the city sewer system unless such premises commence at a point beyond 200 feet from the nearest point to which a connection with the sewer system could be made or unless access to the city sewer system is not available due to insufficient grade or right-of-way limitations.

(b) It shall not be mandatory for owners or occupants of such premises to connect to the city sewer system if the premises are connected to a properly maintained and functioning septic system until such time as:

(1) The septic system ceases to function or to be properly maintained; or

(2) The owner or occupant is required to apply to the state for a permit to modify the existing septic system.

(Code 1988, § 29-151)

**Sec. 28-122. Septic tanks.**

Owners or occupants of premises which do not adjoin streets and alleys where sewer pipes are laid or whose premises lie more than 100 feet beyond such sewer pipes shall construct and install plumbing to proper septic tanks in a manner prescribed by the city manager and in compliance with the state code.
(Code 1988, § 29-152)

**Sec. 28-123. Outdoor privies.**

The construction or use of outdoor privies or toilets is expressly prohibited.
(Code 1988, § 29-153)

**Sec. 28-124. Connections.**

Connections to the city sewer system shall be made in a manner and with such materials as are prescribed by the city manager.
(Code 1988, § 29-154)

Pillar Engineering, LLC

August 10, 2010

RECEIVED
AUG 10 2010
OFFICE OF THE ASSISTANT CITY MANAGER

Mr. Robert L. Garza, P.E.
Assistant City Manager
City of Las Cruces

RE: Septic Tanks for The Overlook development

Mr. Garza,

I respectfully request that this letter be added to the Resolution going before City Council to discuss the use of septic tanks for The Overlook development. The current owner has agreed to additional conditions for the use of septic tanks in The Outlook development that are outlined in this letter. Please let me know the earliest that this item will be before City Council for action.

**The Overlook Septic Tanks**

The 341-acre assemblage of parcels known as The Overlook was annexed by the City of Las Cruces in June 2007 as part of the Kennon Annexation. The property is west of South Fairacres Road and includes much of the escarpment just below the West Mesa between Interstate 10 and Raasaf Hills. The current owner of The Overlook is West Mesa Holdings, LLC, which purchased the bulk of the property in October 2005 and added three small parcels in early 2006. Prior to that, the bulk of the property was acquired in August 1990 by the New Mexico and Arizona Land Company from the U.S. Bureau of Land Management (BLM).

At the time of annexation, The Overlook in conjunction with other nearby developments planned to extend sanitary sewer service from the City of Las Cruces to the property. Due to situations out of the control of West Mesa Holdings LLC, the extension of City sewer service to the property did not occur. The nearby developments did not participate in the extension of the sanitary sewer. Now, in response to the denial of the original 400-lot Overlook PUD by the Planning and Zoning Commission, a new low-density development project with a limited number of residential lots is being planned for The Overlook, and this project cannot support the expense of more than $1,250,000 to extend sewer service to The Overlook property.

It is important to emphasize that the new planning theme for The Overlook is drastically different from the original proposal and has been designed specifically to address the concerns that have been raised by neighboring property owners. For example, lots in The Overlook will be significantly larger than most neighboring lots. Moreover, the individual septic systems in The Overlook will either be the equal of or superior to the septic systems that serve all neighboring properties. The impact of The Overlook on the local environment will be no different from that of existing developed properties in the neighborhood.

280 E. Foster, Suite. B Las Cruces, New Mexico 88005 (575) 647-1927

In April 2010, West Mesa Holdings LLC entered into a contract to sell The Overlook to Front Range Investment Holdings, LLC, with a closing scheduled for early June, subject to due diligence. A few days before the closing, Front Range Investment Holdings, LLC notified the broker for West Mesa Holdings LLC that it was postponing the closing because of two issues that had arisen during due diligence. Both issues involved comments about the property made by City staff. One issue pertains to the existing dam structures located on the property and is being dealt with separately. The other issue pertains to the use of septic tanks for development of the property, and that is the issue about which we are seeking clarification from City Council.

West Mesa Land Holdings LLC and its successors are willing to agree that:

- All residential and commercial lots will have a minimum lot size of 3.000 acres.
- All developed residential and commercial lots will have the septic tank installed between the building structures and the dedicated roads. This would allow for easier future upgrade to a sanitary sewer system, if and when one becomes available.
- Depending on when development of The Overlook moves forward and what the City's plans are at that time for extension of City sewer service to the area, the developer will consider installation of sewer mains within proposed roadways of the development along with sewer stub-outs to each lot.
- All proposed septic tanks will meet or exceed current Environment Department regulations.

If you have any questions, please do not hesitate to call. Thank you for your assistance with this issue for The Overlook development.

Sincerely;
Pillar Engineering, LLC

Martin J. Pillar

Martin J. Pillar, P.E.

Cc John Moscato – Bright View Land Company