SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY (SSCAFCA)
MINUTES OF APRIL 1, 2005
BOARD OF DIRECTORS SPECIAL WORK/STUDY SESSION

CALL TO ORDER.

The special meeting of the SSCAFCA Board of Directors was called to order by Dub Yarbrough, Chairman, at 9:00 a.m.

ROLL CALL OF DIRECTORS.

Directors in attendance were Mark Conkling, Steven House, Donald Rudy, and Dub Yarbrough. David Stoliker, Executive Director, Bernard Metzgar, SSCAFCA's attorney, and members of the public were also present.

PLEDGE OF ALLEGIANCE.

The Board was led in the Pledge of Allegiance by Dub Yarbrough.

APPROVAL OF AGENDA.

A motion was made by Steve House to approve the Agenda as presented. It was seconded by Mark Conkling and passed unanimously.

ANNOUNCEMENTS.

Announcements were made by Dub Yarbrough that all electronic devices needed to be turned off during the meeting.

DISCUSSION/EVALUATION OF THE DRAINAGE POLICY.

Mr. Stoliker stated that SSCAFCA is currently supporting redevelopment of blighted areas in Rio Rancho. It is staff's intention to also support SAD's as they come through the City and the County to address regional drainage up to and including allowing for some variances in its Drainage Policy if the particular situation calls for it. Mr. Rudy stated that rather than a relaxation of policy, it's a transfer of an activity in terms of time. Mr. Conkling stated that an SAD is a financing process for the purpose of equally distributing the cost of utilities over previously antiquated platted lots. There are no drainage requirements in an SAD. The only thing that SSCAFCA would get is if whoever is promoting the SAD agrees to certain items because it's better, not because SSCAFCA has any authority over them.

Mr. Stoliker stated that SSCAFCA does not have the authority to do SAD's, only the County and City. It is staff's intention to support SAD's if they will address drainage issues. Mr. Conkling stated that SSCAFCA also does not have the authority to impose drainage requirements in SAD's on previously platted existing lots. He stated that it is a

gathering of money to apply to existing properties. Mr. Conkling stated that SSCAFCA does not have instant authority over an SAD because there has to be a cost/benefit ratio to the owners or it can't happen. The economic consideration is what drives an SAD, not the regulations of a new subdivision. He stated that it's better for SSCAFCA to relax its rules a little bit to get something rather than hold a hard line and get nothing.

Mr. Clint Dodge stated that the local drainage improvements, if required, would be part of an SAD. It may be at a location where SSCAFCA might not have a variance, but it might need funding assistance. Mr. Conkling stated that there is a ''creeping control'' that comes from governmental agencies and he doesn't want SSCAFCA to become one of those. Mr. Rudy stated that if impact fees go in, then one of the ways to support SAD's is to be willing to relax the impact fees for local drainage.

Mr. Stoliker asked the Board if it wanted staff to support impact fees or not. Mr. Conkling stated that the answer is ''yes and no.'' It has to do with what the impact fees are for and if it will support them or not. If SSCAFCA is going to do single lot ponding and put a burden of a pond on somebody, then SSCAFCA should not have an impact fee for drainage. It's too complicated to support the item without having all the facts.

Mr. Yarbrough stated that if you go in and put curbs and gutters in through an SAD, you should still be responsible for the excess flow. The water would then be dumped on the people below you and you are obligated to control the water rather than say, ''we put curbs and gutters in and now we're going to quit.'' Mr. Conkling stated that you would be responsible for that water, but the extent to which you are is not governed by SSCAFCA's policies. It is governed by an economic consideration of the cost of the containment of the flow and the cost of the curbs and the gutters. He stated that the SAD's are worked out according to an economic consideration, not according to policy.

Mr. Metzgar stated that there might be some misunderstanding on this issue. The report states that the SAD can fund a significant measure of local runoff control using the impact on downstream facilities. Since SAD funds are limited, funding for regional facilities is usually not available. The problem is not solved regionally, it's solved locally. Mr. Stoliker stated that he would like for SSCAFCA to provide the financial support to address regional problems if the finances are available and if it can be worked into that particular development so that the SAD has to take care of the local problems only.

Mr. Rudy stated that if the wording can be changed from ''supporting'' to ''working with'' to solve the problem. Each of these is a mechanism which the City is using to correct or improve infrastructure issues. SSCAFCA's Drainage Policy is one of those infrastructure issues. All SSCAFCA needs to do is discuss the fact that these are activities by the City which SSCAFCA can work with and help take advantage of in order to implement SSCAFCA's drainage objectives.

Mr. Stoliker stated that staff has sensed that the Board perceives that the redevelopment of blighted areas, SAD's and impact fees are things that may actually have some benefit for SSCAFCA, but that it is not the right time to form a storm water utility. It

may be something in the future that SSCAFCA might want to do. Likewise, the Horizon Boundary Delineation is also something that has some inherent issues and problems that need to be worked out and will not be pursued at this time.

Mr. Clint Dodge stated that drainage from new, single lot development in antiquated platting is uncontrolled, unfairly subsidized, a source of drainage complaints, causes local erosion, and impacts the downstream watershed infrastructure. New subdivision developments, including SAD's and Redevelopment areas, is being controlled and results in minimal infrastructure impacts. The other component of that is that SSCAFCA has received complaints from developers about inequity in funding in that they are being required to control their drainage, but the single lot developer is not. Single family housing starts in Rio Rancho in 2004 were 411 out of a total of 1720, which is 24% of the total housing starts. These houses occupied 55% of the total area. Mr. Conkling stated that this shows that there were 411 houses built on antiquated platted lots.

Mr. Stoliker stated that one of the complaints from the developers is that when SSCAFCA models the watershed, SSCAFCA models it as if 100% of the antiquated platting will be developed as antiquated platting. If SSCAFCA modeled it at the 55% as shown on the chart that would change the amount of flow they have to address, which is the amount of concrete they have to pour over and above what appears to be needed. Mr. Dodge stated that SSCAFCA has no control where those things occur. In some drainage basins, it may be 100% subdivided and in others it may be 100% antiquated platting. There is no way to predict where each will occur. Mr. Conkling stated that his presumption is that if you had a pond on every lot it would be totally controlled.

Mr. Dodge stated that SSCAFCA's Drainage Policy says that you can't alter the site without some controls. The drainage from offsite needs to be passed through the property in a rate that doesn't exceed the capacity of the downstream facilities and you have to discharge from your property at a rate of flow and location similar to historic flow. Mr. Stoliker stated that this policy applies to every lot. Mr. Conkling stated that the standard is for five acres or more. Mr. Rudy stated that SSCAFCA reviews five acres, but the policy applies to everybody. Mr. Stoliker stated that it is also a location issue. If it is adjacent to one of SSCAFCA's facilities or a regional drainage way, then SSCAFCA will always look at it, but generally SSCAFCA only looks at the major subdivision, which is five acres or more. Mr. Dodge stated that there is a disconnect between the written policy and the procedures carried out. Mr. Rudy stated that when SSCAFCA starts talking about on-lot ponding, that distinction suddenly becomes important. SSCAFCA is then no longer talking about developments that are as large as SSCAFCA traditionally reviews, but it gets applied to every lot. This is a different consideration.

Mr. Dodge stated that the current policy states that a drainage plan addressing on-site and off-site flood control and sediment issues is required for minor subdivision, site development plans and landscaping plans for development of five acres or less. A

designee can be given the authority to implement the policy and the policy requires dedication of easements sufficient to pass the design run-off that is coming from off-site. The design run-off is the run-off from the 100 year event with full development upstream. Mr. Stoliker stated that the policy also requires the permanent dedication of natural flood plain and prudent line limits. The LEE is not contained in the policy and it needs to be re-written to get that in. However, it should be noted that the prudent line and the LEE are very close. The numbers would change if the full development requirement was taken away from the calculations. Mr. Stoliker stated that the difference could be anywhere from two to six times the amount of flow coming off in the model.

Mr. Dodge stated that the difference between on-lot retention and on-lot detention is that there is no discharge allowed from the retention pond. They are not recommending the on-lot retention pond. There are several problems with this option. The biggest is that, over time, those would tend to seal off and become long term standing water. The description of the alternate would be to require all new single family residential single lot development to restrict the run-off to not greater than the pre-development rate. To implement that, they suggest that the owner/developer submit and obtain the Drainage Plan as it currently exists, that they provide a pond sized for the 100 year event with a restricted outfall to drain at not greater than the pre-development rate, that they drain their entire site to the pond, and to address the off-site run-off conveying the off-site run-off through their property. The run-off would be reduced in this situation to the pre-development rate from upstream rather than the fully developed rate. Lastly, they would need to provide easements for both the pond and access to the pond. Some of these lots slope away from the road, so the pond may very well be in the back side of the property. SSCAFCA would still need to have access for inspection, remedial construction if required, etc. They are recommending that new subdivisions be controlled under the current policy, which requires new subdivisions to meet the written policy as it is today. That system is working fairly well.

Mr. Robert Schultz, of the City, stated that there are four instances when a single family residential lot owner has to submit an engineered grading and drainage plan. The first instance is when they are affecting the public drainage system, which is the flow path from the farthest upstream property to the City limit, whether it is publicly or privately owned. The second instance is if they are building below the road. The other two instances have to deal with the quantities of earth work and disturbed area. Commercial and industrial entities always have to submit plans.

Mr. Dodge stated that the regional drainage would still be required because you still have to pass the undeveloped flows coming from both the on-lot ponds and the undeveloped areas upstream. One of the disadvantages is that there is administrative and technical criteria to be developed and procedures to be developed to implement the on-lot pond option. The roadway drainage and other public right-of-way drainage is not really being addressed in this report. This will need to be looked at as a separate issue. The

overall recommendations are to explore the administrative, technical, enforcement and legal details of how the on-lot policy would work. Out of that would come the details for the on-lot policy.

Mr. Dodge stated that the actual implementation details include the administration. The data gathered is that there has not been a successful on-lot pond policy implemented. Part of the administration is the assurance that these ponds are built and maintained in order to guarantee that the downstream facilities are sized correctly. It is suggested that SSCAFCA work with Rio Rancho and Sandoval County to include the single lot pond in the building and permit process. The developer would construct and pond and the recommendation is that Rio Rancho and Sandoval County inspect it as part of their acceptance procedures. Certification by a professional engineer would also be needed to ensure that it is built in accordance with the approved plan. Mr. Dodge stated that there are two elements to the recommendation. The first is to require a grading plan for the site prior to the construction, and then to require a professional engineer's certification that it was built the way it was supposed to be built. Mr. Stoliker stated that FEMA sometimes allows for surveyors to do things like this. The idea is to get it to a professional to sign something to indicate that it was done correctly.

Mr. Dodge stated that the inspection and enforcement element is critical to making this work. This, of course, is no guarantee that it would work. He has not found anyplace where the level of enforcement was adequate to make the on-lot pond work. Eventually, they were either discarded or the public took them over. Mr. Curtis stated that there was one instance where they have an on-lot ponding policy that works, which is High Desert/ Mariposa. The only reason it works is because there is a very strong, local neighborhood organization with covenants and they are enforced to the letter. Mr. Dodge stated that the idea of the inspection is to periodically inspect the pond and if it is not in compliance with their grading plan, to enforce putting it back the way it is supposed to be. If the ponds are inspected every year, the word will get out in the public that SSCAFCA will be inspecting the ponds.

Mr. Dodge stated that the staffing might include one inspector per 1,000 ponds, which would be about five ponds per day, along with an administrative person. The administrative person would schedule the inspections with the homeowners, pull the paperwork for that specific pond, etc. The annual inspection of the ponds might be able to be reduced as time went along. Mr. Conkling stated that you should be able to take the square footage of impermeable surface, such as a road or concrete driveway, and relate that to the size of the pond required in such a way that you might have ponds driven by the square footage of the impermeable surface. The pond design would have the access easement that would become part of the survey that would then be a permanent easement on the property. The ponds could be pre-designed and an engineer's fee would not have to be charged every time someone built a house, but they could select the appropriate

pond for the size of the home. Mr. Dodge stated that with the variety of the terrain and the variety of lot configurations, there is really no typical lot.

Mr. Cliff Spirock stated that the act of granting an easement violates the 1965 grandfathering of whether they need to use an individual well or septic tank. In such cases, granting an easement implies a subdivision action where the replat might be recorded. Mr. Conkling stated that, based on that, a recorded easement would be a big problem. Mr. Dodge stated that the recommendation is to explore all the details required to do this, which would include the legal format of not only the access issues but the other enforcement issues. Mr. Conkling stated that he would like for it to be as easy and inexpensive as possible for the homeowner that would end up saving 30% or 40% of the structural features of SSCAFCA's requirement of upstream flow.

Mr. Dodge stated that public funds should be used for the periodic inspections of the pond, but that the enforcement issues should be paid for by the homeowner who is out of compliance. The idea is that the pond is providing a public benefit. He stated that the day to day maintenance of the pond and the initial construction would all be paid for by the single lot developer. Mr. Metzgar stated that for SSCAFCA to be able to recoup the cost of the enforcement if an action is taken against a homeowner would depend on how the ordinance read, but usually the ordinances do not speak to attorney fees or court costs. They typically speak to fines only. Usually, the attorneys are staff attorneys of the City or County trying to enforce the ordinance. Court costs may be included in the fines payable. Mr. Conkling stated that the City needs to pass the ordinance and SSCAFCA should administer, inspect, remediate and otherwise enforce the ordinance. Mr. Rudy stated that this is probably the only way that the City would be willing to pass the ordinance.

Mr. Robert Schultz stated that in Arapahoe County they imposed a requirement at the time of platting on a private drainage system and if that system fell into disrepair, the County had the right to go onto the property, make the repair, and the cost of the repair constituted a lien on the property. Mr. Conkling stated that a homeowner could give lien rights when you have a covenant. Mr. Yarbrough stated that there are going to be two different situations, one with a single lot homeowner and the SAD's. He is wondering if SSCAFCA could redo its policy to include the SAD's where they would have to submit a drainage plan and their remedy for any flows. Mr. Spirock stated that an SAD does not ask for permission to subdivide, create a new property line, and create an easement, rather an SAD asks to put in water, sewer, curb and gutter. Mr. Yarbrough stated that SSCAFCA should get control of the SAD's. They are creating more problems with drainage.

Mr. Dodge stated that the City is enforcing their drainage policy on the SAD's. There are regional ponds and historical flow rate discharge requirements being maintained with all the improvements that are being put in, but an SAD looks at a localized improvement as opposed to regional improvements. The impacts of the SAD on the drainage system are being addressed within the SAD. Mr. Conkling stated that if the SAD

were in a topographically difficult area, you might find that on-lot ponding is the less expensive solution to the local condition. Mr. Curtis stated that they have a handle on the new development in the City for the most part. It is the existing subdivided lots where people feel they have the right to build. If the City were to enforce its policies and rules to the letter, the public would have to do the on-lot ponding. The problem is that the City doesn't have the resources to ensure compliance. Mr. Conkling stated that there is widespread belief that this solution is extremely hard to make work. Mr. Curtis stated that SSCAFCA and the City have developed an alternative to on-lot ponding in the Rainbow Tributary Drainage Management Plan. People could be given the alternative to do on-lot ponding with all the requirements, etc., or kick in funding to make the plan happen.

Mr. Dodge stated that design criteria would be one of the items looked at in the details of technical considerations to on-lot ponding. They consist of having a template for the ponds for the public to choose from, as discussed before; and encouraging that the ponds be located at the front of the property so that you don't have the access problems. The pond itself would provide some level of water quality and no additional water quality features are being recommended. Some of the lots may have wells or septic tanks and these would have a problem with a pond addition as far as separation from the well. Mr. Conkling stated that the new septic tank requirements with the State are imminent, which will not allow certain things that have been allowed in the past, and this will go against this issue. He stated that a series of ponds could actually get a higher peak flow rate downstream than you do from the property before it was developed. This must be addressed somewhere.

Mr. Dodge stated that the most difficult point of implementing a policy such as this would be staffing, funding and enforcement. He stated that the roadways are a concern and a consideration that must be put into the overall mix. If you have free discharge from the roads, you increase the run-off two or three times for many of the roadways up to 30%. When you add regional and local ponds, those would need to be taken into account. The need for public facilities doesn't go away as a result of the on-lot ponding, they just decrease in size because you still have historic run-off, plus you have to deal with public facilities that have their own run-off. Mr. Conkling stated that a rough guess was that it might reduce the costs that SSCAFCA puts out for regional facilities by 30% to 35%.

Mr. Stoliker stated that the difference between fully developed run-off and natural run-off is one to six cfs per acre. If it is undeveloped, the flow is one to two cfs/acre. You go to fully developed, it goes to two to eight cfs/acre depending on the type of development. He stated that staff still needs to discuss this with the City and have Mr. Metzgar review it for legal issues. It won't be brought to the Board until possibly May as a draft. He stated that the City is looking at impact fees and staff was trying to dovetail these two together. The thought was why have SSCAFCA go forward with something if impact fees are going to be implemented by the City. Staff was trying to be prepared when the City came out with its analysis of impact fees. He stated that he would like to have as little

to do with SAD's as possible because they are the City's and the County's purview, but that SSCAFCA should support them. If the City winds up deciding that they do want to have impact fees for drainage, SSCAFCA needs to make sure that the entities aren't stepping on each other's toes with respect to that. Why have on-lot ponding if the City is going to charge an impact fee for drainage. Mr. Conkling stated that rather than wait for the City to have their impact fee discussion, he would like to propose this policy prior to that and draft a proposed ordinance.

Mr. Ken Curtis, of the City, stated that it is premature to draft an ordinance because the City does not support on-lot ponding at this time. Some of the City staff met a month or so ago and it was real clear that at this point the City staff does not support on-lot ponding because they do not believe that it is enforceable, plus multiple public jurisdictions have indicated that it does not work. This has not been taken to the government body by City staff because the staff has not seen enough evidence to support it. Mr. Conkling stated that if SSCAFCA can solve the enforcement and funding sides of it, City staff may be more open to this issue. Mr. Curtis stated that then this issue might go forward as policy discussions with the governing body. Mr. Dodge stated that the recommendation does not address who should fund on-lot ponding.

Mr. Rudy stated that if it is enforced for a significant period of time, the violations and time required for enforcement will probably diminish. In the near term, enforcement will be serious and expensive. In the long term, the expectation is that it will diminish. Mr. Schultz stated that one of the City's goals is to provide an adequate drainage system to all developed lands within the City. If you look at the instances where the on-lot ponds will be provided, you are looking at basically the unimproved subdivision areas. When you have 100 year historic release rate that is what would normally flow off the land in the natural condition. When you pave it and you increase the velocity of the 100 year flood and you increase the duration of the flood. Right now, in the unimproved subdivisions, these would be draining into unpaved roads, unlined arroyos, and areas where the City does not have conveyance facilities. There is a potential that this could make things worse.

Mr. Spirock stated that SSCAFCA's entire jurisdiction is not just in the City of Rio Rancho. That portion that is outside of the City, which is mostly upstream from the water the City has to deal with, would be a benefit if 70% of the land area had a pond or some method of control as opposed to natural, particularly when you count the number of rooftops in the County portion. Mr. Schultz stated that his point is not that it wouldn't make things better to have ponds; rather, his point is that it does not solve the whole problem.

Mr. Dodge stated that the existing ordinance requires discharge not to exceed various storms, not just the 100 year storm. It is true that the volume increases and the downstream erosion is a function of volume as well as flow rate. Mr. Schultz stated that if downstream facilities exist, they are allowed to release at the 100 year historic rate. In

areas that Rio Rancho deals with all the time, the natural drainage ways, the unimproved roads, etc., and then Rio Rancho has the ability to require them to deal with any event.

Mr. Curtis stated that the City is not saying that they're not willing to carry this forward, they are willing to take it to the governing body for policy discussion at some point, but the time is not ripe for an ordinance at this time.

DISCUSSION OF FUTURE ACTIONS.

Mr. Stoliker stated that the Board has invitations to the storm monitor breakfast and he invited everybody to come. He stated that Bohannan-Huston has produced a map for review. Mr. Conkling stated that he has an office building where he can dedicate space to a map and, in keeping with educating the public what SSCAFCA does, he wants to put this 6 x 6 map view of what SSCAFCA does on the wall so that when the public comes in they can see it.

Mr. Yarbrough stated that Mr. House has a scheduling problem for the next regular meeting. Mr. House stated that he would like to push the Board meeting to a later time in the day to accommodate his conflict. Mr. Stoliker stated that because of the conflict, the Board meeting on Friday, April 15, 2005 is now scheduled for 1:30 p.m.

ADJOURNMENT.

A motion was made by Donald Rudy to adjourn the meeting. It was seconded by Steven House and passed unanimously. The meeting was adjourned at 10:52 a.m.

Wm. C. Yarbrough

WM. C. YARBROUGH
Chairman

JOHN CHANEY
Secretary

DATE APPROVED: