

City of Santa Fe, New Mexico

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Memorandum

To: Members of the Governing Body

From: Zachary Shandler
Assistant City Attorney *ZS*

Via: Kelley Brennan *KAB*
City Attorney

Re: Appeal of Ms. Nicoletta Munroe from the March 1, 2016, Decision of the Board of Adjustment to Approve the Sanbusco 2015 LLC & New Mexico School for the Arts Institute's request for a Special Use Permit at Sanbusco Center.
Case No. 2016-32

Date: April 4, 2016 for the April 13, 2016 Meeting of the Governing Body

The Appeal

On March 9, 2016, Ms. Nicoletta Munroe, (Appellant) filed a Verified Appeal Petition (the Petition) appealing the March 1, 2016 Decision of the Board of Adjustment (Board) to approve the Sanbusco 2015 LLC & New Mexico School for the Arts Institute's request for a Special Use Permit. (Petition attached as **Exhibit A**).

The Property

The property is the Santa Fe Builders' Supply Company (Sanbusco Center). The New Mexico School for the Arts (School) acquired the property which includes 5.2+ acres and several

buildings. The property is zoned BCDRED and BCDCAN (Business Capital District Redevelopment & Sandoval/Montezuma Subdistricts - Community Commercial) and is located within the Westside-Guadalupe Historic Review District and Historic Downtown Archaeological Review District. It is bounded by Agua Fria Street, Camino de la Familia, and Montezuma Avenue and residential houses.

History of the Case

The School is a chartered school created by the State legislature subject to regulation by the New Mexico Public Education Department. The School, which opened in 2010, is a performing arts high school, and is currently located at the old Cathedral School on 725 East Alameda. It serves students on a state-wide basis and twenty-five percent of its students commute on the Rail Runner train. It has acquired the Sanbusco Center and hopes to renovate it for school use and move in for the fall of 2017. Since the Sanbusco Center is in the BCD District and within 200 feet of residentially zoned properties, the City's "Table of Permitted Uses" requires the School to obtain a special use permit. A public hearing before the Board of Adjustment was held on February 2, 2016. (Meeting Packet attached as **Exhibit B**). The Board voted unanimously to approve the special permit. (Minutes attached as **Exhibit C**). The Board approved the Findings of Fact on March 1, 2016 (Findings attached as **Exhibit D**).

Basis of the Appeal

The Appellant cites the following specific bases for appeal:

Special Use Permit for Sanbusco Center—

- a. Issuance of the permit will adversely affect the public interest because:
 - 1) The School harms the local economy;
 - 2) The School harms public safety because its location is too close to businesses that sell alcohol;
 - 3) The School harms public safety because its location raises too many issues involving student safety.
- b. The School is incompatible with existing structures and uses because:
 - 1) The School is incompatible with the remaining businesses;
 - 2) The School creates parking issues;
 - 3) The School is incompatible with the historic preservation of Sanbusco Center.

Discussion

Code §14-3.17(A)(2) provides that an appeal can only be filed if: (1) the final action appealed from does not comply with Code Chapter 14 or §§3-21-1 through 3-21-14 NMSA¹ (the Statute);

¹ Section 3-21-8 B. NMSA 1978 provides in pertinent part: "Any aggrieved person...affected by a decision of an administrative...commission or committee in the enforcement of Sections 3-21-1 through 3-21-14 NMSA 1978 or ordinance, resolution, rule or regulation adopted pursuant to these sections may appeal to the zoning authority. ..."

(2) Code Chapter 14 has not been applied properly; or (3) the decision appealed from is not supported by substantial evidence.

General Claims. There are three legal elements to a special use permit. Code Section 14-3.6(D)(1)(a) requires that a board/commission must have authority to issue a special use permit. There is no dispute that the Board has authority to issue a special use permit. Code Section 14-3.6(D)(1)(b) requires the Board to make a finding that “granting the special use permit does not adversely affect the public interest.” Code Section 14-3.6(D)(1)(c) requires the Board to make a finding that “the use and associated buildings are compatible with ... uses of the abutting property and other properties in the vicinity of the premises under consideration.”

With respect to Appellant general claims, the Board properly applied Chapter 14 and relied on substantial evidence in the record establishing that the issuance of the permit will not adversely affect the public interest and is compatible with existing structures and uses.

Claim A1. The issuance of the permit will adversely affect the public interest because the School harms the local economy.

Appellant argued in her Petition that the School's move will have a negative impact on the economic base of Santa Fe. Dr. Kelly O'Donnell, the School's economic consultant, provided a written economic analysis report. (Attached as part of **Exhibit B**). She concluded the impact would be a net positive. Dr. O'Donnell stated: “in this instance we will be supporting 120-140 jobs on an on-going basis, doubling that number during the construction period, and produce, in the short term, GRTs and City and State fees of roughly \$1 million, and ongoing revenue to City government of about \$150,000 annually after the expansion and construction is complete.” Board Meeting Minutes, p. 6 (Feb. 2, 2016).

Appellant argued that Dr. O'Donnell's report was not substantial evidence to demonstrate the impact on the economic base of Santa Fe. The term “substantial evidence” means “relevant evidence that a reasonable mind could accept as adequate to support a conclusion.” Sims v. Sims, 1996-NMSC-098, ¶ 65, 122 N.M. 618, 930 P.2d 153. Substantial evidence is not a “beyond a reasonable doubt” evidential standard; it only has to be evidence of some weight and reasonableness. Dr. O'Donnell's report is ten pages long, filled with tables on fiscal impacts, ten year projections and gross receipt tax data. It even included a table on the School's sources of revenue. Dr. O'Donnell's report constitutes “relevant evidence that a reasonable mind could accept as adequate to support a conclusion.” Mr. Fabian Trujillo, City Economic Development staff, concurred with the analytical numbers in her report.² (Attached as part of **Exhibit B**).

Nevertheless, Appellant has asserted that the School's use of Sanbusco Center “discourages business...has destroyed thriving businesses in the Sanbusco Center.” The business occupancy rate at Sanbusco Center, however, at time of the sale was 60 percent. Board Meeting Minutes, p. 8 (Feb. 2, 2016). Dr. O'Donnell told the Board: “If the retail establishments that are currently

² The City Code does not require City staff to hire its own independent company to conduct an analysis of an applicant's numbers.

located at Sanbusco were going away there would be a net negative impact, I think. But as I understand it, the ones that are leaving are relocating to DeVargas and other sites throughout the City with vacancies. As such, the value of those properties should go up somewhat and there were will be offset there." Board Meeting Minutes, p. 8 (Feb. 2, 2016). Dr. O'Donnell stated: "You have to acknowledge the fact that this is a non-profit use and non-profits are exempt from property tax. So that will be property tax that is no longer collected on this property. However, again to some extent, that will be offset by increased property values elsewhere in the City." Board Meeting Minutes, p. 8 (Feb. 2, 2016).

The owner of "Rock, Paper, Scissors" told the Board that they had been at the Sanbusco Center for over fourteen years. Board Meeting Minutes, p. 15 (Feb. 2, 2016). She said her daughter attends the School, but that her business, and others, were moving to other city locations. She said "they are expanding their staff, and this will be a blessing in disguise." Board Meeting Minutes, p. 15 (Feb. 2, 2016). She said "the School is the absolute best use for the land." Board Meeting Minutes, p. 15 (Feb. 2, 2016).

Therefore, the issuance of the permit will not adversely affect the public interest because there was evidence that the School will bolster, not harm, the local economy. There was also testimony that businesses have been able to successfully relocate to other locations.

Claim A2. The issuance of the permit will adversely affect the public interest because the School harms public safety because its location is too close to existing businesses that sell alcohol.

Appellant wrote in her Petition: "Licenses to sell alcohol at three restaurants...[is] in violation of state law 15 NMAC 10.3.2." Appellant's theory is that state law bans businesses with alcohol licenses from operating within 300 feet of a school; thus either the businesses have to move or the School cannot move in.

New Mexico State Law Section 60-6B-10 reads: "A license may be granted for a proposed licensed premises if the owner or lessee has, prior to the establishment of a church or school located within three hundred feet of the proposed licensed premises, applied for, been granted and maintained a valid building permit for the construction or renovation of the proposed licensed premises...." It is our understanding that several businesses that sell alcohol were established prior to the School acquiring Sanbusco Center. Board of Adjustment member Rachel Winston asked: "if Pranzo's license will be affected by its proximity to the School." Board Meeting Minutes, p. 10, (Feb. 2, 2016). The School's lawyer answered: "Pranzo's has an existing liquor license, so it's an existing license. Its license would be grandfathered...." Board Meeting Minutes, p. 10, (Feb. 2, 2016).

As a point of reference, there is another high school, Tierra Encantada Charter School, which is approximately 900 feet away from Sanbusco Center (and from these businesses that sell alcohol). There was no evidence presented at the Board meeting that these businesses have caused harm to the students at Tierra Encantada Charter School. Dr. O'Donnell told the Board: "I ran the agency that issues liquor license for the State of New Mexico for a number of years...We

granted waivers of the 300 foot rule on an almost daily basis, because just about everything is within 300 feet of a church or school in this State.” Board Meeting Minutes, p. 12, (Feb. 2, 2016).

Therefore, the issuance of the permit will not adversely affect the public interest because the existing businesses are grandfathered in and there was no evidence presented that the licensees and two high schools cannot co-exist in this area.

Claim A3. The issuance of the permit will adversely affect the public interest because the School harms public safety because its location raises too many issues involving student safety.

Appellant asserts in her Petition that the “proposal to occupy the SanBusCo Center as a school may be in violation of state Public Education Department (PED), and federal Department of Education laws for campus safety.” She cites to: (a) lack of green space; (b) lack of campus perimeter fence; (c) presence of businesses serving alcohol; and (d) Rail-Runner safety.

The School’s activities are subject to review by the PED. It would be that agency that would review issues involving student and campus safety. At the time of the hearing, Appellant’s alleged “violations” were speculative and lacked sufficient evidence to justify the placing of any condition on the special use permit.

The Board and Applicant’s representative did have a lengthy discussion about the perimeter walls and balancing them against the public’s ability to travel from Agua Fria to the Railyard Farmer’s Market. Board Meeting Minutes, pp. 9, 20-21 (Feb. 2, 2016). The actual design of the wall did not have to be submitted to the Board since it was a hearing over the use of the property. City staff told the Board: “If there are any walls or fences, again, all the cosmetic attributes that would be developed on this property, [it would] need to go through the Historic [Districts] Review Board, so they will be vetted through another committee with another public hearing that will allow public input at that point.” Board Meeting Minutes, p. 21 (Feb. 2, 2016).

The issuance of the permit will not adversely affect the public interest because the student safety issues will be handled by other boards and agencies (as opposed to the Board of Adjustment).

Therefore, Claims A1 to A3 do not fall within any of the three bases for appeal cited above and should be denied.

Claim B1. The School is not compatible with existing structures and uses because the businesses that are staying are incompatible with the School.

Appellant wrote in her Petition: “Because the merchants possess long-term lease agreements that last 25 years, three restaurants and several stores will stay at the site while the school takes-over the remaining space at SanBusCo Center.” The Petition added: “School students will have to share the site with an expensive selection of retail shops and fine dining restaurants that may be distracting for the student.”

None of the businesses, which are remaining at Sanbusco Center, raised the issue of incompatibility at the Board hearing. Mr. Richard Czoski, Executive Director of the neighboring Santa Fe Railyard Community Corporation, told the Board that "Railyard Board has considered the presence of the School in the area and are in favor of it, think it will be a great use." Board Meeting Minutes, p. 13 (Feb. 2, 2016). He noted there were some details to work out "but by and large are very much in favor of it and think it will be a great addition to the neighborhood and look forward to being good neighbors to them and them being good neighbors to us because we have to coexist." Board Meeting Minutes, p. 13 (Feb. 2, 2016).

The Applicant's representative noted there are "many components making up this district including galleries, Site Santa Fe, Warehouse 21, and 12 galleries, 2 museums, restaurants." Board Meeting Minutes, p. 7 (Feb. 2, 2016). He said: "What would be a better component to anchor the north end of the cultural arts district than a performing arts school. Then what you can begin to envision is the synergy between these uses, galleries, existing tenants and how the students can interact with the entire Railyard economic engine." Board Meeting Minutes, p. 7 (Feb. 2, 2016).

Therefore, there was no evidence presented that the remaining businesses at Sanbusco Center, the adjacent businesses and the School were going to be incompatible in this area.

Claim B2. The School is incompatible with existing structures and uses because the school is taking over needed parking spots.

Appellant asserted in her Petition: "The Railyard, and the entire Guadalupe District rely upon the SanBusCo Center for significant access to parking. This parking may be lost when the school expands enrollment as planned. The loss of parking will significantly curtail access to shopping and diminish patronage of the area."

City Staff told the Board that "there currently are 274 parking spaces. However, they [the School] lost some parking spaces, as the result of the [proposed] 20 foot drive that wraps around the building to accommodate fire apparatus, bringing it to 247 spaces." Board Meeting Minutes, p. 4 (Feb. 2, 2016). City Staff added: "a school has specific category requirements to meet parking requirements, and they fell perfectly within that with the balance of the parking spaces....They are right at Code at 247 spaces." Board Meeting Minutes, p. 4 (Feb. 2, 2016).

The Applicant's representative stated: "In terms of the parking question, what is provided on the site are 247 spaces, and the school requires 200 spaces [at this time] pursuant to the Code. We have provided spaces for the retailers that are staying such as On Your Feet, On Your Little Feet, Pranzo's, all those have been provided on the site and have been designated as such." Board Meeting Minutes, p. 5 (Feb. 2, 2016). He added: "The restaurants to the north side of the site have also been provided with parking." Board Meeting Minutes, p. 5 (Feb. 2, 2016).

The Applicant's representative further stated: "they met with Mr. Czoski at the Railyard, and the concern is that at certain times when you come out of the [City] parking garage when there is

congestion...[drivers] head through the Sanbusco parking lot and exit." Board Meeting Minutes, p. 9 (Feb. 2, 2016). The Applicant's representative stated that the School was fine with this practice continuing in the future.

Therefore, there was no evidence presented that the parking issues and the School are incompatible in this vicinity.

Claim B3. The School is not compatible with existing structures and uses because the School is not compatible with the historic preservation of Sanbusco Center.

Appellant asserts in her Petition that the "public has a right to access the building as a site of history that contains archival documents...to experience the historic site...which has significance within the history of New Mexico and the United States." She added: "While a charter school may not seem to be a large change for the SanBusCo Center, it could cause the building to lose historic status, or to depreciate from interior modifications and/or use, that lowers the value, and/or status of the buildings at SanBusCo Center."

Appellant has mixed together the three jurisdictional levels of historic review of a building: federal, state and city. Any citizen can ask for a property to be placed on the National Register of Historic Places and the New Mexico Registered Cultural Property list. In November 1980, Ms. Cecilia Abeyta (who appears to have been a city employee based on her mailing address) submitted a three page application for the Sanbusco building to be placed on the National and State Register. **See Exhibit E.** In the section titled, "Why Property is Important", she wrote about the owner, C.W. Dudrow, who was a lumber businessman and a Santa Fe City Councilor, County Commissioner, and a candidate for sheriff. Her application was really about the story of the building. In 1981, both the state and federal governments approved the application.

As a result, the Sanbusco Building is on the National Register of Historic Places by the U.S. Department of the Interior. There is a plaque on the outside western wall on Montezuma Avenue. It is on the New Mexico Registered Cultural Property list. There is a plaque on the outside western wall on Montezuma Avenue. The building also has a series of framed photographs with narrative explanations in the interior of the building. The photographs, however, were not part of the application, but were apparently placed there voluntarily by the then-property owner.

What is the impact of these plaques? According to the National Register's webpage, a property on the National Register only gets "honorific recognition" and access to tax credits. **See Exhibit F.** The webpage further states: "From the Federal perspective...a property owner can do whatever they want with their property as long as there are no Federal monies attached to the property." **See Exhibit F.** According to State Rule 4.10.4.8 NMAC: "Before any change greater than ordinary maintenance is made to a registered cultural property, the owner who is interested in maintaining register status should submit a description of the proposed change to the [state] cultural property review committee." **See Exhibit G.**

According to City Historic Code, the analysis on whether a building is "historic" depends on whether it is a contributing or non-contributing structure.³ The City's Historic Board's focus is on the exterior design. The presence of a National and State plaque is a factor, but not the sole factor in making this determination. It is important to note that the Historic Board's focus is not on the use of the property (what matters is the design of the outside; not if it is a school or a shopping center).

What does this all mean? The Federal and State plaques commemorate the story and the people behind the Sanbusco building. The plaques do not confer on the public the right to enter the interior of the building. The plaques do not confer on the public the right to look at photographs that a previous owner voluntarily put up on the interior walls. Even if the City's Historic Board does/has assigned contributing status to a building, it does not mean the public has access to the interior of the property.

The plaques do not even bar the current owner from making exterior alterations (although the current owner would need to go in front of the state committee and City Historic Board).⁴

Therefore, there was no evidence presented that the School is incompatible with the historic preservation of Sanbusco Center. These issues will be handled by other boards and agencies (as opposed to the Board).

Therefore, Claims B1-B3 do not fall within any of the three bases for appeal cited above and should be denied.

Conclusion

Based upon the foregoing, Appellant has not effectively alleged that the approval of the special use permit does not comply with applicable Code or the Statute; that the Code has been improperly applied; or is not supported by substantial evidence. As a result, the Appellant has failed to state a valid basis for appeal under Code §14-3.17(A)(2).

Option #1: The CAO recommends that the Governing Body vote to deny the Appellant's appeal in Case No. 2016-32.

³ Accord to minutes, Mr. David Rasch, City Historic Preservation Division, stated the Sanbusco Building is listed as a contributing structure but the other buildings on the property have not been assigned a status. Meeting Minutes, p. 3 (Feb. 2, 2016). He anticipated the School will ask the City's Historic Board to review the status on all of the buildings (particularly since the Sanbusco Building subsequently added the non-historic "Borders" addition). It is important to note, even if a building is assigned contributing status, a property owner can ask to make exterior alterations, they just need to ask for certain exceptions from the City's Historic Board.

⁴ The same analysis applies to the adjoining Butler & Foley Building (World Market), which is listed as contributing to the Santa Fe National Register Historic District. There is a plaque on the outside western wall on Montezuma Avenue. It is on the New Mexico Registered Cultural Property list because it "contributes to the warehouse portion of the Santa Fe Historic District." There is a plaque on the outside western wall on Montezuma Avenue.

[MOTION: I move that the Board of Adjustment acted in accordance with law and reliance on substantive evidence and move to deny the appeal in Case No. 2016-32.]

Option #2: If, however, the Governing Board concludes that the Board of Adjustment's approval of the special use permit did not meet the criteria of City Code, it should grant the appeal.

[MOTION: I move to grant the appeal in Case No. 2016-32 on grounds the Board of Adjustment did not act in accordance with law and did not rely on substantive evidence and the City Council shall deny the issuance of the special use permit and to direct staff to prepare for the Governing Body's approval findings of fact and conclusions of law reflecting this decision].



LUD Use Only

Time Filed: 1:46 PM
 Fee paid: \$ 100.00
 Receipt attached:

(date stamp)

RECEIVED

MAR 9 2016

Land Use Dept.

Case# 2016-32
VERIFIED APPEAL
PETITION

****Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.****

Appellant Information

Name: Munroe Nicoletta L.
Last First M.I.

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Santa Fe NM 87501
City State ZIP Code

Phone: (505) 984.1693 E-mail Address: nicolettamunroe@gmail.com

Additional Appellant Names: _____

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____
 authorize _____ to act as my/our agent to execute this application.
 Signed: _____ Date: _____
 Signed: _____ Date: _____

Subject of Appeal

Project Name: Sanbusco 2016, New Mexico School for the Arts

Applicant or Owner Name: New Mexico School for the Arts

Location of Subject Site: 500 and 560 Montezuma Santa Fe, NM 87501

Case Number: 2015 - 121 Permit Number (if applicable): _____

Final Action Appealed:

Issuance of Building Permit Other Final Determination of LUD Director

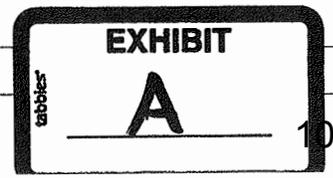
Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001):
Appellant is a resident in the Historic District, is a member of the neighborhood association.

Basis for Appeal: The facts were incorrectly determined Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken:
City failed to provide evidence; City failed to collect sufficient evidence from the Applicant.

Check here if you have attached a copy of the final action that is being appealed.



March 9, 2016

APPEAL ON ISSUANCE OF A SPECIAL USE PERMIT FROM CITY OF SANTA FE BOARD OF ADJUSTMENT TO THE NEW MEXICO SCHOOL FOR THE ARTS CHARTER SCHOOL AT SANBUSCO CENTER

CASE # 2015-121

APPEAL: The facts were incorrectly determined by the City, and the Special Use Permit violates laws within the City of Santa Fe Code, Chapter 14, Land Use; and the Special Use Permit violates State of New Mexico Administrative Code 15 NMAC 10.3.2, concerning alcohol sales near a school.

Standing Required to Appeal is based from 14-3.17 (B)(3) wherein Appellant, Nicoletta Munroe, has standing given that at the time the decision appealed was rendered Appellant was organized through her own research on the issue, and from her neighborhood association. Appellant cites the significant loss of cultural value within the Historic District including the economic impact of SanBusCo Center being altered from merchant center to a shared school/merchant building.

1.) EVIDENCE PRESENTED AT THE BOARD OF ADJUSTMENT HEARING ON FEBRUARY 2, 2016 IS INCOMPLETE, AND IS NOT SUFFICIENT TO GRANT A SPECIAL USE PERMIT

This appeal is rendered under Section 14-3.17 (2)(c), that allows an Appellant “to appeal a decision lacking substantial evidence to support it.”

A. The evidence used by the City to formulate an Economic Development Impact Analysis does not include a basis of comparison to show GRT, Gross Receipts Taxes, from SanBusCo Center in recent years, as compared to the projected economic cycle from the New Mexico School for the Arts (Applicant) at SanBusCo Center when it becomes a school building. Therefore, the economic impact report from the City is incomplete, and further, the economic impact report from the City as written misleads the public. The Economic Development Impact Analysis is based on information provided by the Applicant only, and has no independent verifiable comparison. The Economic Development Impact Report is also based upon a 2013 BBER report provided to the City that is also based on information provided by the Applicant. The BBER report also misleads the public. See Exhibit B8.

B. The economic impact report from the City uses speculative financial information provided by the Applicant in the Applicant’s application for the Special Use Permit. The financial projections from Applicant, upon which the City’s economic impact report was written, is not proven financial information. To date there is no Letter of Credit from the New Mexico School for the Arts that proves it has financial holdings claimed in sworn testimony on February 2nd, 2016, at the Board of Adjustment hearing, wherein the school testified under oath that it possesses \$10 million dollars to begin construction at SanBusCo Center. During the hearing on February 2, 2016, the Board asked the question “Are finances secure?”. This question addressed the financial claims from the Applicant

given in the submitted proposal from the New Mexico School for the Arts charter school (Applicant). At the hearing on February 2, 2016, a representative from the school claimed, in sworn testimony, that the school's LLC has \$10 million dollars in holdings (not assets of real property) to begin construction. That fact was used by the Board of Adjustment to vote affirmatively to grant the Special Use Permit. That fact has not been corroborated with a Letter of Credit from the New Mexico School for the Arts. See minutes of the Board of Adjustment hearing February 2, 2016, held at 6 P.M. at City Hall. Minutes are located on the City of Santa Fe website within the March 2, 2016, Board of Adjustment packet.

See Exhibit 1: minutes of the Board of Adjustment hearing February 2, 2016.

On page 8, of Board of Adjustment Committee minutes from February 2, 2016, a Board member asks, of the New Mexico School for the Arts, "Are finances secure?"

On page 8, of Board of Adjustment Committee minutes from February 2, 2016, the New Mexico School for the Arts director answers the question, and states that the school's LLC has approximately \$10 million in pledges and gifts.

On page 23, of Board of Adjustment Committee minutes from February 2, 2016, a Board member states that "They have \$10 million committed... This has been on the table for a year." This is a fact that contributed to the Board's decision to vote affirmative for the Special Use Permit.

2.) ALCOHOL SALES ON CAMPUS CREATE A SAFETY PROBLEM

State of New Mexico law regarding alcohol sales states that a school may not be within 300 feet of an establishment that sells alcohol beverages. Because three restaurants that each possess beverage licenses will remain as tenants on the property where the New Mexico School for the Arts charter school will house its school, alcohol will be served on campus. Licenses to sell alcohol at three restaurants on the property effectively renders the New Mexico School for the Arts charter school, a school that is located within 300 feet of three beverage licenses, in violation of state law 15 NMAC 10.3.2.

3.) CHAPTER 14 HARMONY

City of Santa Fe Code Section 14-3.6 (B) states that the Board has the authority to grant a permit if the project is in harmony with Chapter 14, or to deny an application if said application is "not in harmony with the intent and purpose of Chapter 14."

The project proposed to the City by the New Mexico School for the Arts violates several provisions within Chapter 14, including, in Section 14-3.1 (f) titled 'Impact on Economic Base of Santa Fe', the code specifically requires that an application submitted at an ENN, Early Neighborhood Notification meeting, consider a project's effects on the community. The code states that when analyzing a project's merits, an applicant and the City, and the community, should consider the following:

Section 14-3.1 (f)

(ii) how the project promotes and encourages businesses consistent with the city's economic development plan and compatible with neighborhood livability

(iii) market impacts on local businesses and potential displacement of local property and business owners

(iv) how the project supports economic development efforts to improve living standards of neighborhoods and their businesses

The New Mexico School for the Arts' proposal to occupy the SanBusCo Center is not in harmony with the goals of Chapter 14 stated in the City of Santa Fe code. The project discourages businesses, and the project displaces businesses. The project does not support economic development, and instead has destroyed thriving businesses in the SanBusCo Center.

4.) PUBLIC INTEREST

Section 14-3.6 (D)(1)(b) of City of Santa Fe Code specifies that the Board grant a permit only if issuance "does not adversely affect the public interest." This project adversely affects the public interest on several levels.

1. There is significant economic damage to the Railyard, and to the BCD, Business Capital District, from the loss of SanBusCo Center as a primary commercial center, open to the public seven days a week, year round.

2. Further, the closing of the main building at SanBusCo Center excludes the public from accessing an historic building that was originally a merchant center Santa Fe Builders' Supply built in 1881. The site was renovated in the 1980s as a retail center, SanBusCo Center, at which time it was given status on the National Register of Historic Places.

Excluding the public from the interior of the main building at SanBusCo Center prevents the public from viewing the archival photographs inside the building that describe a history of the founding of Santa Fe from 1881. The public has a right to access the building as a site of history that contains archival documents that describe that history. The public also has the right to access the interior of the building to experience the historic site, SanBusCo Center, which has significance within the history of New Mexico, and the United States.

5.) COMPATIBILITY

Section 14-3.6 (D)(1)(c), specifies that a Special Use Permit be granted if a project is "compatible with, and adaptable to", adjacent properties and other properties in the area. The fact that the transformation of the SanBusCo Center from a merchant center to a school building will happen only if the site is shared between a charter school and the

merchants remaining at the site, shows that the project is not compatible with the adjacent properties on site. Because the merchants possess long-term lease agreements that last 25 years, three restaurants and several stores will stay at the site while the school takes-over the remaining space at SanBusCo Center. School students will have to share the site with an expensive selection of retail shops and fine dining restaurants that may be distracting for the student. Further, alcohol sales on campus will pose a safety issue.

Additionally, a school will impact the economic vitality in the area. Specifically, the school may prevent businesses to thrive in the area because of lost merchant activity at SanBusCo Center. The Railyard adjacent receives traffic from the SanBusCo Center patronage. The entire Guadalupe District relies upon the SanBusCo Center to bring people to the area for shopping. The loss of the anchor building, SanBusCo Center, the interior of which was a thriving shopping mall, will create loss of economic activity in the BCD area. Negative economic effects are already being seen in the BCD district, where in recent months the community has lost the Swiss Bakery, and the Zia Diner.

6.) PARKING

The Railyard, and the entire Guadalupe District rely upon the SanBusCo Center for significant access to parking. This parking may be lost when the school expands enrollment as planned. The loss of parking will significantly curtail access to shopping and diminish patronage of the area.

7.) PROPERTY TAX LOSS

The New Mexico School for the Arts is a non-profit organization that will not be paying the full property taxes formerly levied at the SanBusCo Center. The school will pay property taxes only on the rented space occupied by the 25-year lease tenants. This will be a significant semi-annual revenue loss for the City of Santa Fe.

8.) PRESERVATION OF THE HISTORIC DISTRICT: CONDITIONS OF THE SPECIAL USE PERMIT

The transformation in the area, that will occur, and that is already occurring with the presence of the New Mexico School for the Arts, will impact the image of the Historic District, and the historic value of the Historic District which has its status from being an area in the City of Santa Fe that has a significant amount of cultural property that is designated with historic status. While a charter school may not seem to be a large change for the SanBusCo Center, it could cause the building to lose historic status, or to depreciate from interior modifications and/or use, that lowers the value, and/or status of the buildings at SanBusCo Center.

Conditions in the Board of Adjustment Special Use Permit herein, (see Exhibit A, Condition 3, and Condition 5), specify that the school present a plan for sidewalk safety, and that the school create a plan for modifications of the parking lot to have a low wall

built to separate the parking and the sidewalk area. These modifications could conflict with the original, now preserved, façade of the SanBusCo Center.

The City of Santa Fe Historic District Review Board, HDRB, will review any plans for exterior changes. However, the Historic District Review Board is not obligated to oversee changes within the interior of SanBusCo Center if the school raises funds, and chooses to alter the inside of the building. The SanBusCo Center is a site registered with the National Register of Historic Places, and the State of New Mexico Historic Preservation Office. The site may be a landmark, protected by the Department of the Interior, however, City of Santa Fe code does not specify that a site be protected from abuse or misuse from neglect or lack of maintenance inside, or on the site. There are no protections for this cultural landmark aside from the façade exterior protections held within the jurisdiction of the HDRB. This fact creates a preservation loophole that leaves the site vulnerable to alterations inside and outside that do not fall within the HDRB's jurisdiction. The site is valuable as an historic site, and it is vulnerable without protections from the HDRB. Further, its value may be diminished, tarnished or altered when it shares space between merchants and a school.

9.) LIABILITY

The New Mexico School for the Arts charter school must follow Public Education Department (PED) regulations, and Public Education Commission (PEC) regulations concerning charter schools in New Mexico. The proposal to occupy the SanBusCo Center as a school may be in violation of state Public Education Department (PED), and federal Department of Education laws for campus safety. For example,

- 1.) The campus at SanBusCo has no green space. Instead the school wants an 'open campus' atmosphere that utilizes the Railyard and the neighborhood as an extension of the campus.
- 2.) The campus has no fence perimeter to protect students during school hours, or at night, when the school has dormitory students living at the campus. Additionally, at the February 2, 2016, Board of Adjustment hearing it was stated that the campus needs security (page 9 in the Board of Adjustment Committee minutes, from February 2, 2016). The fire marshal has stated that no fence is possible at the site in order to stay within the fire code. It should be noted that there are 5 ingress/egresses at the site.
- 3.) There is alcohol served during lunch and dinner at three restaurants on campus, and at one restaurant adjacent to campus near the dormitory.
- 4.) The Rail Runner being next-to the campus could pose a safety threat being a modus of transport that could allow students to leave town unbeknownst to the staff at school.

Conclusion: The state Legislature originally approved a charter for the New Mexico School for the Arts, however the Legislature has never funded the performing arts curriculum at the school. The State of New Mexico funds the charter school's academic curriculum only.

Further, the New Mexico School for the Arts currently has a campus at the Cathedral School building at 275 E. Alameda in Santa Fe, and has no compelling reason to insist upon moving into a new campus at SanBusCo Center. Further, the request herein, for a Special Use Permit, to allow the school to occupy an historic landmark building, regardless of ownership, completely disregards the public interest on an economic basis, and on the basis of treatment of an historic landmark building that formerly was open to the public.

The historicity, and the historic value of SanBusCo Center as a cultural landmark has thus far not been considered in this case. The buildings at SanBusCo Center are registered with the National Register of Historic Places. The building at 500 Montezuma was originally built in 1881, is a contributing building, registered with the City of Santa Fe Historic District Review Board, and is a national landmark recognized by the United States Department of the Interior. The State Historic Preservation Office is not recognizing the historic value of the site, or the imperative to keep the site open for the public to view historic documents inside the building.

There is significant liability for the State of New Mexico, and for the City of Santa Fe, if a school is allowed to exist at a site that has four establishments within 300 feet of the campus that serve alcohol, including an on-campus restaurant that possesses a full beverage license. The liability alone is a significant risk to the State of New Mexico and to the City of Santa Fe, and is compelling evidence to disallow a Special Use Permit for the New Mexico School for the Arts.



Agenda

CITY CLERK'S OFFICE

DATE 1-13-16 TIME 3:15

SERVED BY [Signature]

RECEIVED BY [Signature]

BOARD OF ADJUSTMENT
Tuesday, February 2, 2016 at 6:00 P.M.
200 Lincoln Ave. Santa Fe NM
City Council Chambers

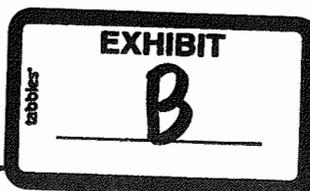
- A. ROLL CALL**
- B. PLEDGE OF ALLEGIANCE**
- C. APPROVAL OF AGENDA**
- D. APPROVAL OF MINUTES: Minutes of December 17, 2015**
- E. FINDINGS/CONCLUSIONS: Case #2015-114. 233 Canyon Road Special Use Permit**
- F. NEW BUSINESS**

- 1. **Case #2015-121.** 500 Montezuma St. Special Use Permit. Santa Fe Planning Group, Inc., agent for Sanbusco 2015, LLC, and the New Mexico School for the Arts Institute requests a Special use Permit for a school use on 5.11+ acres. The property is zoned BCDRED (Business Capital District Redevelopment Subdistrict District - Community Commercial) and located within the Westside-Guadalupe Historic Review District and Historic Downtown Archeological Review District. (Dan Esquibel, Case Manager)

- G. STAFF COMMUNICATIONS**
- H. MATTERS FROM THE COMMISSION**
- I. ADJOURNMENT**

NOTES:

New Mexico law requires the following administrative procedures be followed by zoning boards conducting "quasi-judicial" hearings. In "quasi-judicial" hearing before zoning boards, all witnesses must be sworn in, under oath, prior to testimony and will be subject to cross-examination. Witnesses have the right to have an attorney present at the hearing. The zoning board will, in its discretion, grant or deny requests to postpone hearings. Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6520, five (5) working days prior to meeting date.



**SUMMARY INDEX
BOARD OF ADJUSTMENT MEETING
Thursday, December 17, 2015**

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER AND ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	1
APPROVAL OF MINUTES – AUGUST 4, 2015	Approved	2
FINDINGS/CONCLUSIONS	None	2
<u>NEW BUSINESS</u>		
<u>CASE #2015-114, 233 CANYON ROAD SPECIAL USE PERMIT. RITA AND MICHAEL LINDER, REQUEST SPECIAL USE PERMIT APPROVAL TO EXPAND A RESTAURANT USE. THE PROPERTY IS ZONED RC8AC</u>	Approved w/staff condition	2-4
STAFF COMMUNICATIONS	Information/discussion	4
MATTERS FROM THE BOARD	Information	5
ADJOURNMENT		5

**MINUTES OF THE
CITY OF SANTA FE
BOARD OF ADJUSTMENT
City Councilor Chambers
200 Lincoln Avenue
December 17, 2015**

A. CALL TO ORDER

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:00 p.m., on Thursday, December 17, 2015, in the City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

B. ROLL CALL

Members Present

Gary Friedman, Chair
Rachel L. Winston, Vice-Chair
Patricia Hawkins
Douglas Maahs
Daniel H. Werwath

Members Excused

Colleen Dearing
Donna Reynolds

Others Present

Dan Esquibel, Staff
Zachary Shandler, Assistant City Attorney
Melessia Helberg, Stenographer

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

MOTION: Daniel Werwath moved, seconded by Douglas Maahs, to approve the Agenda, as presented.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES – AUGUST 4, 2015

MOTION: Patricia Hawkins moved, seconded by Daniel Werwath, to approve the minutes of the meeting of August 4, 2015, as presented.

VOTE: The motion was approved unanimously on a voice vote.

E. FINDINGS/CONCLUSIONS: NONE.

There were no Findings/Conclusions.

F. NEW BUSINESS

1. **CASE #2015-114. 233 CANYON ROAD SPECIAL USE PERMIT. RITA AND MICHAEL LINDER, REQUEST SPECIAL USE PERMIT APPROVAL TO EXPAND A RESTAURANT USE. THE PROPERTY IS ZONED RC8AC. (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum dated December 9, 2015 for the December 17, 2015 Meeting, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, in this matter, is incorporated herewith to these minutes as Exhibit "1."

Dan Esquibel, Case Manager, presented information regarding this case. Please see Exhibit "1," for specifics of this presentation.

Public Hearing

Presentation by the Applicant

All those speaking were sworn en masse

Cindy Barreras, 92 Old Galisteo Lane, employee of Caffé Greco, 233 Canyon Road, representing the Applicants [previously sworn]. Ms. Barreras said she would request approval of the proposed Special Use Permit. She said they are a traditional, authentic restaurant which has very affordable prices and they have gotten inquiries and good feedback from all the gallery owners on Canyon Road, noting 80% of the owners walk to their restaurant for lunch. She said they also deliver lunch when they can't walk to the Caffé. They currently have 8 employees, and will add 8-10 employees with the expansion. She said it is a wonderful restaurant in a quiet, old school building, with a friendly atmosphere, commenting they love the place and give everybody really good food

Maurice Bonal, 60 East San Francisco Street [previously sworn], said he sat on the City Council 1978-1982. He said he was on the Council when they adopted the REC-8 overlay, noting this used to be RM-1, but they could have 20 units per acre with an Arts & Crafts Overlay, which the Council felt was way too big. He said the residents of the area convinced the Council to make it a Residential Arts & Crafts Compound with an overlay. Mr. Bonal said he is here because he is an expert on liquor licenses, and spoke about his involvement in obtaining licenses for various business on Canyon Road including El Farol, The Cities of Spain, and Celebrations which formerly was Vigil's Grocery. He said this particular request is a good fit with what is intended in the neighborhood. He asked that the Board of Adjustment please approve this request.

Mr. Werwath asked how much of the proposed expansion is being dedicated to the seating area, and asked if any of it being dedicated to the expansion of the kitchen facilities or other things.

Mr. Barreras said currently the restaurant seats 28 people, and in the winter months they run out of seating. The expansion will seat 39-40 people.

Mr. Werwath said then the expansion primarily is being used for seating.

Ms. Barreras said yes.

Speaking to the Request

All those speaking were sworn en masse

Ben Martinez, 324½ Read, Gallery Manager at 222 Delgado, [previously sworn], said the corner was dead until the Linders came in with this restaurant. He said he agrees with this request, commenting that it is a nice place to eat, a lot of City and State employees eat there and they have really good green chile stew.

Jeannie Olson, 1428 Calle [inaudible] [previously sworn] said she regularly eats at the restaurant, which is a lovely place with fantastic food, and in the summer it is wonderful to eat outside. She said she is in support of the expansion saying it does a lot for the local people.

Barbara Belle Lamont, 1571 Luisa, [previously sworn], said she spoke in 2012 on behalf of the owners to get another permit for their business for a kitchen, and she is here to speak in the same capacity. She said the Linders have maintained a very very positive membership in the business community in Santa Fe from the earliest times, first on the plaza, and then moving onto Canyon Road. She said she knew the corner on Canyon Road, noting she grew up in Santa Fe for the first 21 years of her life. She said as Mr. Bonal knows, her family has been merchants in Santa Fe since the early 1900's, so she knows the area very well. She said the Linders' entrance into that part of the community has been a boon and has brought a number of very positive things to the community. She said the Linders continue to participate in any activity in which they are asked to participate, to support Santa Fe activities, and said

they never turn down an opportunity to boast about their membership in the Santa Fe Chamber of Commerce and many other activities. She said the petition to allow the expansion into what was formerly part of the jewelry business is sound, and doesn't pose any harm or danger to the community. She said, if anything, it opens the opportunity for more people to visit there, for events to happen, and if you are having a party you can ask to use that space. She said the Caffé Greco is well placed to greet people as they come into our community. She said the little bus that runs up Canyon Road comes right by the restaurant. She said, "I think they are a benefit to the Canyon Road community and to Santa Fe as a whole. Thank you."

Barbara Canfield, 301½ Garcia [previously sworn], said, "I am here to defend... Garcia is a beautiful street, and it's a very very lovely street. If two cars park on opposite sides of the road, right and left, there's barely enough room for one car to go between them, so people wait. I didn't realize.... they were just getting crowded and I didn't understand it. It is a lovely café, but I don't appreciate people 'parking for lunch through there.' When people come to my house to visit me, I expect them to have room to park, and I think most of the people on Garcia Street so as well. I'm opposed. It's a beautiful restaurant, it's got great food, I can attest to that, but it doesn't need to be in that place. And we certainly do not need people coming over and parking and going to eat there. That's all I have to say."

The Public Testimony Portion of the Public Hearing was Closed

MOTION: Daniel Werwath moved, seconded by Douglas Maahs, regarding Case #2015-114, Canyon Road Special Use Permit, to approve the request to expand a Restaurant Use at 233 Canyon Road, granting the Special Use Permit, incorporating the Staff Finding of Fact and Conclusions of Law, and the approval is subject to the following condition of approval: *Parking on the property shall not be restricted to any business and shall be open to all patrons for any business on the property.*

VOTE: The motion was approved unanimously on a voice vote.

Chair Friedman advised that anyone with any questions about this decision should refer them to Dan Esquibel, Current Planning Division.

Ms. Barreras invited the Board and everyone in attendance to come to their restaurant and try the food.

G. STAFF COMMUNICATIONS

Mr. Esquibel wished everyone a safe and Happy Holiday, and a safe and Happy New Year's.

Mr. Esquibel said there is an interesting case coming before this Board in early 2016, which will be a request to bring the School for the Arts to Sanbusco's. He said there may be more cases that might be coming forward at the same time.

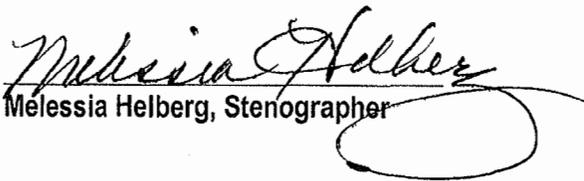
H. MATTERS FROM THE BOARD

Chair Friedman wished everyone a Happy Holiday, to be safe, stay warm, and said, "I hope 2016 is a wonderful year for everybody."

I. ADJOURNMENT

There was no further business to come before the Board, and the meeting was adjourned at approximately 6:30 p.m.

Gary Friedman, Chair


Melessia Helberg, Stenographer

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case # 2015-114—233 Canyon Road Special Use Permit
Owner/Applicant's Name—Rita and Michael Linder

THIS MATTER came before the Board of Adjustment (Board) for hearing on December 17, 2015 (Hearing) upon the application (Application) of Rita and Michael Linder (Applicant). The Applicant seeks a special use permit to convert an existing retail use at 233 Canyon Road Suite A and consolidate it with an existing restaurant use at 233 Canyon Road Suite B (Property). The Property is zoned RC-8-AC (Residential Arts & Crafts).

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant. Six members of the public interested in the matter spoke at the hearing.
2. Pursuant to Code Section 14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code Sections 14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code Section 14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. The Property is located in an RC-8-AC district.
5. Pursuant to Code Section 14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", "restaurant" is a permitted use in an RC-8-AC district with a special use permit.
6. Approval of a special use permit is required for all restaurant use in the RC-8-AC zone.
7. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:
 - (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].

8. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
 - (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
 - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
 - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
9. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
10. An ENN meeting was held on November 19, 2015 at Santa Fe Main Branch Library.
11. The ENN meeting was attended by the Applicant, City staff, and approximately fourteen other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).
12. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
 - (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)]. *The change in the legal nonconforming use at 233 Canyon Road Suite A and converting it to a restaurant use is allowed subject to the Special Permit process.*
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]. *Granting the special use permit for the Project will not adversely affect the public interest because with the recommended conditions, the proposed Special Use Permit application complies with minimum standards of Chapter 14 SFCC.*
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)]. *The change from retail to restaurant use is a compatible use for the Canyon Road area, especially considering this is a consolidation with an existing restaurant. Parking for the property is currently legally nonconforming. There is no change in nonconformity with the replacement of the retail use to the restaurant use because the parking standards for both uses are identical.*
13. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
14. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
15. Board staff provided the Board with a report dated December 9, 2015 (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions set out in the Staff Report (the Conditions).
16. Code Section 14-3.6(D)(2) includes among the conditions of approval that the Board may specify for a special use permit the provision for and arrangement of parking and vehicular and pedestrian circulation.
17. The parking on the property shall not be restricted to any business and shall be open to all patrons for any business on the property.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

WHEREFORE, IT IS ORDERED ON THE ____ DAY OF _____, 2016 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the special use permit is approved as applied for, subject to the Conditions presented in Staff's report.
2. Parking on the property shall not be restricted to any business and shall be open to all patrons for any business on the property.
3. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of three hundred and sixty five (365) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

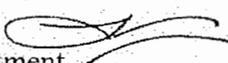
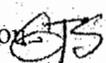
Date:

City of Santa Fe, New Mexico

memo

DATE: January 21, 2016 for the February 02, 2016 Board of Adjustment Meeting

TO: Board of Adjustment

VIA: Lisa D. Martinez, Director, Land Use Department 
Greg Smith, Division Director, Current Planning Division 

FROM: Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division 

500 MONTEZUMA ST. SPECIAL USE PERMIT

Case #2015-121. 500 Montezuma St. Special Use Permit. Santa Fe Planning Group, Inc., agent for Sanbusco 2015, LLC, and the New Mexico School for the Arts Institute requests a Special use Permit for a school use on 5.2+ acres. The property is zoned BCDRED and BCDSAN (Business Capital District Redevelopment & Sandoval/Montezuma Subdistricts - Community Commercial) and located within the Westside-Guadalupe Historic Review District and Historic Downtown Archeological Review District. (Dan Esquibel, Case Manager)

RECOMMENDATION:

Staff recommends **APPROVAL** of Case #2015-121 500 Montezuma St. Special Use Permit, subject to conditions identified in Exhibit A.

I. EXECUTIVE SUMMARY

The New Mexico School for the Arts (NMSA) is requesting a special use permit to relocate from their current location at 275 Alameda Street to 500 Montezuma Street. The new site is located on the west side of Montezuma Street, adjacent to and north of the Santa Fe Railyard and Outside Magazine, and is currently the location of the Sanbusco Market Center. The project site includes two commercial buildings, a large carport and supporting parking on the west side of Montezuma Street and a parking lot located on the east side of Montezuma Street. Most of the commercial uses on the school site are in the process of relocating, but one restaurant and 6,000 square feet of retail space will remain on the project site. The school owns a third parcel located north of the project site, with frontage on Agua Fria Street. The restaurant and office tenants on that lot are not being relocated, and are included in the offsite parking calculations for this application.

NMSA is a secondary charter school that focuses on performing arts, with an anticipated enrollment of 300 students. The campus would include a 10,000 square-foot performance space (seating capacity not yet determined), and dormitory facilities for 25 students. The number of parking spaces provided complies with the minimum required by code, although most of the existing spaces and access aisles are nonconforming with regard to minimum dimensions.

The special use permit review process is intended to ensure that the new use will be compatible with other nearby existing and likely future uses. Within the Business Capital District (BCD), a public or private school is a permitted use in most locations. Chapter 14-6-1-1 requires a special use permit to locate a public or private school use within 200 feet of residentially-zoned property. The project site is within 200 feet of approximately eighteen R-21 parcels on both sides of Agua Fria, including several that abut the north edge of the school parcel.

External building modifications will be reviewed by the Historic Districts Review Board. No other public review steps are anticipated.

II. SITE REVIEW

a. Existing Conditions

The site for the school is comprised of two lots (.98± acres and 4.3± acres) totaling 5.2± acres. The .98 acre lot on the east side of Montezuma Street is utilized exclusively for parking, and the 4.3 acre lot on the west side of Montezuma contains two commercial buildings, a large carport and supporting parking (Market Center and Pranzo's Restaurant). The larger of the two commercial buildings is identified as the Sanbusco Market Center and the smaller of the two buildings is the current location for Cost Plus World Market.

A third lot is also owned by the school: a .46± acre lot adjacent to and north of the Market Center internal parking area identified as 544 and 548 Agua Fria Street (*restaurant lot*). This property provides access to Agua Fria Street from within the Market Center's internal parking area and is the location of two restaurants, Raga's and the Radish & Rye, plus an office building. Some of the parking spaces for the restaurant lot are located on the Market Center lot, and others are accessed from within the internal Market Center parking area and straddle both properties. Parking details are addressed in paragraph II.f.

b. Adjoining Properties

Table 1: Adjoining zoning and uses

Direction	Zoning	Use
North	R-21 (Residential - 21 dwelling units per acre)	Residential
Northwest and West	BCDWES (Business Capital District Westside Subdistrict District - Community Commercial)	Residential and Community Commercial
Northeast	C-1 (General Office) and BCDSAN (Business Capital District Sandoval/Montezuma Subdistrict District - Community Commercial)	Community Commercial
East and South	BCDRED (Business Capital District Redevelopment Subdistrict District - Community Commercial)	Community Commercial

c. Existing uses

The Cost Plus World Market and various smaller retail and service businesses are currently located in buildings on the project site. Most current tenants are in the process of relocating, many to the DeVargas Shopping Center. The Market Center building was the former location of the Borders Book Store. The Borders space has remained vacant since the closing of Borders Book Store.

The following businesses will remain on the project site and the restaurant lot, along with the NMSA, if the special use permit is granted:

- On Your Feet/On Your Little Feet
- Pranzo Italian Grill
- Raaga – Fine Indian Dinning
- Radish and Rye Restaurant
- Restaurant lot office tenants

d. Utilities and Environmental Service

Wet and dry utilities exist on site and a trash compactor is located on the north side of the Sanbusco building. No objections were received from City Water, Sewer or Environmental Services Departments. See additional comments in Exhibits B1, B2, and B3

e. Access and Traffic

There are five points of ingress/egress that serve the main project site: one off Montezuma Street, two off Market Street, one at the southwest corner of the parking area providing ingress/egress to the Santa Fe Railyard and one at the northwest portion of the parking area connecting to Agua Fria Street. A sixth driveway serves the parking lot on the east side of Montezuma Stree.

No objections were received from City Traffic Engineering, which has reviewed and approved a traffic impact analysis report that includes evaluation of queuing for student drop-off and pickup times. Comments specify that *"drop-off/pickup of students will not significantly impact traffic on the surrounding public streets"*. The applicant is required to *"provide a Pedestrian Safety Improvement Plan for the vicinity of the proposed school"*. Refer to Exhibit B4 for Traffic Engineering comments and condition. Traffic Engineering conditions are also included in the compiled list of conditions in Exhibit A.

f. Parking and Loading

The parking for the project incorporates components for both the commercial and educational uses. Table 2: *Parking Standards* below identifies the differences between the two, and Table 3: *Parking Analysis* (page 4) provides the analysis. The application indicates that 245 spaces will be required: 200 spaces for the school, and 42 spaces for the restaurant, retail and office uses that will remain on the site. Staff estimates that the requirement for the existing restaurants is slightly higher than indicated on the application, and projects a code requirement of 247 spaces.

The plans show that 247 spaces will be provided. The project will utilize the existing parking spaces that surround the buildings, although some spaces will be eliminated to meet fire access.

requirements. The project will also utilize the spaces located in the existing parking lot on the east side of Montezuma Street.

The application includes a 10,000 square-foot auditorium, but does not indicate the seating capacity. The applicant specifies an average attendance of 125 per event (reference Exhibit G for the 2013-2014 Event list). The code requirement for the school auditorium is 50 spaces (one parking space per 200 square feet), in addition to the spaces required based on classrooms, etc. This requirement is somewhat lower than the figure used for other theater or assembly uses, which requires one space per three seats. Using the rate of one space per 200 square feet, the 200 spaces provided for the school would support an after-school theater seating capacity of up to 600 seats.

The application does not provide details on how the school theater will be utilized; however, the applicant's agent stated that certain major performances will continue to utilize off-site venues such as the Lensic Theater. Staff would note that the City Railyard Parking facility sometimes operates near full capacity during evening and weekend hours, depending on Railyard and other nearby entertainment events.

The majority of the existing parking spaces do not meet current standards for minimum parking space dimensions and access aisle widths. Research by city staff has been unable to determine when the spaces were first installed with the current dimensions, or whether the reduced dimensions were ever approved by the city.

Should the Board determine the existing spaces should be treated as legally nonconforming, no further action is needed. Should the Board determine the spaces should not be treated as legally nonconforming, Subsections 14-8.6(D) and (E) would allow the Board to consider a shared-use parking reduction.

Table 2: Parking Standards

TABLE 14-8.6-1: Parking and Loading Requirements		
Category	Specific Use	Parking and Loading
Education	Elementary and junior high schools	One space for each classroom, workshop, laboratory or office plus one space per 200 square feet of auditorium, gymnasium and cafeteria.
	Senior high schools	Four spaces for each classroom, workshop, laboratory or office plus one space per 200 square feet of auditorium, gymnasium and cafeteria.
BCD	For commercial uses	(1) One parking space for each five hundred (500) square feet of net leasable floor area for office uses; (2) One parking space for each three hundred fifty (350) square feet of net leasable floor area for other commercial uses, except that the requirements for hotels and motels shall be one parking space for each rental unit;

Table 3: Parking Analysis

	Qualifying Factor	Required Parking	Proposed Parking
Educational			
NM School for the Arts:			
• classrooms/workshops/labs	• 25	100	100
• offices	• 10	40	40
• Auditorium	• 10,000Sq. Ft.	50	50
• Cafeteria	• 2,000 sq. Ft.	10	10
Commercial			
• Pranzo Italian Grill	• 4,020 Sq. Ft.	11	12
• Raaga Restaurant	• 1887 Sq. Ft.	5	11
• Radish & Rye Restaurant	• 2998 Sq. Ft.	8	
• Office Use	• 940 Sq. Ft.	1	2
• Retail (On Your Feet/On Your Little Feet)	• 6046 Sq. Ft	17	17
Wall thickness	-.05%	N/A	
Total parking		242	242

g. Loading

Loading areas for the restaurant lot will share the student drop-off area during off pick-up and drop off times. An existing loading dock at the rear of Pranzo’s Restaurant will continue to be utilized. Commercial loading during off-peak student pick-up and drop off times will provide adequate loading and unloading operations without compromise to parking, public streets, walkways or alleyways.

h. Bicycle Parking

Santa Fe City Code, *Table 14-8.6.3*, establishes a ratio of required bicycle parking spaces relative to the number of vehicle parking spaces of a development. A minimum of 25 bike parking spaces must be included as part of the building permit application.

i. Landscaping and Terrain Management

The submittals did not address landscaping. Comments have been received from the Land Use Technical Review Division requiring compliance with SFCC 14-7.4(A). Refer to Exhibit B5 for comments and condition from Somie Ahmed dated December 30, 2015. Landscaping conditions are also included in the compiled list of conditions in Exhibit A. No objections were received concerning Terrain Management.

j. Fire Protection

No objections have been received from the Fire Department. Comments received from the Fire Marshal can be found in Exhibit B7. Fire Marshal conditions have also been included in the compiled list of conditions in Exhibit A.

k. Lighting, Signage And Architecture

Lighting and signage will be addressed at the time of building permit submittal, and architectural review will be managed by the Historic Design Review Board.

l. Economic Development

The applicant submitted an economic impact study pertaining to the proposed school project. NMSA operations are projected to generate \$5.2 million in economic output, \$2.9 million in wages and salaries paid to NMSA employees, as well as 120 annual jobs at full enrollment in 2019. See Exhibit B8 for economic review comments from the City Economic Division.

III. SPECIAL USE PERMIT APPROVAL CRITERIA

For most locations within the Business Capital District (BCD), a public or private school use is a permitted use. However, approval of a special use permit is required for a school use to locate within 200 feet of a residentially-zoned property. The NMSA site is adjacent to an R-21 District (Residential – 21 dwelling units per acre) located along the south and north sides of Agua Fria. Because no building expansion is proposed as part of this application, approval of a development plan is not required. Additionally, no variances are requested as part of this application.

Since the requirement to obtain a special use permit is triggered by proximity to the residential zoning district, the intent of the ordinance implies a higher priority for compatibility with residential uses than for compatibility with non-residential uses.

Required findings for approval of the special use permit application are listed below with staff analysis. The applicant's responses to the required findings are provided in Exhibit G.

a. 14-3.8(D) Approval Criteria

A special use permit is granted for a specific use and intensity. Pursuant to Subsection 14-3.6(D) (*Approval Criteria and Conditions*), to grant a special use permit the Board of Adjustment shall make the following findings:

14-2.3(D)(1)(a)- (Authority): "that the land use board has the authority under the section of Chapter 14 described in the application to grant a special use permit;"

Staff Analysis

Subsection 14-2.4(C) *Powers and Duties*, grants the BOA authority to take action on a special use permit. Table 14-6.1-1 establishes the special use permit requirement for schools located in the BCD, and within 200 feet of a residential district.

14-2.3(D)(1)(b)- (Public Interest): "that granting the special use permit does not adversely affect the public interest, and"

Staff Analysis

Review by city staff has determined that the proposed use is consistent with applicable city ordinances and policies that are adopted to protect the public interest, including minimum standards of Chapter 14 SFCC.

14-2.3(D)(1)(c)- (Compatible With And Adaptable To): *“that the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.”*

Staff Analysis

There are no code definitions that define *“compatible with”* and *“adaptable to”*. However, in this case the findings of 14-2.3(D)(1)(c) are qualified within Chapter 14 as follows:

1. *The use is compatible with, and adaptable to, any associated buildings, structures, and uses of the abutting property and other properties in the vicinity of the premises under consideration;*

Staff Analysis

Review by staff has not identified potential impacts in terms of noise, traffic, etc., to the adjacent and nearby residential uses.

State statutes and city regulations require approval by the Governing Body for any new alcohol license. A new license within 300 feet of a school also requires approval of a waiver by the Governing Body, although pre-existing establishments are “grandfathered in.” A map of the area that would be affected by the waiver requirement is attached as Exhibit E3.

2. *associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration*

Staff Analysis

The second component is established as an infill project proposing adaptive reuse of existing buildings already established within the BCDRED. Architectural compatibility is required by the Historic District and Historic Design Review Board.

IV. EARLY NEIGHBORHOOD NOTIFICATION (ENN)

An ENN meeting for this project occurred on December 10, 2015. The meeting was well attended with audience participation. There were many questions concerning process and chapter 14 regulations. Concerns raised by the attendees included:

- The economic impacts of the school on the Railyard
- The effect of the school on procedures for liquor license applications within 300 feet of the school
- What effect the school has to GRT revenue and other economic impacts to the area

V. CONCLUSION

The applicant has complied with all applicable procedural requirements.

Review by Land Use staff and by other affected city departments has determined that the proposed Special Use Permit will not adversely affect the public interest, and the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.

Staff recommends **APPROVAL** subject to conditions in Exhibit A.

VI. EXHIBITS

Exhibit A- Conditions of Approval

Exhibit B - DRT comments

1. Water Division
2. Waste Water
3. Environmental Services
4. Traffic Division
5. Landscaping
6. Terrain Management
7. Fire Marshal
8. Economic Development Division

Exhibit C- ENN

1. ENN Notes 12-19-15
2. Guideline Questions

Exhibit D- Code References

1. BOA Authority Section 14-2.4(C)
2. Special Use Permit Approval Criteria
3. BCD Permitted Uses and Development Standards

Exhibit E- Maps

1. Area of Review
2. Adjoining Zoning
3. Liquor License buffer

Exhibit F- Correspondence

1. Santa Fe Railyard

Exhibit G- Applicant's Data

February 02, 2016
Board Of Adjustment
Case # 2016-121
**500 MONTEZUMA ST.
SPECIAL USE PERMIT**

EXHIBIT A

Conditions of Approval

EXHIBIT A
 Conditions of Approval
 Case #2015-121
 500 Montezuma St. Special Use Permit - New Mexico School For The Arts Institute

	Condition	Department	Staff
1	If the sewer system serving the site needs to be modified the School for the Arts shall be required to submit a technical sewer service	Wastewater Management Division	Stan Holland, P.E. January 19, 2016
2	In addition 500 Montezuma Street is served with an 4" fire service connection. All backflow preventers must be evaluated and upgraded if necessary to meet current requirements.	Water Division	Dec Beingsner P.E. December 30, 2015
3	The comments below should be considered as Conditions of Approval to be addressed prior to final sign-off unless otherwise noted: The Developer shall provide a Pedestrian Safety Improvement Plan for the vicinity of the proposed school to be approved by the Public Works Department (PWD), Traffic Engineering Division. The Developer shall be responsible for the design and construction of safety improvements as detailed in the final, approved Pedestrian Safety Improvement Plan.	Traffic Engineering Division	John Romero P.E. January 15,2016
4	The Pedestrian Safety Improvement Plan shall include, but is not limited to the following areas: <ul style="list-style-type: none"> • Montezuma Avenue/Market Street intersection; • Montezuma Avenue, between Agua Fria Street and the Guadalupe Street; and • Market Street where it is adjacent to the subject property. Prior to any new construction or remodel shall comply with the current code adopted by the governing body due to a change of use occupancy. 1. All Fire Department access shall be no greater than a 10% grade throughout. 2. Fire Department Access shall not be less than 20 feet width. 3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turnaround that meets the IFC requirements shall be provided. 4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.	Fire Marshal	Reynaldo Gonzales Fire Marshal December 31, 2015

EXHL A
 Conditions of Approval
 Case #2015-121
 500 Montezuma St. Special Use Permit - New Mexico School For The Arts Institute

5	<p>5. Shall have water supply that meets fire flow requirements as per IFC</p> <p>6. Must meet all fire protection requirements set forth by IFC:2009 edition for its classified occupancy.</p>		
	<p>Parking lot adjacent to Montezuma Ave. must comply with SFCC 14-7.4 (A) Note 3 requires on-site parking to be separated from public sidewalks by a solid wall no less than 3 feet in height or by a landscaped area no less than four feet in width measured from the back of the sidewalk; or, in the absence of a sidewalk, from the property line, and planted with plant materials whose mature height is at least three feet, six inches. Landscaping must be protected from vehicular damage by placement of physical barriers.</p>	<p>Land Use Technical Review Division</p>	<p>Somie Ahmed, Planner Technician Senior December 30, 2015</p>
	<p>Provide a no stopping fire zone at the southwest corner of the building in front of the fire hydrant and loading area.</p>	<p>Land Use Current Planning Division</p>	<p>Dan Esquibel Land Use Planner Senior</p>

February 02, 2016
Board Of Adjustment
Case # 2016-121
**500 MONTEZUMA ST.
SPECIAL USE PERMIT**

EXHIBIT B

Development Review Team (DRT) Comments and Conditions

City of Santa Fe
memo

DATE: December 30, 2015
TO: Dan Esquibel, Land Use Planner, Land Use Department
FROM: Dee Beingessner, Water Division Engineer *DB*
SUBJECT: Case # 2015-121 500 Montezuma Street Special Use Permit

The property at 500 Montezuma Street currently has two domestic water meters, each 1 1/2" in size. One meter is listed for 500 Montezuma Street and one is for 500B Montezuma Street. In addition 500 Montezuma Street is served with an 4" fire service connection. All backflow preventers must be evaluated and upgraded if necessary to meet current requirements.

Fire protection requirements are addressed by the Fire Department.

EXHIBIT B1

City of Santa Fe



MEMO

Wastewater Management Division DEVELOPMENT REVIEW COMMENTS

E-MAIL DELIVERY

Date: January 19, 2016

To: Dan Esquibel, Case Manager

From: Stan Holland, P.E.
Wastewater Management Division

Subject: Case 2015-121 500 Montezuma Street Special Use Permit

The subject property is accessible to the City public sewer system.

The Applicant has indicated that the water and sewer service to serve this project will remain "as-is". The Wastewater Division has no objection to this project. If the sewer system serving the site needs to be modified the School for the Arts shall be required to submit a technical sewer service evaluation to the City's Wastewater Division.

EXHIBIT B2

ESQUIBEL, DANIEL A.

From: LUCERO, ERIC J.
Sent: Tuesday, January 19, 2016 7:20 PM
To: ESQUIBEL, DANIEL A.
Subject: DRT Comments

Dan,

No DRT Comments at this time.

Thanks,

Eric

EXHIBIT B3

City of Santa Fe, New Mexico

memo

DATE: January 15, 2016
TO: Dan Esquibel, Land Use Division
VIA: John J. Romero, Traffic Engineering Division Director *JE*
FROM: Sandra Kassens, Engineer Assistant *SKK*
SUBJECT: 500 Montezuma St. Special Use Permit, case #2015-121

ISSUE:

Santa Fe Planning Group, Inc., agent for Sanbusco 2015, LLC, and the New Mexico School for the Arts Institute requests a Special Use Permit for a school use on 5.11± acres. The property is zoned BCDRED (Business Capital District Redevelopment Sub District – Community Commercial) and is located within the Westside-Guadalupe Historic Review District and Historic Downtown Archeological Review District.

NOTE: The Developer complied with a request for additional submittals to provide information on the student drop-off/pick-up numbers at the NM School for the Arts on E. Alameda Street. Our review of these numbers, adjusted to account for the proposed increase in enrollment, demonstrates that the proposed student drop-off/pick-up plan will operate satisfactorily within the school property. Therefore, the drop-off/pickup of students will not significantly impact traffic on the surrounding public streets.

RECOMMENDED ACTION:

Review comments are based on submittals received on December 23, 2015 and on January 13, 2016. The comments below should be considered as Conditions of Approval to be addressed prior to final sign-off unless otherwise noted:

The Developer shall provide a Pedestrian Safety Improvement Plan for the vicinity of the proposed school to be approved by the Public Works Department (PWD), Traffic Engineering Division. The Developer shall be responsible for the design and construction of safety improvements as detailed in the final, approved Pedestrian Safety Improvement Plan.

- The Pedestrian Safety Improvement Plan shall include, but is not limited to the following areas:
 - Montezuma Avenue/Market Street Intersection;
 - Montezuma Avenue, between Agua Fria Street and the Guadalupe Street; and
 - Market Street where it is adjacent to the subject property.

If you have any questions or need any more information, feel free to contact me at 955-6697. Thank you.

EXHIBIT B4

City of Santa Fe, New Mexico

memo

DATE: December 30, 2015
TO: Dan Esquibel, Land Use Planner Senior
FROM: Somie Ahmed, Planner Technician Senior
SUBJECT: Comments for Case #2015-121, 500 Montezuma St., Special Use Permit

Below are staff's comments for 500 Montezuma St, Special use Permit. Based on documentation and plans dated December 18th, 2015 the following comments are a request for additional submittals before Landscape review can be approved:

- Parking lot adjacent to Montezuma Ave. must comply with SFCC 14-7.4 (A) Note 3 requires on-site parking to be separated from public sidewalks by a solid wall no less than 3 feet in height or by a landscaped area no less than four feet in width measured from the back of the sidewalk; or, in the absence of a sidewalk, from the property line, and planted with plant materials whose mature height is at least three feet, six inches. Landscaping must be protected from vehicular damage by placement of physical barriers.

EXHIBIT B5

ESQUIBEL, DANIEL A.

From: ZAXUS, RISANA B.
Sent: Monday, January 11, 2016 2:20 PM
To: ESQUIBEL, DANIEL A.
Subject: Case # 2015-121: Montezuma Street Special Use Permit

Mr. Esquibel,

I have looked at the submittal for the above-referenced case, and I have no review comments.

Risana B "RB" Zaxus, PE
City Engineer

EXHIBIT B6

City of Santa Fe, New Mexico
memo

DATE: December 31, 2015
TO: Dan Esquibel, Case Manager
FROM: Reynaldo Gonzales, Fire Marshal 
SUBJECT: Case #2015-121 500 Montezuma Street Special Use Permit

I have conducted a review of the above mentioned case for compliance with the International Fire Code (IFC) Edition. If you have questions or concerns, or need further clarification please call me at 505-955-3316.

Prior to any new construction or remodel shall comply with the current code adopted by the governing body due to a change of use occupancy.

1. All Fire Department access shall be no greater than a 10% grade throughout.
2. Fire Department Access shall not be less than 20 feet width.
3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turn-around that meets the IFC requirements shall be provided.
4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.
5. Shall have water supply that meets fire flow requirements as per IFC
6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy.

EXHIBIT B7



Memorandum

DATE: January 26, 2016
TO: Board of Adjustment
FROM: Fabian Trujillo, Economic Development Division Director *F.T.*
RE: Economic Development Impact Analysis – New Mexico School for the Arts.

Overview:

The New Mexico School for the Arts (NMSA) was established in 2008 by a charter approved by the NM Public Education Commission. NMSA's first year of operation was in 2010. Today, it is comprised of 215 students from across New Mexico. NMSA provides their students pre-professional instruction in the performing and visual arts. They prepare many of New Mexico's artistically talented students to compete nationally for post-secondary education and for professional careers in the arts. Currently, students study in one of these four artistic disciplines: dance, theater, music, or visual arts. NMSA is a high performing school. In May 2015, NMSA was ranked as one of the 12 best schools in New Mexico by US News and World Reports.

NMSA acquired the Sanbusco Market Center in September 2015 and is proposing to use the site for their campus. The Sanbusco Center is 88,000 sq. ft. and is projected to have 300 students by 2019; 25 residential dormitories, 25 classrooms, an academic auditorium, lobby and concessions, gallery space and common space for a library, media and research, computer lab, cafeteria and kitchen, bathrooms, locker rooms and dressing rooms. The NMSA renovation and expansion is expected to be completed in 2019 with a capital investment of over \$23 million.

Economic Impact Analysis Review:

NMSA contracted with Dr. Kelly O'Donnell who is a member of the UNM Economic Department to update the UNM BBER Impact Analysis in 2013 and to estimate the impacts of the planned expansion and operations at the Sanbusco Market Center.

For this report, Dr. O'Donnell utilized an "export-base" method utilized by educational Institutions. According to this report, this methodology "recognizes that only expenditures supported by out-of-county revenues can be considered to have a tangible impact on the county." The economic impacts in this report were generated by the IMPLAN model which were inputted, analyzed and developed by Dr. O'Donnell. Additionally, Dr O'Donnell utilized the results from IMPLAN to estimate fiscal impacts. These fiscal impacts are specific to Santa Fe.

EXHIBIT B8

Summary of Economic Impacts for NMSA:

According to Dr. Kelly O'Donnell, NMSA will generate economic impacts based on the following four components: current operations, student expenditures, Sanbusco Market Center renovations, and visitor expenditures. These impacts are the result of the direct economic activities generated by NMSA spending. The economic impacts will result from the spending and outputs in the following areas:

NMSA Economic Impacts at Full Enrollment (2019)			
	Jobs	Labor Income	Output
Operations (Annual)	120	\$2,899,179	\$5,235,324
Student Expenditures	5	\$182,836	\$473,440
Visitor Expenditures	3	\$65,491	\$197,612
Total Annual Recurring Expenditures	128	\$3,147,506	\$5,906,376
Construction Expenditures (2016-2018)	163	\$6,918,413	\$24,984,893
Totals	291	\$10,065,919	\$30,891,269
Source: Economic Impact of NMSA; O'Donnell Economics & Strategy – January 25, 2016			

Fiscal Impacts – NMSA spending on operations, spending by students and visitors as well as construction spending on renovations of the Sanbusco Market Center will generate revenues in the form of taxes and fees for the state and local governments. These taxes and fees are the result of the jobs and economic activity directly and indirectly from NMSA. The state is projected to receive the following recurring and non-recurring taxes and fees due to NMSA and is illustrated in the table below:

NMSA State and Local Tax Impacts at Full Enrollment (2019)			
	Local	State	Total
Recurring (All Non-Construction)	\$51,451	\$162,197	\$213,648
Non-recurring (Construction)	\$997,567	\$1,231,882	\$2,229,449
Totals	\$1,049,018	\$1,394,079	\$2,443,097
Source: Economic Impact of NMSA; O'Donnell Economics & Strategy – January 25, 2016			

Conclusion:

NMSA is estimated to generate positive economic and fiscal impacts to the city and state by this project during the renovation period and for the next ten years. These impacts are substantial. NMSA will generate \$997,567 in GRT, permits, fees, and lodger's taxes for the city of \$1,049,018. According to Dr. O'Donnell,

"NMSA will increase the productivity of Santa Fe's economy by attracting student, visitor, operations, and capital improvement funding from outside the county. The additional economic output generated by NMSA will total \$80.3 million over the ten-year period, an average of over \$8 million per year. Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.48 million over the ten-year period."

I concur with Dr. O'Donnell and agree that the economic and fiscal impacts will be positive by NMSA. The Sanbusco Center's tenants are relocating to Santa Fe's other retail spaces which are include but are not limited to DeVargas Center and the Santa Fe Place Mall. So, NMSA is not only re-purposing and revitalizing the Sanbusco Center, the NMSA expansion will increase retail occupancy rates elsewhere in Santa Fe.

Finally, NMSA will contribute and stimulate the arts and cultural sector of Santa Fe's economy. They will provide a world class environment where students from all over New Mexico can be prepared for a career in the arts and where NMSA student performances can enrich an already vibrant arts and culture sector.

O'Donnell Economics & Strategy

1473 West Ella Drive
Corrales, NM 87048
Phone: 505-659-5702
E-Mail: Kelly@odonnelleconomics.com
Web: odonnelleconomics.com

January 25, 2016

Riis Gonzales
Executive Director,
New Mexico School for the Arts-Arts Institute
275 East Alameda
Santa Fe, NM 87501

Dear Mr. Gonzales:

Enclosed is the economic impact analysis of the New Mexico School for the Arts and its proposed renovation/expansion that I prepared at the behest of the New Mexico School for the Arts - Art Institute. The analysis, which uses the most up-to-date data available, shows that NMSA contributes significantly to the Santa Fe economy and that the proposed renovation/expansion will magnify the school's impact considerably.

Sincerely,

Kelly O'Donnell

Kelly O'Donnell, PhD

Director, O'Donnell Economics and Strategy
Assistant professor of economics and senior research fellow,
University of New Mexico

Summary

New Mexico School for the Arts is a public/private partnership comprised of a legislatively created, residential charter high school and the NMSA-Art Institute, a nonprofit art educational institution. Because state funding for the charter school supports only its academic programming, NMSA-AI raises the private funds necessary to support the school's master arts programming, outreach, admissions, development and residential programs.

Having outgrown its current location at the old Cathedral School in downtown Santa Fe, NMSA is preparing to relocate to the Sanbusco Market Center property adjacent to the Santa Fe Railyard and expand enrollment from 215 students to 300 students by 2019.

NMSA and NMSA-AI contribute to the Santa Fe economy through the funds they attract from outside the county. Major sources of outside funding include: contributions, grants, and state public education funds that support school operations; spending by the sixty-five students who board at the school or commute from households outside Santa Fe; and spending by the over 1,000 visitors from outside Santa Fe who attend performances and events at NMSA each year.

Transitioning the 88,000 square foot Sanbusco Center property from a retail center to a residential school for the arts will entail a major renovation expected to cost over \$23 million.

NMSA Economic Contribution at Full Enrollment (300 students)

	Labor Income	Jobs
Operations (annual, 2019)	\$2,899,179	121
Student Expenditures (annual, 2019)	\$182,836	5
Visitor Expenditures (annual, 2019)	\$65,491	3
Total Annual Recurring	\$3,147,507	128
Construction (Total 2016-18)	\$6,918,413	163
Total:	\$10,065,919	291

The NMSA renovation and expansion is expected to be complete in 2019. With 300 students enrolled, NMSA will generate \$5.9 million in annual economic activity, 128 jobs and \$3.1 million in annual labor income. During the renovation period, construction activities will support 163 person-years of construction employment at an average total compensation, including benefits, of \$42,502 per year. The combined economic impact of NMSA at full enrollment and the renovation necessary to achieve full enrollment is 291 jobs and \$10.1 million in labor income.

The expansion will produce over \$1 million in new revenue for the City of Santa Fe. At full enrollment, NMSA will generate \$51,145 in annually recurring municipal tax revenue. Between 2016 and 2018 construction activities related to the renovation will contribute an additional \$997,567 in tax and fee revenue for the city.

City of Santa Fe Fiscal Impacts	
Recurring (annual at full enrollment)	
Gross Receipts Tax	\$48,347
Lodgers Tax	\$3,104
Non-recurring (one-time 2016-18)	
Gross Receipts Tax	\$626,349
Permits & Fees	\$371,218
Total	\$1,049,018
Source: Author calculations	

Ten-Year Economic Contribution

The additional economic output generated by the visitors, students, and funding NMSA attracts to Santa Fe will total \$80.3 million over the ten-year period, an average of over \$8 million per year. Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.5 million over the ten-year period.

Introduction

New Mexico School for the Arts (NMSA) is preparing to relocate from St. Francis Cathedral School in downtown Santa Fe to the Sanbusco Market Center property adjacent to the Santa Fe Railyard and expand enrollment from 215 students to 300 students. NMSA-AI, a nonprofit arts organization, commissioned Kelly O'Donnell PhD to estimate NMSA's impact, pre- and post expansion, on the Santa Fe economy for the ten-year period beginning school year 2016 (SY16). This report presents the results of that analysis and describes the data and methodology that were used.

The pre-expansion economic impacts presented here are updates to an economic impact analysis performed for NMSA-AI by the UNM Bureau of Business and Economic Research (BBER) in 2013. The methodology used here to estimate recurring economic impacts closely follows that described in the BBER report. In addition to updating the BBER estimates, this report projects the economic impacts of the planned expansion through 2025, estimates the impact of the school's \$29.8 million purchase and renovation of Sanbusco Center, and calculates the state and local fiscal impact of all economic activity related to NMSA.

Because a major objective of this study is to predict the economic and fiscal impact of the relocation and expansion, results presented in the foregoing tables, unless otherwise noted, are annual economic impacts for 2019, when the expansion is expected to have been completed and enrollment has reached 300. Annual impacts for each of the ten years from 2016 through 2025 and total impacts over the full ten-year period are presented in Table 13 at the end of this report.

Data

The revenue, expenditure, employment and enrollment data for this study were provided by NMSA. The school currently has 215 students. Sixty-five students (30%) are from households outside Santa Fe County. Currently, 20 of these students board at the school and the remainder commute. NMSA anticipates that between 2017 and 2019 enrollment will increase to 300. The new facility's close proximity to the Railrunner will make the school more accessible, and the number of students from outside the county is expected to more than double. NMSA and NMSA-AI currently employ 75 faculty and staff. Employment is expected to increase in proportion to enrollment during the expansion period.

Major sources of revenue for NMSA in SY 2014-15 are presented in Table 1. Sixty-three percent of NMSA's 2014-15 revenue was derived from sources outside Santa Fe County.

Table 1: New Mexico School for the Arts and NMSA-Art Institute (NMSA-AI) Sources of Revenue, SY 2014-15

New Mexico School for the Arts and NMSA-Art Institute, Sources of Revenue, SY 2014-15			
	In-County	Out-of-County	Total
State Education Funding	-	\$1,895,748	\$1,895,748
Contributions	\$1,126,404	\$435,475	\$1,561,879
Earned Income	\$119,693	\$48,981	\$168,674
Investment Income	-	\$2,062	\$2,062
Federal telecommunications funding	-	\$9,583	\$9,583
Other	\$231,325	\$171,486	\$402,811

Total	\$1,477,422	\$2,563,335	\$4,040,757
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Source: NMSA and NMSA-AI budget documents

NMSA expenditures for SY 2014-15 are presented in Table 2. Eight-five percent of NMSA employees reside within Santa Fe County. Overall, 79 percent (\$3.07 million) of NMSA's total expenditures went to individuals and businesses within Santa Fe County.

Table 2: New Mexico School for the Arts and NMSA-Art Institute Expenditures, SY 2014-15

NMSA and NMSA-AI Expenditures by Category, SY 2014-15	
Instruction/art programs	\$1,932,897
Outreach/admissions	\$89,408
Student services	\$84,564
Residential	\$245,554
Instruction support	\$373,519
School administration	\$286,206
General administration	\$372,752
Facilities	\$234,333
Food	\$20,147
Development	\$274,155
Total	\$3,913,535

Source: NMSA and NMSA-AI 2014-15 budget documents

Methodology

This study seeks to quantify the *net* economic activity attributable to NMSA – the economic activity that would not occur if the school did not exist. To isolate this activity, it is assumed that only expenditures made in Santa Fe County with funds derived outside the county have a net impact on the county economy. This standard assumption recognizes that NMSA revenue derived within Santa Fe County would, in the absence of NMSA, flow to other county activities. NMSA's contribution to the Santa Fe economy thus derives from its ability to attract revenues from sources outside the county. The direct economic impact of NMSA's expenditures is then the product of its total spending (\$3.9 million), the share of NMSA revenue derived from out-of-county sources (63%), and the share of NMSA expenditures made within the county (79%):

$$\text{Direct Impact} = (\text{Total Expenditures}) \times (\% \text{ Out-of-County Revenues}) \times (\% \text{ In-County Expenditures})$$

$$\$1.94 \text{ million} = \$3.9 \text{ million} \times .63 \times .79$$

NMSA's total impact on the county economy exceeds its direct impact because NMSA's in-county expenditures are re-spent within the local economy, creating "multiplier effects" and "indirect" and "induced" economic impacts. The analysis presented here uses IMPLAN 3.0 in conjunction with the most recent (2014) economic data for Santa Fe County to estimate the direct, indirect, and induced impacts on output, employment, and income attributable to NMSA. Estimates of tax impacts utilize the economic impact results from IMPLAN, but are estimated using standard public sector fiscal impact methodologies and Santa Fe-specific statutory and effective state and local tax rates.

Results

NMSA's total economic impact is composed of four components: (1) current operations; (2) expenditures by students; (3) expenditures by visitors; and (4) the Sanbusco Market Center renovation. NMSA will renovate the Sanbusco

property between 2016 and 2018 and expand enrollment from 215 to 300 students between 2017 and 2019. Table 3 presents NMSA's annual economic impact at full enrollment (2019) and total construction expenditure.

Table 3: NMSA Annual Economic Impact at Full Enrollment and Total Construction Expenditure

NMSA Economic Impact at Full Enrollment			
	Output	Labor Income	Jobs
Operations (annual, 2019)	\$5,235,324	\$2,899,179	120
Student Expenditures Full Enrollment (annual, 2019)	\$473,440	\$182,836	5
Visitor Expenditures Full Enrollment (annual, 2019)	\$197,612	\$65,491	3
Total Annual Recurring	\$5,906,377	\$3,147,507	128
Construction (Total 2016-2018)	\$24,984,893	\$6,918,413	163
Total	\$30,891,270	\$10,065,919	291

Source: IMPLAN 3.0

Economic Impacts of NMSA Operations

Table 4 presents the annual direct, indirect, and induced impacts of NMSA operations on the Santa Fe economy at full, post-expansion enrollment. School operations are estimated to produce \$5.2 million in economic output, \$2.9 million in wages and salaries paid to the county residents, and 120 jobs annually by the end of school year 2019.

Table 4: Economic Impact of NMSA-AI Post-Expansion Operations at Full Enrollment (2019)

Economic Impact of NMSA Operations at Full Enrollment (2019)			
	Output	Labor Income	Jobs
Direct	\$2,740,153	\$2,050,426	96
Indirect	\$969,498	\$319,940	11
Induced	\$1,525,673	\$528,813	13
Total Operations	\$5,235,324	\$2,899,179	120

Source: IMPLAN 3.0

Economic Impacts of Student and Visitor Spending

NMSA students and visitors contribute to the Santa Fe economy when they spend money at local businesses. Spending by students and visitors from outside the county brings new money into the local economy, producing a net economic impact of eight jobs and \$248,327 in annual income.

Currently, 65 (30%) of NMSA's 215 students are from households outside the county. Expenditures by out-of-county students currently total roughly \$142,821 per year (\$2,197 per student) and include items such as dorm fees, groceries, transportation, books, supplies, and clothing. After the expansion, out-of-county students are expected to make up 50 percent of enrollment and student expenditures will total \$332,143 annually. Table 5 presents the economic impact of student spending at full enrollment, which totals \$473,440 in economic output, \$182,836 in labor income, and 5 jobs.

In 2014-15 an average of 125 people attended each of NMSA's 43 events and performances and 600 attended each of the two 2015 Art Spring Showcase performances held at the Lensic Theater in downtown Santa Fe. Approximately 25 percent of the 6,575 visitors came from outside Santa Fe.¹

At full enrollment, 2,188 out-of-county visitors are expected to spend an average of \$61.43 for a total expenditure of \$134,392 per year, resulting in three additional jobs and \$65,491 in labor income. Table 5 presents the impact of visitor expenditures at full enrollment.

Table 5: NMSA Student and Visitor Spending Impacts Post-Expansion, Full Enrollment

NMSA Student and Visitor Spending Impacts Post-Expansion, Full Enrollment (2019)			
	Output	Labor Income	Jobs
Student Spending	\$473,440	\$182,836	5
Visitor Spending	\$197,612	\$65,491	3
Total	\$671,053	\$248,327	8

Source: IMPLAN 3.0

Construction Impacts

Extensive renovations will be necessary to convert Sanbusco Center from a shopping mall to a school with dormitories, practice halls, and performance spaces. In addition to spending \$7.3 million to purchase the Sanbusco property, NMSA will invest an estimated \$23.3 million in renovations. The estimate of the economic impact of the renovations assumes that 75 percent of funding for the project derives from outside the county. Renovation spending will likely begin toward the end of 2016 and extend into 2018, generating \$25 million in additional output, \$6.9 million in labor income, and 163 person-years of construction employment. It is important to note that Sanbusco's current tenants are relocating to Santa Fe's other retail properties, including De Vargas Center and Santa Fe Place. So, in addition to re-purposing and revitalizing the Sanbusco property, the NMSA expansion will increase retail occupancy rates elsewhere in community.

Table 6: Economic Impact of Sanbusco Center Renovation

Economic Impact of Sanbusco Center Renovation			
	Output	Labor Income	Person-years of employment
Direct	\$17,507,250	\$4,504,857	102
Indirect	\$4,060,456	\$1,223,122	32
Induced	\$3,417,187	\$1,190,434	29
Total	\$24,984,893	\$6,918,413	163

Source: IMPLAN 3.0

Fiscal Impacts

NMSA operations, spending by students and visitors, and the Sanbusco Center renovation will all generate tax and fee revenue for the city and the state.

Table 7 City of Santa Fe Fiscal Impacts

City of Santa Fe Fiscal Impacts	
Recurring (annual at full enrollment)	\$51,451
GRT	\$48,347
Lodgers Tax	\$3,104
Non-recurring	\$997,567
GRT	\$626,349
Permits & Fees	\$371,218
Total	\$1,049,018

Source: Author calculations

City of Santa Fe Taxes and Fees

At full enrollment, NMSA will contribute \$51,451 in annual recurring revenue for the City of Santa Fe. The renovation project will contribute an additional \$997,567, for a total fiscal impact of \$1.05 million. NMSA generates revenue for the city

from gross receipts tax, occupancy (lodger's) tax, and city-imposed fees. Schools and non-profits are exempt from property tax in New Mexico; thus, NMSA will not directly contribute to property tax revenue.¹

Gross Receipts Taxes

Gross receipts tax is a significant source of revenue for both the city and the state. The State of New Mexico imposes a 5.125% Gross Receipts Tax (GRT) on the sale of most goods and services. Counties and municipalities impose local option gross receipts taxes as increments to the state's base rate. The current GRT rate within the City of Santa Fe is 8.3125%. In addition to city-imposed local option gross receipts taxes, the city receives a 1.225% municipal GRT credit from the state. The municipal credit and City of Santa Fe local option taxes total 3.0375% and are listed in Table 8 below.

Table 8 City of Santa Gross Receipts Tax Rates, January-June 2016

City of Santa Gross Receipts Tax Rates, January-June 2016	
Revenue Source	Rate
Municipal Gross Receipts Credit	1.2250
City of Santa Fe Local Option Gross Receipts Taxes	
Capital Improvements	0.5000
City Operations	0.5000
Municipal GRT (Bus Systems, Quality of Life, Revenue Loss)	0.2500
Municipal GRT Environmental (WW)	0.0625
Infrastructure:	
Solid Waste	0.0625
Santa Fe Rail Yard	0.0625
Police	0.0625
Chavez Center	0.0625
Water	0.2500
TOTAL	3.0375
Source: Santa Fe Municipal Budget	

GRT from NMSA Operations

NMSA operations are expected to generate \$39,628 in annual GRT revenue for the City of Santa Fe from 2019 onward. The estimate assumes that 45 percent of labor income generated by NMSA operations is expended on gross receipts taxable commodities.

GRT from Student and Visitor Spending

At full enrollment, student and visitor expenditures are expected to total \$466,535 and generate an annual average of \$8,718 in city GRT revenue. The estimates assume that 50 percent of student expenditures and 90 percent of visitor expenditures are gross receipts taxable.

GRT from Sanbusco Renovation

Construction spending will be a significant source of non-recurring tax revenue between 2016 and 2018. Gross receipts taxes will be levied on final sales of construction goods and services and on a portion of the income earned by construction workers. The estimate assumes that 75 percent of funding for the construction project originates outside Santa Fe and that 45 percent of income earned by construction workers is spent on gross receipts taxable commodities.

¹ Property tax is a significant source of revenue for local governments. NMSA may contribute to property tax revenue through its impact on jobs and income or by increasing property values near the Sanbusco site. However, these impacts are not included in the revenue estimates.

Table 9 provides a detailed breakdown of city GRT revenue by expenditure type and GRT credit or increment.

Table 9 City of Santa Fe Gross Receipts Tax Revenue by Expenditure Type and Revenue Source

City of Santa Fe Gross Receipts Tax Revenue by Expenditure Type and Revenue Source				
	Operations (2019)	Student & Visitor Spending (2019)	Renovation (2016-18)	Total
Municipal Gross Receipts Credit	\$15,982	\$3,516	\$252,602	\$272,099
City of Santa Fe Local Option Gross Receipts Taxes				
Capital Improvements	\$6,523	\$1,435	\$103,103	\$111,061
City Operations	\$6,523	\$1,435	\$103,103	\$111,061
Municipal GRT (Bus Systems, Quality of Life, Revenue Loss)	\$3,262	\$718	\$51,551	\$55,530
Municipal GRT Environmental (WW)	\$815	\$179	\$12,888	\$13,883
Infrastructure:				
Solid Waste	\$815	\$179	\$12,888	\$13,883
Railyard	\$815	\$179	\$12,888	\$13,883
Police	\$815	\$179	\$12,888	\$13,883
Chavez Center	\$815	\$179	\$12,888	\$13,883
Water	\$3,262	\$718	\$51,551	\$55,530
TOTAL	\$39,628	\$8,718	\$626,349	\$674,695

Source: Author calculations

Lodger's Tax

The City of Santa Fe imposes a 7 percent occupancy tax on hotel rooms in addition to the gross receipts tax. The estimate assumes that taxable lodging accounts for 33 percent of expenditures by out-of-county visitors. NMSA will generate \$3,167 in lodger's tax at full enrollment.

Fees

Assuming direct construction costs of \$23.34 million, the NMSA renovation will generate one-time fees to the City of Santa Fe totaling \$371,218.

Table 10 City Fee and Permit Revenue from Sanbusco Renovation

City Fee and Permit Revenue from Sanbusco Renovation	
Impact Fees	\$189,195
Building Permit	\$104,013
Plan Review	\$78,010
Total	\$371,218

The Santa Fe Land Development Code provides for impact fees of \$1,621 per 1,000 square feet for public/institutional projects.

City building permits cost \$5,893.37 for the first \$1 million project value, and \$4.40 per \$1,000 thereafter. Based on the estimated direct construction cost of \$23.34 million, building permits will cost \$104,013. City plan review fees will total \$78,010, 75 percent of building permit costs.

Table 11 City of Santa Fe Public/Institutional Development Impact Fees

City of Santa Fe Public/Institutional Development Impact Fees	
Use	Fee per 1,000 sq. ft.
Roads	\$1,460
Parks	\$0
Fire	\$113
Police	\$48
Total	\$1,621
Source: Santa Fe Land Development Code	

State of New Mexico Taxes

The jobs and economic activity directly and indirectly attributable to NMSA generate gross receipts tax and personal income tax for the state general fund. Recurring impacts will total \$162,197 annually - \$104,182 in personal income tax and \$58,015 in gross receipts tax. Non-recurring state fiscal impact will total \$1.2 million.

NMSA's recurring state and city fiscal impacts at full enrollment and the non-recurring tax impacts resulting from construction spending are presented in Table 12.

Table 12: NMSA-All State and Local Tax Impacts

NMSA State and Local Tax Impacts at Full Enrollment (2019)			
	Local	State	Total
Recurring (all non-construction, 2019)	\$51,451	\$162,197	\$213,648
Non-Recurring (construction, total spending 2016-18)	\$997,567	\$1,231,882	\$2,229,449
Total	\$1,049,018	\$1,394,079	\$2,443,097
Source: Author calculations			

Ten-Year Impacts

Table 13 presents annual economic and fiscal impacts for ten years beginning 2016 as well as total impacts for the ten-year period 2016-2025. NMSA will increase the productivity of Santa Fe's economy by attracting student, visitor, operations, and capital improvement funding from outside the county. The additional economic output generated by NMSA will total \$80.3 million over the ten-year period, an average of over \$8 million per year.

Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.48 million over the ten-year period.

Table 13. Ten Year Total and Average Impacts

NHSA Expansion – Ten Year Total and Average Annual Impacts												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Ten Year Total	Annual Average
Output												
NHSA Operations	\$3,726,400	\$4,173,568	\$4,674,397	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$49,221,634	\$4,922,163
Student Spending	\$203,579	\$230,408	\$385,854	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$4,133,924	\$413,392
Visitor Spending	\$139,906	\$156,974	\$176,125	\$197,612	\$201,564	\$205,596	\$209,708	\$213,902	\$218,180	\$222,543	\$1,942,110	\$194,211
Construction	\$6,246,223	\$12,492,447	\$6,246,223	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$24,984,893	\$2,498,489
Total	\$10,316,109	\$17,053,397	\$11,482,599	\$5,906,377	\$5,910,329	\$5,914,360	\$5,918,472	\$5,922,646	\$5,926,944	\$5,931,308	\$80,282,561	\$8,028,256
Labor Income												
NHSA Operations	\$2,063,579	\$2,311,208	\$2,588,553	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$27,257,596	\$2,725,760
Student Spending	\$78,619	\$88,980	\$149,011	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$1,596,461	\$159,646
Visitor Spending	\$46,367	\$52,023	\$58,370	\$65,491	\$66,801	\$68,137	\$69,500	\$70,890	\$72,308	\$73,754	\$643,672	\$64,367
Construction	\$1,729,603	\$3,459,206	\$1,729,603	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,918,413	\$691,841
Total	\$3,918,168	\$5,911,418	\$4,525,538	\$3,147,507	\$3,148,816	\$3,150,152	\$3,151,515	\$3,152,905	\$3,154,323	\$3,155,769	\$36,416,112	\$3,641,611
Jobs (Person Years)												
NHSA Operations	86	96	108	121	121	121	121	121	121	121	1133*	136
Student Spending	2	2	4	5	5	5	5	5	5	5	42*	136
Visitor Spending	2	2	3	3	3	3	3	3	3	3	26*	136
Construction	41	81	41	0	0	0	0	0	0	0	163*	136
Total	131	182	155	128	1364*	136						
Taxes												
City	\$562,980	\$352,605	\$202,122	\$51,451	\$51,587	\$51,723	\$51,866	\$52,010	\$52,156	\$52,306	\$1,480,808	\$148,081
GRF	\$189,564	\$350,139	\$199,355	\$48,347	\$48,420	\$48,495	\$48,571	\$48,649	\$48,729	\$48,810	\$1,079,079	\$107,908
Lodgers tax	\$7,198	\$2,466	\$2,767	\$3,104	\$3,167	\$3,230	\$3,294	\$3,360	\$3,428	\$3,496	\$30,510	\$3,051
Fees and Fees	\$371,218	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$371,218	\$37,122
State	\$420,752	\$742,308	\$452,051	\$162,197	\$162,265	\$162,334	\$162,404	\$162,476	\$162,549	\$162,623	\$2,731,958	\$273,196
Total	\$983,731	\$1,094,914	\$654,173	\$213,648	\$213,881	\$214,058	\$214,370	\$214,683	\$214,703	\$214,929	\$4,232,768	\$423,277

*person-years

About the Author

Kelly O'Donnell PhD is an economic consultant, member of the UNM economics department faculty, and a senior research fellow at the UNM Robert Wood Johnson Center for Health Policy. She has held a number of senior positions in New Mexico state government including director of state tax policy, deputy and acting cabinet secretary for economic development, board chair of the New Mexico Spaceport Authority, and superintendent of the New Mexico Regulation and Licensing Department.

¹ Bureau of Business and Economic Research, (2014, January). Economic Impact of Santa Fe School for the Arts on the Santa Fe County Economy, FY 2013.

February 02, 2016
Board Of Adjustment
Case # 2016-121
500 MONTEZUMA ST.
SPECIAL USE PERMIT

EXHIBIT C

ENN



**City of Santa Fe
Land Use Department
Early Neighborhood Notification
Meeting Notes**

<i>Project Name</i>	500 MONTEZUMA ST. NMSA
<i>Project Location</i>	500 Montezuma St
<i>Project Description</i>	Special use Permit for a school use on 5.2+ acres.
<i>Applicant / Owner</i>	Sanbusco 2015, LLC, and the New Mexico School for the Arts Institute
<i>Agent</i>	Santa Fe Planning Group, Inc.
<i>Pre-App Meeting Date</i>	November 19, 2015
<i>ENN Meeting Date</i>	December 10, 2015
<i>ENN Meeting Location</i>	500 Montezuma in the old Boarder Location.
<i>Application Type</i>	ENN
<i>Land Use Staff</i>	Dan Esquibel
<i>Other Staff</i>	N/A
<i>Attendance</i>	33

Notes/Comments:

The meeting was well attended with audience participation. There were many question concerning process and chapter 14 regulations. The following identifies the concerns raised by the attendees:

- The economic impacts of the school on the Railyard
- The effect of liquor licenses within 300 feet of the school
- What effect the school has to revenue to the area

**Sanbusco Market Center / NM School for the Arts – Art Institute:
Special Use Permit / Variance Request to Parking Standards
Early Neighborhood Notification**

The City Code provides for the exchange of information between an applicant for subdivision approval and the area neighborhoods. Eleven points are to be discussed with the neighborhood residents and landowners. This document is intended to address these eleven points.

LOCATION:

The subject site is approximately 4.22-acres in size and is located at the north end of the Santa Fe Railyard area. The site is bounded by existing residential and commercial uses to the north, existing residential to the west, Outside Magazine to the south, and an existing Sanbusco parking lot to the east with existing commercial business beyond the parking lot. The site fronts Montezuma Avenue to the east and Market Street to the southeast. The subject site has existed as a multi-tenant retail center since the mid-1980s. It is addressed 500-560 Montezuma.

The subject site and buildings was purchased by the NM School for the Arts / Art Institute in September 2015.

REQUEST:

The subject site is zoned BCD (Business Capitol District). Secondary schools are a permitted use in the BCD. A special use permit is required if the subject site is within 200-ft of a residentially-zoned property. The intent of this application is a special use application for educational uses (secondary schools and dormitory uses). The application may include a variance to Section 14.8.6-1 of the City of Santa Fe Land Use Code (parking requirements for educational uses).

The following is an outline of the eleven discussion points to be considered in the ENN process:

1. The effect on character and appearance of the surrounding neighborhoods:

As part of the special use application the appearance of the existing building will not be modified. This application is a special use application only. Any changes to the exterior building will adhere to the Westside Guadalupe Historic District and will require Historic Board Review (under a separate application and submittal).

2. Effect on protection of the physical environment:

As part of this application, the physical environment of the existing building will not be modified. The existing physical environment will remain "as is" save for minor circulation and traffic improvements.

3. Impacts on prehistoric, historic, archaeological or cultural sites, including acequias and the historic downtown:

The site is located in the Westside Guadalupe Historic District. This application does not include modification to the exterior of buildings. The project will conform to the City of Santa Fe design guidelines for the Westside Guadalupe Historic District. Any exterior modifications will require H-Board review.

4. Relationship to existing density and zoning within the surrounding area:

The school use is an exceptional use in an area of median-to-high density housing. This school will function similarly to the other dozens of public and private schools throughout Santa Fe.

5. Effects upon parking, traffic patterns, congestion, pedestrian safety, impacts of the project on flow of pedestrians or vehicular traffic and provision of access for the disabled, children, low-income and elderly services:

The site currently features approximately 245 parking spaces. This count does not include street parking. It is anticipated that the school will utilize far less than the 245 parking spaces provide. The existing school utilizes approximately 50 spaces for teachers and staff. The peak traffic hours for the school will be at 9am (which is prior to most business hours in the area) and students depart the school near 5pm. Students depart, not in bulk, but sporadically, as their schedule's permit. It is anticipated that school traffic flow will not be a major obstacle for folks traversing the area, though provisions will be made for designated pickup/drop off locations (mostly likely in the old Borders parking lot).

6. Effect on the economic base of Santa Fe:

The project and the construction will have a positive economic benefit to the economic base of Santa Fe. Secondary impacts include jobs created and the sale of building materials for the construction of roads, utilities, other buildings. Gross receipts tax will be generated on the sale of retail goods, construction materials locally and on local construction contracts.

It should be noted that the New Mexico School for the Arts expends \$2.2 million on employee compensation, and \$1 million on goods and services. It has secured 65%

of its revenue from sources outside of Santa Fe County, and generated a total economic impact of \$3.4 million, \$1.9 million in income and 78 jobs.

7. Effect on availability of affordable housing and availability of housing choice for all Santa Fe residents:

The project is a secondary school and will not have impact on affordable housing.

8. Effect on services such as fire, police protection, school services, and other public infrastructure elements such as water, power, communications, bus service, commuter or other services or facilities:

The project will not have an impact on fire, police protection and other infrastructure elements. These services are available for the existing Sanbusco use. It is estimated that 25% of the students will utilize the Railrunner commuter train to access the school.

9. Impacts on water supply and conservation methods:

The project will be served by the Sangre de Cristo Water Division and the City of Santa Fe Liquid Waste Division. The existing Sanbusco Center utilizes approximately 1.37-afy of water. The existing school location utilizes approximately 1.03-afy of water. A new water budget will be calculated to determine the additional water beyond the 1.37-afy the Sanbusco Center currently utilizes for the additional school uses planned for the building. If the water demand exceeds 5-afy, water rights will be required of the project (the water budget is not expected to exceed 5-afy).

10. Effects on opportunities for community integration and social balance through mixed land use, pedestrian oriented design, and linkages among neighborhood and recreational activities and employment centers:

A school use is an exceptional use for a mixed-use area that features residential and commercial uses. Pedestrian-oriented linkages abound in the area. Students will walk to local commercial businesses and many will depart on the Railrunner train. It is anticipated that this use will have less of an impact on the surrounding area than the existing Sanbusco Market Center. The use will complement the array of existing uses such as the local restaurants and retail establishments. The community connections and linkages already exist in the area. The school will utilize the same fabric developed in the area over the last 30-years.

11. Effects on Santa Fe's urban form:

The existing Sanbusco Market Center will not change as part of this application. The buildings and circulation will remain similar to existing conditions.

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SPECIAL USE PERMIT**

EXHIBIT D

Code References

14-2.4 BOARD OF ADJUSTMENT

(A) Designation

There shall be a board of adjustment of the *city*, which shall be referred to as the “board of adjustment” or the “BOA”.

(B) Delegation of Authority

The *governing body* hereby delegates its authority, as set forth generally in Chapter 3, Articles 19 through 21 NMSA 1978, to the BOA as described in this section, except those powers retained to the *governing body* in the Santa Fe City Code. In addition, the *governing body* delegates authority to the BOA to hear appeals, variances and special use *permits* as provided in Chapter 14.

(C) Powers and Duties

(Ord. No. 2013-16 § 2)

The BOA has the review and decision-making responsibilities set forth in Table 14-2.1-1 to be carried out in accordance with the provisions of Chapter 14 and has the following additional responsibilities:

- (1) to hear appeals of *final actions* of the *land use director* applying the provisions of Chapter 14, unless jurisdiction for such appeals is otherwise specifically reserved to another *land use board*;
- (2) to hear and decide *applications* for special use *permits* as provided in Section 14-3.6 and Article 14-6 (Permitted Uses and Use Regulations), unless jurisdiction for such special use *permits* is specifically reserved to another *land use board*; and
- (3) to authorize in specific cases a variance from the terms of Chapter 14 as provided in Section 14-3.16.

(D) Composition

The BOA consists of seven members, two of whom may be planning commission members and at least five of whom shall be members-at-large. Members of the *governing body* may serve as at-large members.

(E) Appointment and Term

Members of the BOA shall be appointed by the mayor with the consent of the *governing body*. Members shall serve three-year overlapping terms, maintaining the original overlap of BOA terms. Members shall serve until their successors are appointed and qualified.

14-3.6(D) Approval Criteria and Conditions

(1) Necessary Findings

To grant a special use *permit*, a *land use board* shall make the following findings:

- (a) that the *land use board* has the authority under the section of Chapter 14 described in the *application* to grant a special use *permit*;
- (b) that granting the special use *permit* does not adversely affect the public interest, and
- (c) that the use and any associated *buildings* are compatible with and adaptable to *buildings, structures* and uses of the abutting *property* and other *properties* in the vicinity of the *premises* under consideration.

(2) Conditions

The *land use board* may specify conditions of approval that are necessary to accomplish the proper *development* of the area and to implement the policies of the *general plan*, including:

- (a) special *yards* or *open spaces*;
- (b) *fences, walls* or *landscape screening*;
- (c) provision for and arrangement of parking and vehicular and pedestrian circulation;
- (d) on-site or off-site *street, sidewalk* or utility improvements and maintenance agreements;
- (e) noise generation or attenuation;
- (f) dedication of *rights of way* or easements or access rights;
- (g) arrangement of *buildings* and use areas on the site;
- (h) special hazard reduction measures, such as *slope* planting;
- (i) minimum site area;
- (j) other conditions necessary to address unusual site conditions;
- (k) limitations on the type, extent and *intensity* of uses and *development* allowed;
- (l) maximum numbers of *employees* or occupants permitted;
- (m) hours of operation;

- (n) establishment of an expiration date, after which the use must cease at that site;
- (o) establishment of a date for annual or other periodic review at a public hearing;
- (p) plans for sustainable use of energy and recycling and solid waste disposal;
- (q) any other appropriate conditions and safeguards, in conformity with Chapter 14 or provisions of other chapters of the Santa Fe City Code that regulate *development* and use of land; and
- (r) conditions may not be imposed that restrict the use to a specific *person* or group.

(E) Expiration of Special Use Permits

(Ord. No. 2013-16 § 8)

- (1) A special use *permit* that has not been exercised within three years from the date of the approval expires as provided in Section 14-3.19(B)(5). Approval of the special use *permit* may be extended as provided in Section 14-3.19(C).
- (2) If the use approved by the special use *permit* ceases for any reason for a period of more than three hundred sixty-five days, the special use *permit* shall expire except as provided for government uses in Section 14-10.2(C)(2).

BCD Business-Capitol District

Purpose

In recognition of the fact that the economic health of the city depends on the economic viability of the BCD, the purpose of the BCD is to provide for a mixture of land uses, including *residential* uses, designed to promote the district's economic well being while preserving the unique architecture, *townscape* and aesthetics that foster a strong tourist industry and sustain the quality of life, sense of community and historical identity in the district and the city.

Boundaries

- (a) The BCD is composed of *townscape* subdistricts and redevelopment subdistricts. The district and its subdistricts are defined by the official zoning map.
- (b) Changes to boundaries of the *townscape* subdistricts or redevelopment subdistricts, including designations of new *townscape* and redevelopment subdistricts, are considered rezonings and must follow the procedures set forth in Section 14-3.5. Designations of new *townscape* subdistricts are also considered Chapter 14 text amendments and shall comply with the procedures set forth in Section 14-3.3.

Townscape Subdistricts

- (a) The existing *townscape* subdistricts include: Alameda Street, Barrio de Analco, Cerrillos Road, Don Gaspar, East Marcy/East Palace, Loretto, Marcy, McKenzie Street, Old Santa Fe Trail, Plaza/San Francisco, Rosario Boulevard/NW Paseo de Peralta, Sandoval/Montezuma, State Capitol and Westside.
- (b) The *townscape* subdistricts are intended to:
 - (i) preserve the overall aesthetic quality of the BCD;
 - (ii) maintain diversity among the various subdistricts; and
 - (iii) protect the unique features, recognizable historic character and other common identifying characteristics of each subdistrict.
- (c) *Property* is eligible for rezoning to a *townscape* subdistrict if the land is located within or adjacent to the BCD and meets all other requirements of Chapter 14.
- (4) Redevelopment Subdistricts
 - (a) Purpose

Redevelopment subdistricts are intended to provide for:

- (i) *infill* and a limitation of sprawl through the efficient use of land;
- (ii) optimum use of public *infrastructure*;
- (iii) a mix of land uses, including *residential* uses;
- (iv) comprehensive site planning;
- (v) *public benefit uses*;
- (vi) urban design innovation;
- (vii) an enhancement of the economic vitality of the district;
- (viii) the preservation and enhancement of the character and quality of the area in which the subdistrict is located through elimination of any

Updated March 27, 2015

- potentially significant adverse impacts or potentially irreversible adverse impacts upon the community, surrounding neighborhoods or other approved project plans; and
- (ix) redevelopment of areas with weak *townscape* qualities or of areas that are undergoing change.

Redevelopment Requirements

- (i) The *property* is eligible for rezoning to a redevelopment subdistrict if: 1) the land is located within or adjacent to the BCD and encompasses at least three acres, exclusive of dedicated *streets* and *rights of way*, or a complete city block, whichever is smaller; and 2) the existing *infrastructure* has the capability to support or to be modified to support the allowed floor area ratio set forth in Subsections (ii) and (iii) below.
- (ii) The *baseline floor-area ratio* shall be two and five-tenths to one; provided, however, that such a floor-area ratio shall not be allowed if it is judged to be incompatible with an adjacent neighborhood or *townscape* subdistrict.
- (iii) Rezoning to BCD-redevelopment subdistricts requires consideration and approval by the planning commission and *governing body* of a master plan or *development plan* for the *property* as provided in Sections 14-3.8 and 14-3.9.
- (5) Redevelopment subdistrict *property* is eligible for rezoning to a *townscape* subdistrict provided that:
- (a) *development* of the redevelopment subdistrict is substantially complete, which determination shall be made by the *governing body*;
 - (b) the *property* is located in or adjacent to the *townscape* subdistrict it will become part of if the rezoning is approved, and
 - (c) all other requirements of Chapter 14 are met.

Permitted Uses

1. Adult day care
2. Antique stores
3. Art supply stores
4. *Arts & crafts schools*
5. Arts & crafts studios, galleries & shops; gift shops for the sale of arts & crafts
6. Automobile service & repair establishments including filling stations & repair
7. Banks, credit unions (without drive-through)
8. Banks, credits unions (with drive-through) ☼
9. Bar, cocktail lounge, nightclub (no outdoor entertainment)
10. Bar, cocktail lounge, nightclub with outdoor entertainment ☼
11. Barber shops & beauty salons
12. Bed & breakfast
13. Boarding, dormitory, monastery
14. Bookshops
15. Cabinet shops (custom)
16. Cemeteries, mausoleums & columbaria
17. Clubs & lodges (private) ☼
18. Colleges & universities (non-residential)
19. Colleges & universities (residential)

20. Commercial recreational uses & structures; theaters; bowling alleys, pool-rooms, driving ranges, etc
21. Continuing care community
22. Dance studios
23. Daycare; preschool; for infants & children (6 or fewer)
24. Daycare, preschool, for infants or children (more than 6)
25. Department & discount stores
26. Dwelling, multiple-family
27. Dwelling, single-family
28. Electrical distribution facilities
29. Electrical substation
30. Electrical switching station
31. Electrical transmission lines
32. Exercise, spas or gym facilities
33. Fire stations
34. Flea markets
35. Florist shops
36. Foster homes licensed by the State
37. Funeral homes or mortuaries
38. Furniture stores
39. Group residential care community (limited)
40. Group residential care facility
41. Hospitals
42. Hotels, motels, residential suite hotels
43. Human service establishments ☼
44. Kennels
45. Laboratories; research, experimental & testing
46. Light assembly & manufacturing
47. Lodging facilities, conference & extended stay
48. Manufactured homes
49. Medical & dental offices & clinics
50. Mini-storage units
51. Museums
52. Neighborhood & community centers (including youth & senior centers)
53. Nursing, extended care, convalescent, recovery care facilities
54. Office equipment sales & service; retail sale of office equipment
55. Offices; business & professional, excluding medical, dental & financial services
56. Parking lots & garages (commercial)
57. Personal care facilities for the elderly
58. Personal service establishments including cleaning & laundry, appliance repair & similar services
59. Pharmacies or apothecary shops
60. Photographers studios
61. Police stations
62. Police substations
63. Public parks, playgrounds & playfields
64. Religious Assembly (all)
65. Religious educational & charitable institutions (no schools or assembly uses) ☼
66. Rental; short term
67. Restaurant with bar, cocktail lounge or nightclub comprising more than 25% of total serving area ☼

Updated March 27, 2015

68. Restaurant with drive-through or drive-up ☼
69. Restaurant; fast service, take out, no drive-through or drive-up
70. Restaurant; full service with or without incidental alcohol service
71. Retail & service uses intended to serve the primary uses & do not exceed 5,000 square feet
72. Retail establishments not listed elsewhere
73. Schools; elementary & secondary (public & private) ☼
74. Sheltered care facilities
75. Sign shops
76. Storage areas – individual within a completely enclosed building
77. Tailoring & dressmaking shops
78. Theaters; non-profit for production of live shows
79. Time share vacation projects
80. Tire recapping & re-treading
81. Transit transfer facilities
82. Utilities (all, including natural gas regulation station, telephone exchange, water or sewage pumping station, water storage facility)
83. Veterinary establishments, pet grooming
84. Vocational & trade schools (light industrial) ☼
85. Vocational & trade schools (non-industrial)
86. Wholesaling & distribution operations; 3,000 square feet or less of storage

☼ Requires a **Special Use Permit** if located within 200 feet of residentially zoned property.

Special Use Permits

The following uses may be conditionally permitted in BCD districts subject to a Special Use Permit:

1. Correctional; group residential care facility

Accessory Uses

The following accessory uses are permitted in BCD districts:

1. Accessory dwelling units
2. Accessory structures, permanent, temporary or portable, not constructed of solid building materials; covers; accessory structures exceeding 30 inches from the ground
3. Barbecue pits, swimming pools (private)
4. Children play areas & equipment
5. Daycare for infants & children (private)
6. Garages (private)
7. Greenhouses (non-commercial)
8. Home occupations
9. Incidental & subordinate uses & structures
10. Residential use ancillary to an approved use

BASELINE FLOOR AREA RATIO

As used in the BCD, means the maximum permitted floor area ratio subject to the townscape standards where applicable, not taking into account allowable land-use intensity credits.

Baseline Land-Use Intensity

For the BCD in general, the *baseline floor area ratio* shall be 2.0:1, except for the Plaza/San Francisco, Alameda, Redevelopment and Loretto subdistricts, where the *baseline floor area ratio* shall be 2.5:1; provided, however, that a *baseline floor area ratio* of 2.5:1 shall not be allowed if it is judged to be incompatible with an adjacent neighborhood or townscape sub-district. Areas within a *structure*, the ceiling of which are below average finished grade, and at-grade parking areas, do not count toward the allowable floor area.

Refer to 14-4.3(E) for additional BCD requirements and standards.

Dimensional Standards by Townscape Subdistrict

Alameda Street Subdistrict	
Max Height	56 - over 36' must step back 1' horizontal for each 2' vertical
Lot Cover	None - except 67% for block between Cathedral Place & Paseo de Peralta
Bldg. Placement & Setbacks	None
Min Open Space	None - except lots fronting Alameda see 14-7.4(A)-1
Yards Landscape	Lots fronting Alameda - See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	All buildings except those facing Alameda must have 3-foot high stuccoed walls
Off-street Parking	None
Portals	Prohibited within ROW of Alameda fronting lots.

Barrio de Analco	
Max Height	West portion 24; east portion 18
Lot Cover	67%
Bldg. Placement & Setbacks	West: Up to 7' from property line; East: no restrictions.
Min Open Space	None required
Yards Landscape	See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	Up to 8 foot height permitted
Off-street Parking	Prohibited in required front yards
Portals	Permitted within ROW at discretion of Governing Body

Cerrillos Road	
Max Height	45; over 27' must step back 1' horizontal for each 2' vertical – wall step backs min 10 horizontal feet
Lot Cover	None
Bldg. Placement & Setbacks	15 min on Cerrillos where abutting residential outside BCD – must meet residential along common property line
Min Open Space	None required
Yards Landscape	See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	No restrictions
Off-street Parking	No restrictions
Portals	Prohibited within ROW

Don Gaspar	
Max Height	24
Lot Cover	No requirements
Bldg. Placement & Setbacks	Street 10; Side 5; Rear 15
Min Open Space	None required
Yards Landscape	No requirements
Walls & Fences (Height)	No restrictions
Off-street Parking	Prohibited in required front yard
Portals	Prohibited within ROW

East Marcy/East Palace	
Max Height	27
Lot Cover	None
Bldg. Placement & Setbacks	Side 5; rear 10; Street See 14-7.4(A)-1 Note 4
Min Open Space	No less than 10% of lot area adjacent to front property line as yard or courtyard
Yards Landscape	Required in yards & open space. Trees & landscape in planting strips. No asphalt permitted in planting strip - See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	Walls, fences & hedges up to 4' high permitted
Off-street Parking	Prohibited in required front yard
Portals	Prohibited within ROW

Loretto	
Max Height	65 - See 14-7.4(A)-1 Note 5
Lot Cover	No requirements
Bldg. Placement & Setbacks	No requirements
Min Open Space	None - except lots fronting Alameda see 14-7.4(A)-1
Yards Landscape	See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	Walls, fences not to exceed required 7' along OSF Trail frontage
Off-street Parking	Prohibited in required front yard
Portals	Prohibited within ROW

Marcy	
Max Height	42 - over 24' must step back 1' horizontal for each 2' vertical – wall step backs min 10 horizontal feet
Lot Cover	No requirements
Bldg. Placement & Setbacks	See 14-7.4(A)-1 Note 7
Min Open Space	No less than 10% of lot area adjacent to front property line as yard or courtyard
Yards Landscape	Required in yards & open space. Trees & landscape in planting strips. No asphalt permitted in planting strip - See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	4 maximum
Off-street Parking	Prohibited in front yard
Portals	Prohibited within ROW

McKenzie Street	
Max Height	24
Lot Cover	No requirements
Bldg. Placement & Setbacks	Street 10; Side 5; Rear 15
Min Open Space	No requirements
Yards Landscape	See 14-7.4(A)-1 Note 3 & Note 8
Walls & Fences (Height)	No restrictions
Off-street Parking	Prohibited in required front yard
Portals	Prohibited within ROW

Old Santa Fe Trail	
Max Height	24
Lot Cover	No requirements
Bldg. Placement & Setbacks	10 max from front property line
Min Open Space	No requirements
Yards Landscape	Landscape treatment required in front yard
Walls & Fences (Height)	Walls & fences not exceeding 5' are required for front yards. Wrought iron fences are allowed.
Off-street Parking	Prohibited in front yard
Portals	Permitted over ROW at discretion of Governing Body

Plaza/San Francisco Street	
Max Height	36
Lot Cover	No requirements
Bldg. Placement & Setbacks	See 14-7.4(A)-1 Note 9
Min Open Space	No requirements
Yards Landscape	No requirements
Walls & Fences (Height)	If in H District as specified in 14-5.2
Off-street Parking	Must be located off site or in rear yard with access from rear
Portals	Permitted over ROW at discretion of Governing Body

Rosario Boulevard and	NW Paseo de Peralta
Max Height	36
Lot Cover	67%
Bldg. Placement & Setbacks	North of Paseo de Peralta minimum building setback is 20'; residential district setback applies along common property line where lots abut residential district
Min Open Space	None except to meet yard requirements
Yards Landscape	See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	No requirement, except to meet landscape treatment requirements
Off-street Parking	No restriction
Portals	Prohibited within ROW

Rosario Boulevard and	NW Paseo de Peralta
Max Height	36
Lot Cover	67%
Bldg. Placement & Setbacks	North of Paseo de Peralta minimum building setback is 20'; residential district setback applies along common property line where lots abut residential district
Min Open Space	None except to meet yard requirements
Yards Landscape	See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	No requirement, except to meet landscape treatment requirements
Off-street Parking	No restriction
Portals	Prohibited within ROW

Sandoval/Montezuma	
Max Height	36
Lot Cover	67%
Bldg. Placement & Setbacks	Where lot abuts residential area, must meet setback requirements for abutting residential district along common property line
Min Open Space	No requirements
Yards Landscape	Required; See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	No restrictions
Off-street Parking	No requirements
Portals	Prohibited on lots fronting Guadalupe & Sandoval streets, elsewhere permitted within ROW at discretion of Governing Body

State Capitol	
Max Height	48
Lot Cover	50%
Bldg. Placement & Setbacks	Min setback from street must equal building height; min side yard building setbacks of 5 feet
Min Open Space	No requirements
Yards Landscape	Required; See 14-7.4(A)-1 Note 3
Walls & Fences (Height)	No walls allowed except for retaining walls, existing walls around parking lots, & walls or fences around delivery or trash areas
Off-street Parking	No requirements
Portals	Prohibited within ROW

Updated March 27, 2015

Westside	
Max Height	24
Lot Cover	No requirements
Bldg. Placement & Setbacks	Street 10; Side 5; Rear 15
Min Open Space	No requirements
Yards Landscape	No requirements
Walls & Fences (Height)	No restrictions
Off-street Parking	No requirements
Portals	Prohibited within ROW

Notes Table 14-7.4(A)-1:

1. Provisions of overlay districts including historic, escarpment or neighborhood districts may override standards in this table. Refer to Article 14-5 Overlay Districts and zoning map.

2. Wall setbacks are expressed as ratio of increased horizontal *setback* required to vertical height increase, above a specified *building* height. Example: 1' Horiz: 2' Vert. above 36' means that a wall setback equivalent to one horizontal foot for each two vertical feet over thirty-six feet is required. The setback required shall be measured horizontally from the face of the *building façade* or *portal*. Wall setbacks shall be measured vertically from grade for all walls except those that directly abut another *zero lot line building*, in which case the vertical measurement may be taken from the roof plane of the abutting *building*; and those to which a *portal* is attached, in which case the vertical measurement may be taken from the roof plane of the *portal*.

3. On-site parking must be separated from public sidewalks by a solid *wall* no less than three feet in height or by a *landscaped* area no less than four feet in width measured from the back of the sidewalk; or, in the absence of a sidewalk, from the *property* line, and planted with plant materials whose mature height is at least three feet six inches. *Landscaping* must be protected from vehicular damage by placement of physical barriers.

4. There is a ten-foot *building setback* requirement in the East Marcy/East Palace Subdistrict, except (a) on the north side of Marcy Street between Otero Street and Paseo de Peralta; and (b) both sides of Palace Avenue between Paseo de Peralta and Delgado Street, where a *front required yard building setback* equal to the average depth of existing *front yards* on the block is required.

5. No portion of a *building* shall exceed sixty-five vertical above a point at grade level at the center of the site. The part of a *building* exceeding thirty-six vertical feet above a point at grade level at the center of the site shall be set back from each abutting public *street right-of-way* line at least one foot for each two feet of *building* height above thirty-six feet.

6. No restrictions, except that for a depth of forty feet from the *property* line for that portion of the Old Santa Fe Trail frontage from Water Street to a line drawn directly west from the northern-most wall of Loretto chapel, there shall be no parking.

7. *Front required yard* equal to the average depth of existing *front yards* on the block shall be required for (a) the east side of Washington Avenue between Place Avenue and Paseo de Peralta (Hillside); and the west side of Grant Avenue between Place Avenue and Paseo de Peralta. Elsewhere in the subdistrict there are no *required yards*.

8. *Landscape treatment* required in *required yards* and *open space*. *Street trees* and *landscape treatment* required if *planting strip* exists. The *planting strip* should have a minimum width of three feet. Asphalt or concrete pavement prohibited in *planting strip*.

9. *Buildings* fronting San Francisco Street between Sandoval and Cathedral Place shall be built to the *street property* line. *Buildings* elsewhere in the subdistrict should also be built to the *street property* line, but where a *building* is set back from the *street right of way*, a solid *wall* shall be built at the *street property* line unless at least eighty percent of the yard is paved and designated for public pedestrian use. There are no *required yards* in this subdistrict.

February 02, 2016
Board Of Adjustment
Case # 2016-121
**500 MONTEZUMA ST.
SPECIAL USE PERMIT**

EXHIBIT E

Maps

500 Montezuma Street



EXHIBIT E1

500 Montezuma Street Adjacent Zoning

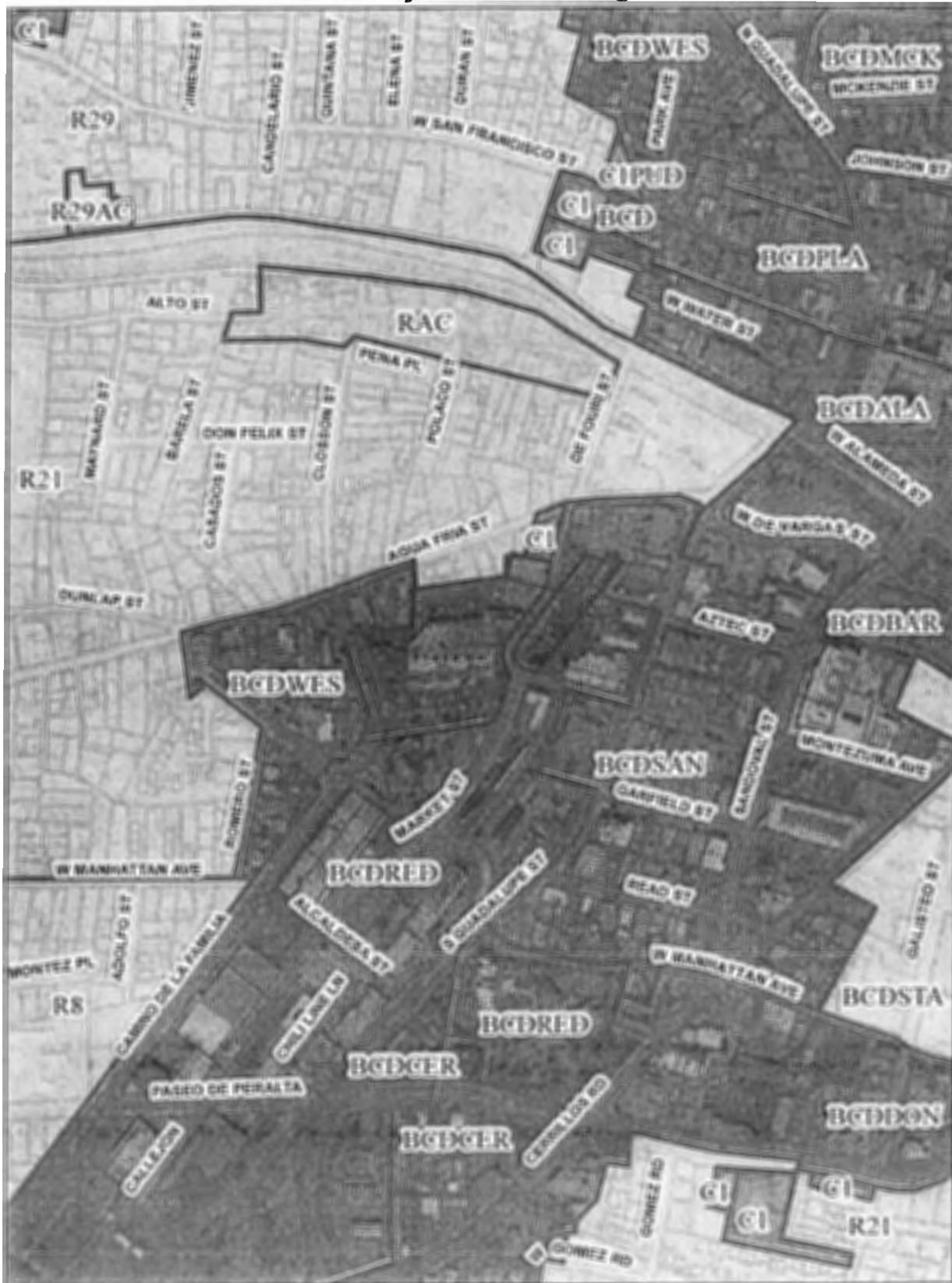


EXHIBIT E2

500 Montezuma Street
Liquor License buffer



EXHIBIT E3

February 02, 2016
Board Of Adjustment
Case # 2016-121
500 MONTEZUMA ST.
SPECIAL USE PERMIT

EXHIBIT F

Correspondence

**THE SANTA FE
RAILYARD**
COMMUNITY CORPORATION

January 22, 2016

Mr. Dan Esquibel
Land Use Planner Senior
City of Santa Fe
200 Lincoln Avenue
P.O. Box 909
Santa Fe, NM 87504

Dear Dan,

Thank you for reviewing the information related to the application for a special use permit by the New Mexico School for the Arts at the Sanbusco Center.

The Santa Fe Railyard Community Corporation does not oppose the use of the Sanbusco property for the school; however, we are requesting clarification on the following items before the Special Use Permit is approved by the Board of Adjustment:

1. Access to City Parking Garage

The entry and exit to the City-owned Railyard Parking Garage is immediately adjacent to the southwest corner of the NMSA property. We feel that it is critical for public safety and traffic flow that the access from the parking garage entry/exit through the Sanbusco parking lot to Market Street be maintained. This access has been blocked temporarily in the past and has caused several near misses as cars try to enter and exit the garage.

2. Traffic Queuing

The preliminary plans appear to reflect traffic queuing from Market Street. Where the traffic then exits from the Sanbusco property is not clear. Will some of the traffic proceed to turn south into Camino de la Familia through the Railyard? If so, please advise the times and duration of drop-off and pick-up activity so we can assess the impact on Camino del la Familia and Market Street.

Will cars be queuing up on Market Street?

3. Performance Center

It appears that NMSA will be building a performance venue inside the Sanbusco Center. In order to assess the impact on the Railyard parking facilities, please advise on the following:

- a. What is the seating capacity? (to determine the parking requirement)
- b. What is the anticipated frequency of the performances?

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332 Read Street, Santa Fe, NM 87501
Tel 505-982-3373 Fax 505-982-3126 www.sfrailyardcc.org

EXHIBIT F1

- c. What time of day are the performances?
- d. Will these performances occur all year, or will they cease in the summer?
- e. Where will the attendees park?

4. Public Parking Availability

Will any of the parking on the Sanbusco site be available for public use when school is not in session, on weekends, evenings, holidays and during the summer break?

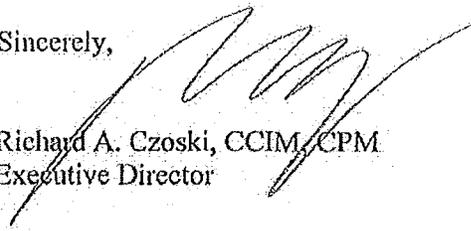
5. Fencing

Please advise what portions of the Sanbusco Center will be fenced off, especially on the boundary between Sanbusco and the Railyard.

Pending satisfactory responses to the above listed questions and the information provided to date, SFRCC does not anticipate any negative economic impact on the Railyard Project as a result of the NMSA occupying the Sanbusco Center as a high school.

We look forward to receiving responses to the above questions before the Board of Adjustment meeting so we can assess how NMSA will impact the operation of the Railyard property. Thank you.

Sincerely,



Richard A. Czoski, CCIM, CPM
Executive Director

February 02, 2016
Board Of Adjustment
Case # 2016-121
**500 MONTEZUMA ST.
SPECIAL USE PERMIT**

EXHIBIT G

Applicant Data

SANTA FE PLANNING GROUP, INC.

P.O. Box 2482

Santa Fe, NM 87504

505.983.1134; 505.983.4884 fax

December 21, 2015

Dan Esquibel
City of Santa Fe Land Use Department
200 Lincoln Avenue, P.O. Box 909
Santa Fe, NM 87504

RE: New Mexico School for the Arts Charter School / Art Institute
At Sanbusco Market Center
Special Use Permit

Dear Mr. Esquibel:

Please find attached our application for a special use permit for the New Mexico School for the Arts at the Sanbusco Market Center, which is located at the north side of the Santa Fe Railyard project. The subject site is 4.22-acres in size and the ancillary parking lot across Montezuma is 0.97-acres for a total of 5.19-acres. It should be noted that the seven (7) buildings that currently harbor the restaurants, Radish & Rye and Raaga and sit on 0.58-acres (Tract B, C-1) are not part of this request. This request is for educational (secondary public and private) and dormitory uses, which are permitted (P) uses in the Business Capitol District (BCD). A special use permit is required due to the proximity of the subject site to residential-zoned property (within 200-ft).

The New Mexico School for the Arts (NMSA) acquired the subject site in September 2015 after a four-year search for a new location that would meet their existing and future requirements for the school. The existing school is located at the corner of Alameda and Paseo De Peralta in the former St. Francis Catholic School. The size of the existing school is less than sufficient for the school's needs and for future plans to fulfill its charter (and expand up to 300 students). The school has currently 215 students. The acquisition of the Sanbusco Market Center is an effort by NMSA to establish a permanent location for their campus within the City of Santa Fe.

The attached materials are the items required for the submittal pursuant to our pre-application meeting, which occurred on November 19, 2015. The ENN meeting for the project was held on December 10, 2015.

Thank you for considering our request. It is our hope that the case will be heard at the **February 2, 2016** meeting of the Board of Adjustment. If you have questions, do not hesitate to contact me at 412.0309.

Sincerely,



Scott Hoeft
Partner

Attachments:

- Letter of Application/Statement Address Approval Criteria
- Legal Lot of Record
- Site Plan (plan set)
- Traffic Impact Study (SF Engineering): under a separate cover
- Resolution No. 2015-4

New Mexico School for the Arts / Art Institute

A Performing Arts Charter School in an Arts and Cultural District

Sanbusco Market Center – An Adaptive Reuse Project

Special Use Application – City of Santa Fe

Educational and Dormitory uses

December 21, 2015

SANTA FE PLANNING GROUP, INC.
PO BOX 2482
SANTA FE, NEW MEXICO 87504
505.412.0309

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Request

This application is for a Special Use Permit for educational and dormitory uses at the existing Sanbusco Market Center. The request is by the New Mexico School for the Arts (NMSA), which plans to use Sanbusco as a new permanent location for their charter school and campus. It is an adaptive reuse project. Sanbusco was acquired by NMSA in September 2015 with this purpose in mind. It should be highlighted that this application focuses upon the “use” question only and does not address historic, building design, or building changes, which will be addressed under a separate application to the H-Board at a later date.

The special use request is for educational and dormitory uses. The specific uses for the NMSA include: 300 students, 25 residential dormitories, classrooms (25), academic, auditorium, lobby and concessions, gallery space, core programs (visual arts, dance, theatre, music) and plan to add creative writing and media arts in the future. Other proposed uses include administrative and counseling, parent workspace, common space for a library, media and research, computer lab, cafeteria and kitchen, custodial/maintenance /storage/security, and bathrooms, locker rooms and dressing rooms.

Project Data

The subject site is 4.22-acres in size and the ancillary parking lot across Montezuma is 0.97-acres for a total of 5.19-acres (Tracts A-1 and E are included as part of this application). The site contains two (2) main buildings and a covered parking area (a shed) that harbors 12 parking spaces. The existing buildings have approximately 97,138 gsf and a combined parking of 274 spaces. This application does not adjust this square footage, nor does it request any modifications to the buildings. The site is bound by existing residential and commercial uses to the north, existing residential to the west, Outside Magazine to the south, and an existing Sanbusco parking lot to the east with existing commercial businesses beyond the parking lot. The site fronts Montezuma Avenue to the east and Market Street to the southeast. The subject site has existed as a multi-tenant retail center since the mid-1980s. It is addressed 500-560 Montezuma.

The design standards are set by the Westside-Guadalupe Historic District. The buildings will require a “status review” by the Historic Review Board (H-Board) under a separate application to the H-Board. The status of the building (no status, contributing, and non-contributing) will be reviewed by the H-Board at a later date. This application does not adjust the appearance of any of the buildings, nor request any review of the appearance of the buildings.

Zoning

The Sanbusco Market Center is located in the Business Capitol District (BCD). The subject site is located at the very north edge of the Railyard, but it is not within the Railyard Redevelopment Subdistrict. This request is for educational (secondary public and private) and dormitory uses, which are permitted (P) uses in the Business Capitol District (BCD). A special use permit is required due to the proximity of the subject site to residential-zoned property (within 200-ft).

“BCD zoning allows for a large variety of land uses that help to energize an urban area.” Per Chapter 14 of the Santa Fe City Land Development Code, the following are the primary categories of land use today at the Railyard: Mixed Use, Light Assembly and Manufacturing, and Arts and Crafts Studios including artists or craft studio space or schools.

The Site

This application does not include any transformative changes to the existing Sanbusco Market Center. The buildings, parking lots, landscaping and appearance will not be altered as part of this application.

Railyard Environs – Arts and Cultural District – The Context

The Sanbusco Market Center sits at the very north edge of the Railyard (though it is not part of its redevelopment district). The Railyard has developed into an Arts and Cultural District by design (per a 1996 plan). It contains a mix of quasi-public facilities such as the Farmers’ Market and Teen Warehouse 21 at the north end. W21 is a cutting edge teen art center and “a place where music, technology, and the arts merge in a venue serving the Santa Fe youth.” W21 has a digital media arts lab, two performance spaces for theatre, concerts and films, a gallery for the creation and exhibition of art, a fashion design studio/dressing room, a recording studio and a visual arts studio for screen printing. Adjacent to W21, Site Santa Fe supports new developments in contemporary art, year-round exhibitions, Arts & Culture series of lectures, performances, and outreach programs for local schools. The area also supports the El Museo Cultural, a Hispanic cultural center.

It should be emphasized that the area has an existing school named Tierra Encantada Charter School (which has enrolled 250 high school kids). This school sits at the south end/west edge of the Railyard (Paseo de Peralta) just west of W21. It is approximately 925-ft away from the subject site (property line to property line).

Other uses in the Railyard include over 15 art galleries, two movie houses, a variety of retailers, City of Santa Fe offices, approximately seven (7) successful restaurants, and the Railyard performance Center (a complete list of tenants is shown at the end of this report).

By design, the uses in the Railyard are eclectic and inhabit a space that emphasizes creativity, arts, culture, entertainment, outdoor enjoyment, public gathering and non-motorized transportation sources (walking, biking and commuter service).

New Mexico School for the Arts – The Anchor Tenant and Economic Engine

With the aforementioned context in mind, it can be easy to see how a performing mastery school can serve as a stimulating new aspect to this wonderful and exciting arts and cultural district of Santa Fe – an additional engine to spark continued redevelopment of this area. Its core programs are: dance, music, performing theatre and visual arts. It should be noted that if a student is accepted to the school based upon open audition, costs are covered in full (by private contributions and State proceeds). State funding covers academic and private funding covers art mastery training.

NMSA’s stated mission:

1. Assists passionate young artists in developing their full potential through a rigorous mastery arts and academic education;
2. Provides access to mastery arts education and rigorous academics for New Mexico’s talented young artists, regardless of home location or financial capacity;

3. Establishes a caring community of artistic learners nurtured and engaged in self-discipline, citizenship, continuous improvement, and joyful learning in and through the arts;
4. Provides innovative and creative curricula in arts and academics based on fundamental skills that include exposure to New Mexico arts and culture;
5. Prepares students for higher education and/or careers in the arts and to participate in the cultural and creative economy;
6. Through partnerships, collaborations and programming, serve as a statewide arts education leader working to encourage arts education throughout the state.

NMSA was established in 2008 and opened in 2010; it is five-years old. The school has a \$3.3 million annual budget, which as a charter school receives \$1.9 million from the State of New Mexico. NMSA Art Institute raises \$1.9 million in private funds (from over 1,000 donors). In its five-years, NMSA has had a direct fiscal impact of over \$20 million to the economy of Santa Fe. These funds pay Santa Fe teachers, Art instructors, administrators, and catering just to name a few. If NMSA did not exist these funds would go elsewhere. As statewide enrollment increases and more philanthropists support NMSA, Santa Fe can expect more jobs to be created and more funding to be spent within the City. NMSA also produces the following highlights:

1. 96% graduation rate (65% Santa Fe area/35% outside of Santa Fe)
2. 75 full-time or part-time employees (85% reside in Santa Fe)
3. NMSA current charter allows up to 300 students (currently at 210)
4. NMSA produces 35 public events and exhibits annually
5. 4,000 audience members attended a ticketed event (\$10-\$100) annually
6. NMSA has received 4 consecutive "A" grades for the Public Education Department
7. NMSA was recently rated a top 10 high school in New Mexico by USNews & World Report.

Multiplier Effect (bringing folks in from around the Country):

8. Over 70 universities and colleges have visited NMSA (college recruitment) and are actively recruiting the graduates
9. Over 60 professional artists and recognized guest lectures have presented at NMSA
10. NMSA Audition Week (500 state wide young artists and families have attended a day long audition process)
11. NMSA plans to have a Summer Intensive Program (100 teachers from around New Mexico visit campus for two-week sessions)
12. NMSA conducts over 25 city and statewide outreach events annually

In addition to the above contributions to the local economy, once fully functioning the NMSA campus with its estimated 300 students can be expected to generate at least \$1.2 million in new annual monies for the Railyard District and surrounding businesses (galleries, specialty shops, restaurants, hotels, entertainment venues and service businesses).

It should be noted that the renovation of interior spaces of the buildings at the Sanbusco Center for a new campus location would inject another \$5 to \$10 million into the local economy for design and construction jobs.

New Mexico School for the Arts - Economic Impact Study

NMSA commissioned the UNM Bureau of Business & Economic Research (BBER) to analyze the economic impact of its operation on the Santa Fe County for fiscal year 2013. BBER estimated the NMSA's conventional impacts such as school operations (salaries), out of county student spending and visitor spending. The study is attached for review (under a separate cover).

Sanbusco Market Center (recent background)

In light of the discourse that occurred at the ENN meeting regarding the recent history of Sanbusco and its leasing efforts, we met Anne Cummings of Trigild Property Management. Ms. Cumming has worked for Trigild and the Sanbusco Center since January 2013. Ms. Cumming provided the following information:

In August of 2012 the bank foreclosed on Sanbusco Shopping Center. In the three years since the foreclosure, the bank ownership spent a great deal of money maintaining the property and made improvements including a new roof, landscaping, and hiring an outside security company. The bank ownership also worked on additional advertising. CBRE was hired to lease the vacant spaces (CBRE is a very large international real estate brokerage firm). After almost three years, CBRE was not able to secure one long-term lease for a new tenant in the mall interior, and was unsuccessful in generating serious interest in the vacant Borders space (which represents about 28% of the leasable space) or any of the other vacant spaces. The bank pursued a conceptual plan to redesign the former Borders space into several smaller spaces as well as changing the space into an upscale market, but analysis showed that the plan would not be feasible (and because there was still no material interest in the endeavor, it was not undertaken).

During this time, significant effort was also put towards promoting the property. The ownership was required by the leases to pay 20% more than the collected promotional rent toward advertising. The tenants paid approximately \$82,664.93 in promotional rent (the owners were required to contribute \$16,532.99 in advertising). A total of \$246,737.40 was expended on television, radio and print advertising including ads in the Pasatiempo, the annual Santa Fe Opera guide, the Rail Runner magazine, Trend, and Inside Santa Fe. The tenants indicated that there had been no material increase in foot traffic to the mall.

In summary, the owners contributed just under \$150,000.00 more than was required by the leases to help promote the property to no avail. After income and expenses were calculated the property lost \$658,085.06 in the period between foreclosure and the sale to NMSA.

As a final comment, Cost Plus World Market, announced their relocation plans to the Santa Fe Place mall in July 2015, and like Borders, occupied a significant amount of space (18% of the total leasable space or 15,298 sf).

NMSA was honored to purchase (by auction) a \$7.3 million Santa Fe property that was going bankrupt.

Special Use Permit Approval Criteria (Section 14-3.6(D))

1. That granting the special use permit does not adversely affect the public interest.

The intent of this application is to make the case that not only will NMSA not adversely affect the public interest, but in fact the school at the subject location will enhance the area and assist in the further redevelopment of the Railyard. An arts school is an exceptional use in an area of medium-to-high density housing, increasing Santa Fe's identity as an arts' community thus further enhancing the Railyard. It is the plan of NMSA to reinvent (adaptive reuse) a small segment at the north edge of the Railyard as a creative zone for art, performance arts, music, as well as serve as a vibrant community addition in an established mixed use area. Performances will attract patrons in the evening and weekends; students and parents will frequent the area on weekdays. NMSA will also be a stable permanent employer and with a new campus will help to create additional permanent jobs and assist the school reach its full charter (300 students/125 teachers) and economic potential.

2. That the use and any associated buildings are compatible with and adaptable to buildings, structures, and uses of the abutting property, and other properties in the vicinity of the premises under consideration.

Schools are typically located near residential areas (the subject site is bounded to the north and west by existing residential uses). We view this use as complementary to the proposed school use at Sanbusco. The area to the west of the subject site is the Railyard, a vibrant and growing arts and cultural that will form a nexus with NMSA. At the Sanbusco location, students will be able to seek inspiration from this new environment. NMSA envisions outreach and internships with the surrounding property owners such as: Outside Magazine (creative writing), the multitude of art galleries (visual arts program), summer concert events in the Railyard (music), and the outdoor performances for dance. All of these surrounding uses can be synergistic for the aspiring young artists of NMSA and encourage them to engage in the community, but also inspire them to become Santa Feans in a true artistic and cultural experience.

It should be noted that pedestrian-oriented linkages abound in the area. The Railrunner stop was a huge incentive in the site selection process. Students, faculty, Staff, parents and board members will walk to local commercial businesses and many will depart on the Railrunner train. It is anticipated that this use will have less of an impact on the surrounding area than the existing Sanbusco Market Center. The school will complement the array of existing uses such as the local restaurants and retail establishments. Community connections and linkages already exist in the area. The school will utilize the same fabric developed in the area over the last 30-years.

The existing Sanbusco Market Center will not change as part of this application. The buildings and circulation will remain similar to existing conditions. The new campus will bring local residents back to the downtown area, with NM School for the Arts' student families and friends coming to performances and exhibitions offered throughout the school year in NMSA's new theater and exhibition galleries. This will make a significant

contribution to the vitality of the Railyard district and greater downtown area. NMSA provides the downtown area with a consistent and steady stream of consumers, and will grow a generation of new Santa Fean artists.

South Carolina – Governor’s School for the Arts: A Case Study

The narrative that has been brought forth in this application is not simply wishful thinking. The economic vitality proposed in this application has already been demonstrated by an existing art school in South Carolina. Established in 1999, this program (which closely matches the model of NMSA) has served as an economic engine and source of revitalization for an area in downtown Greenville. The campus was located on 8.5-acres and served as an engine to revitalize this portion of downtown Greenville. According to the school website, “The school is run much like a college and is modeled as a master-apprentice community with arts faculty who are all practicing artists, as well as educators in their areas of expertise.” NMSA program is run in the same manner and philosophy. For further information, please consult the following website: <http://www.scgsah.org>.

Landscape, Parking and Lighting Plan, Signage Specifications

The exterior spaces are not being changed as part of this special use permit. The landscaping and lighting will remain as is. The parking plan is shown on the site plan, which is attached for review.

Terrain Management

The exterior spaces are not being changed as part of this special use permit. The terrain will remain as is.

Traffic Impact Analysis and Circulation

A traffic impact analysis was completed as part of this submittal (it is included under a separate cover). Please consult the report for further information regarding traffic counts, intersections studied, and recommendations for traffic improvements.

It should be noted that it is estimated that 25% of NMSA students will utilize the Railrunner commuter train to access the school. The Railrunner stop was one of the primary justifications of the acquisition of the Sanbusco Center for NMSA. NMSA attracts kids from across the State of New Mexico.

The site currently features approximately 274 parking spaces (which includes the parking around the Sanbusco Center and the parking lot across Montezuma. This count does not include street parking. It is anticipated that the school will utilize far less than the 274 parking spaces provided. The existing school utilizes approximately 50 spaces for teachers and staff. The peak traffic hours for the school will be at 9 am (which is prior to most business hours in the area) and students depart the school near 5 pm. Students depart, not in bulk, but sporadically, as their schedules permit. It is anticipated that school traffic flow will not be a major obstacle for folks traversing the area, though provisions will be made for designated pickup/drop off locations (mostly likely in the old Borders parking lot).

Archaeological Clearance

The exterior spaces are not being changed as part of this special use application, therefore an archaeological clearance is not required. It should be noted that any exterior changes to the buildings require H-Board approval (to be completed under a separate submittal to the H-Board) at a later date.

Water and Sewer Plan

The water and sewer service will be remain “as is” as part of this special use application.

Regarding water rights, it should be noted that the existing Sanbusco Center utilizes approximately 1.37-afy of water. The existing school location (St. Francis school) utilizes approximately 1.03-afy of water. A new water budget will be calculated to determine the additional water beyond the 1.37-afy the Sanbusco Center currently utilizes for the additional school uses planned for the building. If the water demand exceeds 5-afy, water rights will be required for the project (the water budget is not expected to exceed 5-afy).

Fiber

Fiber was recently extended to the Railyard (to the REI building). The fiber connection was installed approximately 400-ft away from the subject site and can be easily extended to assist the school with its broadband connectivity, which will be a critical factor in NMSA’s evolution in the coming years. Preliminary meetings have been underway with CyberMesa to develop cost estimates to extend the broadband to Sanbusco.

Phasing Plan

A phasing plan has not been submitted as part of this special use application. It is planned for the school to move from its existing location at 275 East Alameda to Sanbusco in one step (and not piecemeal). The school plans for this turnover in the Spring 2017 (to be ready for the Fall of 2017 school year).

Conclusions

By nurturing New Mexico’s artistic talent, NMSA, via this new location at the Sanbusco Center, will help to preserve the arts and cultural economy of the state by training youth to practice their art here, in galleries, or join local arts companies – many within a short distance from their proposed educational home. This adaptive reuse project in this location at the Sanbusco Market Center is absolutely critical in making the vision of NMSA a reality.

Railyard Uses and Surrounding Properties – List of Tenants and Potential Partners

Public Uses

Tierra Encantada Charter School (250 high school kids)
City of Santa Fe Offices

Galleries

Tai Modern Gallery
David Richards Gallery
William Siegal Gallery
Evoke Contemporary
Charlotte Jackson Fire Art
LewAllen Gallery
James Kelly Contemporary
Santa Fe Clay (pottery studio)
Central Studio
Art Yard
El Museo Cultural
Moss Collections

Entertainment

Railyard Performance Center
Violet Crown Movie Theatre
Jean Cocteau Movie House

Warehouse 21

Site Santa Fe

Restaurants

Joseph's Table
Radish & Rye
Raaga
Second Street Brewery
BoxCar Restaurant
Pranzo
Tomasita's

Retailers and other

REI
Daniella Clothing
Outside Magazine Headquarters
Verizon
Barker Realty
Santa Fe Home Furnishings
On Your Feet/On Your Little Feet

**NEW MEXICO SCHOOL FOR THE ARTS
ART INSTITUTE
AT
THE SANBUSCO MARKET CENTER
SPECIAL USE PERMIT APPLICATION
(SECONDARY EDUCATION AND DORMITORY USES)**

SHEET LIST

1. COVER SHEET
2. BOUNDARY SURVEY
3. SITE PLAN FOR SPECIAL USE PERMIT

OWNER:



PLANNER:

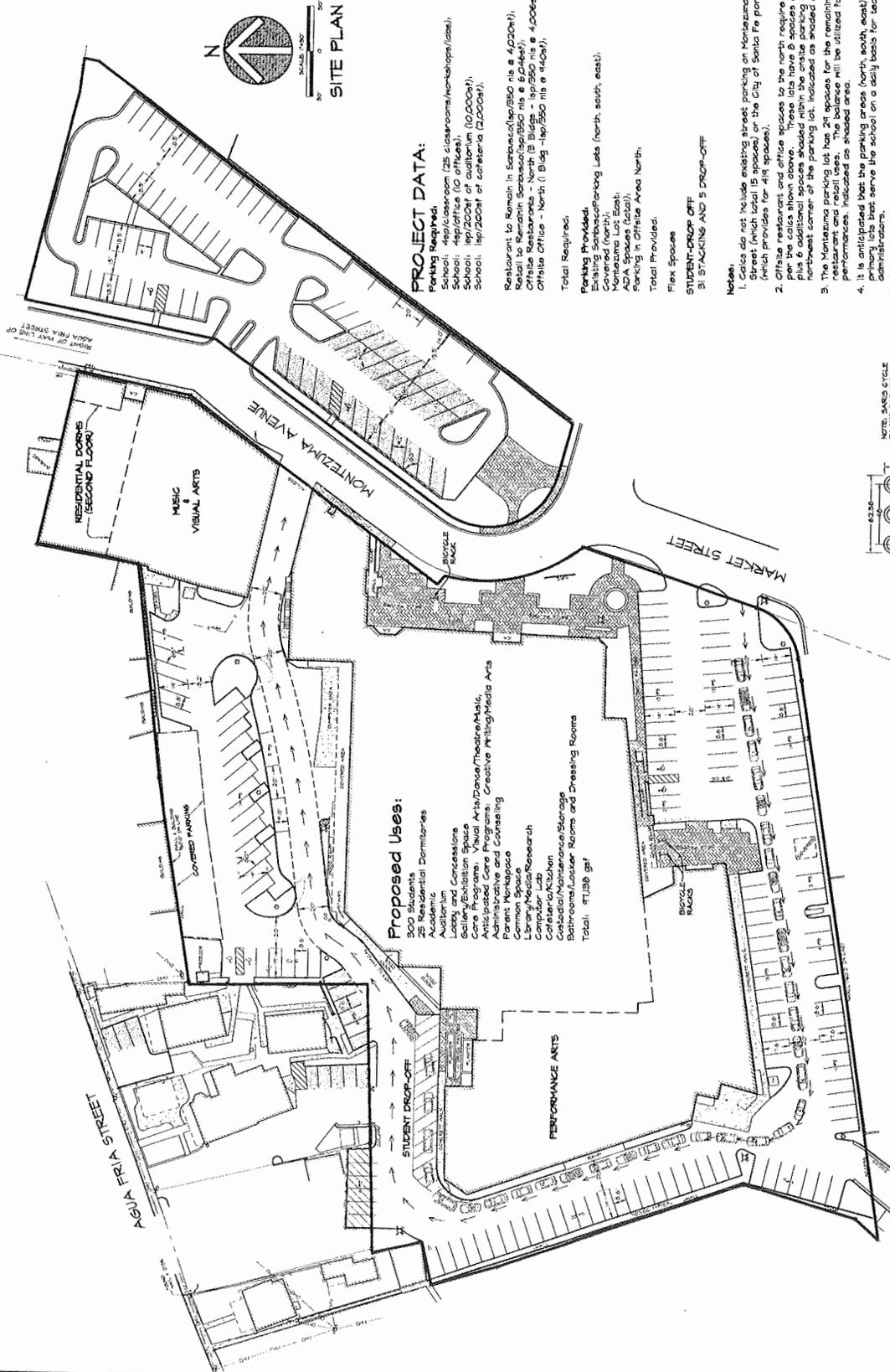


SURVEYING:



SHEET NO.
1
12/12/2015





Proposed Uses:
 300 Students
 25 Residential Dormitories
 Auditorium
 Lobby and Concessions
 Gallery/Exhibition Space
 Care Programs, Visual Arts/Dance/Theatre/Music,
 Programs, Creative Writing/Media Arts
 Administrative and Consulting
 Parent McNamara
 Common Space
 Library/Media/Research
 Computer Lab
 Cafeteria/Kitchen
 Custodial/Maintenance/Storage
 Bathrooms/Locker Rooms and Dressing Rooms
 Total: 47,138 sq ft

PROJECT DATA:

- Parking Required:**
 1000sp
 500sp
 50 sp
 10 sp
 200 sp
 13 sp
 17 sp
 11 sp
 2 sp
 42 sp
 242 spaces

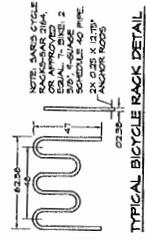
- Parking Provided:**
 Existing Surface/Off-Street (North, South, East),
 Montazuma Lot East,
 ADA Spaces (Total),
 Parking in Offsite Area North,
 Total Provided:
 Flex Spaces
 5 spaces
 247 spaces

STUDENT-DROP OFF

- Notes:**
 1. Cites do not include existing street parking on Montazuma or Market Street (which total 15 spaces) or the City of Santa Fe parking garage which provides for 471 spaces.
 2. Office and office spaces to the north require 18 spaces, per the city shown on the site plan. The balance of the 247 spaces plus 6 additional spaces shaded within the on-site parking area in the northwest corner of the parking lot, indicated as shaded area.
 3. The Montazuma parking lot has 247 spaces for the remaining restaurant and retail uses. The balance will be utilized for school performances, indicated as shaded area.
 4. It is anticipated that the parking area (north, south, east) will be the primary drop-off area for the school on a daily basis for teachers and administrators.
 5. The auditorium parking is other hours (evening performances).

Existing Square Footage (sq ft)

Montazuma	64,359 sq ft
North Building Second Floor	4,431 sq ft
North Building Second Floor	4,020 sq ft
Food Service Space (Pranzo)	1,416 sq ft
Utility/Electrical	644 sq ft
Other Second Floor	2,311 sq ft
Basement	2,311 sq ft
Total	81,133 sq ft





Memorandum

DATE: January 26, 2016
TO: Board of Adjustment
FROM: Fabian Trujillo, Economic Development Division Director *F.T.*
RE: Economic Development Impact Analysis – New Mexico School for the Arts.

Overview:

The New Mexico School for the Arts (NMSA) was established in 2008 by a charter approved by the NM Public Education Commission. NMSA's first year of operation was in 2010. Today, it is comprised of 215 students from across New Mexico. NMSA provides their students pre-professional instruction in the performing and visual arts. They prepare many of New Mexico's artistically talented students to compete nationally for post-secondary education and for professional careers in the arts. Currently, students study in one of these four artistic disciplines: dance, theater, music, or visual arts. NMSA is a high performing school. In May 2015, NMSA was ranked as one of the 12 best schools in New Mexico by US News and World Reports.

NMSA acquired the Sanbusco Market Center in September 2015 and is proposing to use the site for their campus. The Sanbusco Center is 88,000 sq. ft. and is projected to have 300 students by 2019; 25 residential dormitories, 25 classrooms, an academic auditorium, lobby and concessions, gallery space and common space for a library, media and research, computer lab, cafeteria and kitchen, bathrooms, locker rooms and dressing rooms. The NMSA renovation and expansion is expected to be completed in 2019 with a capital investment of over \$23 million.

Economic Impact Analysis Review:

NMSA contracted with Dr. Kelly O'Donnell who is a member of the UNM Economic Department to update the UNM BBER Impact Analysis in 2013 and to estimate the impacts of the planned expansion and operations at the Sanbusco Market Center.

For this report, Dr. O'Donnell utilized an "export-base" method utilized by educational institutions. According to this report, this methodology "recognizes that only expenditures supported by out-of-county revenues can be considered to have a tangible impact on the county." The economic impacts in this report were generated by the IMPLAN model which were inputted, analyzed and developed by Dr. O'Donnell. Additionally, Dr O'Donnell utilized the results from IMPLAN to estimate fiscal impacts. These fiscal impacts are specific to Santa Fe.

Summary of Economic Impacts for NMSA:

According to Dr. Kelly O’Donnell, NMSA will generate economic impacts based on the following four components: current operations, student expenditures, Sanbusco Market Center renovations, and visitor expenditures. These impacts are the result of the direct economic activities generated by NMSA spending. The economic impacts will result from the spending and outputs in the following areas:

NMSA Economic Impacts at Full Enrollment (2019)			
	Jobs	Labor Income	Output
Operations (Annual)	120	\$2,899,179	\$5,235,324
Student Expenditures	5	\$182,836	\$473,440
Visitor Expenditures	3	\$65,491	\$197,612
Total Annual Recurring Expenditures	128	\$3,147,506	\$5,906,376
Construction Expenditures (2016-2018)	163	\$6,918,413	\$24,984,893
Totals	291	\$10,065,919	\$30,891,269
Source: Economic Impact of NMSA; O’Donnell Economics & Strategy – January 25, 2016			

Fiscal Impacts – NMSA spending on operations, spending by students and visitors as well as construction spending on renovations of the Sanbusco Market Center will generate revenues in the form of taxes and fees for the state and local governments. These taxes and fees are the result of the jobs and economic activity directly and indirectly from NMSA. The state is projected to receive the following recurring and non-recurring taxes and fees due to NMSA and is illustrated in the table below:

NMSA State and Local Tax Impacts at Full Enrollment (2019)			
	Local	State	Total
Recurring (All Non-Construction)	\$51,451	\$162,197	\$213,648
Non-recurring (Construction)	\$997,567	\$1,231,882	\$2,229,449
Totals	\$1,049,018	\$1,394,079	\$2,443,097
Source: Economic Impact of NMSA; O’Donnell Economics & Strategy – January 25, 2016			

Conclusion:

NMSA is estimated to generate positive economic and fiscal impacts to the city and state by this project during the renovation period and for the next ten years. These impacts are substantial. NMSA will generate \$997,567 in GRT, permits, fees, and lodger’s taxes for the city of \$1,049,018. According to Dr. O’Donnell,

“NMSA will increase the productivity of Santa Fe's economy by attracting student, visitor, operations, and capital improvement funding from outside the county. The additional economic output generated by NMSA will total \$80.3 million over the ten-year period, an average of over \$8 million per year. Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.48 million over the ten-year period.”

I concur with Dr. O'Donnell and agree that the economic and fiscal impacts will be positive by NMSA. The Sanbusco Center's tenants are relocating to Santa Fe's other retail spaces which include but are not limited to DeVargas Center and the Santa Fe Place Mall. So, NMSA is not only re-purposing and revitalizing the Sanbusco Center, the NMSA expansion will increase retail occupancy rates elsewhere in Santa Fe.

Finally, NMSA will contribute and stimulate the arts and cultural sector of Santa Fe's economy. They will provide a world class environment where students from all over New Mexico can be prepared for a career in the arts and where NMSA student performances can enrich an already vibrant arts and culture sector.

O'Donnell Economics & Strategy

1473 West Ella Drive
Corrales, NM 87048
Phone: 505-659-5702
E-Mail: Kelly@odonnelleconomics.com
Web: odonnelleconomics.com

January 25, 2016

Riis Gonzales
Executive Director,
New Mexico School for the Arts-Arts Institute
275 East Alameda
Santa Fe, NM 87501

Dear Mr. Gonzales:

Enclosed is the economic impact analysis of the New Mexico School for the Arts and its proposed renovation/expansion that I prepared at the behest of the New Mexico School for the Arts - Art Institute. The analysis, which uses the most up-to-date data available, shows that NMSA contributes significantly to the Santa Fe economy and that the proposed renovation/expansion will magnify the school's impact considerably.

Sincerely,

Kelly O'Donnell

Kelly O'Donnell, PhD

Director, O'Donnell Economics and Strategy
Assistant professor of economics and senior research fellow,
University of New Mexico

Summary

New Mexico School for the Arts is a public/private partnership comprised of a legislatively created, residential charter high school and the NMSA-Art Institute, a nonprofit art educational institution. Because state funding for the charter school supports only its academic programming, NMSA-AI raises the private funds necessary to support the school's master arts programming, outreach, admissions, development and residential programs.

Having outgrown its current location at the old Cathedral School in downtown Santa Fe, NMSA is preparing to relocate to the Sanbusco Market Center property adjacent to the Santa Fe Railyard and expand enrollment from 215 students to 300 students by 2019.

NMSA and NMSA-AI contribute to the Santa Fe economy through the funds they attract from outside the county. Major sources of outside funding include: contributions, grants, and state public education funds that support school operations; spending by the sixty-five students who board at the school or commute from households outside Santa Fe; and spending by the over 1,000 visitors from outside Santa Fe who attend performances and events at NMSA each year.

Transitioning the 88,000 square foot Sanbusco Center property from a retail center to a residential school for the arts will entail a major renovation expected to cost over \$23 million.

NMSA Economic Contribution at Full Enrollment (300 students)

	Labor Income	Jobs
Operations (annual, 2019)	\$2,899,179	121
Student Expenditures (annual, 2019)	\$182,836	5
Visitor Expenditures (annual, 2019)	\$65,491	3
Total Annual Recurring	\$3,147,507	128
Construction (Total 2016-18)	\$6,918,413	163
Total	\$10,065,919	291

The NMSA renovation and expansion is expected to be complete in 2019. With 300 students enrolled, NMSA will generate \$5.9 million in annual economic activity, 128 jobs and \$3.1 million in annual labor income. During the renovation period, construction activities will support 163 person-years of construction employment at an average total compensation, including benefits, of \$42,502 per year. The combined economic impact of NMSA at full enrollment and the renovation necessary to achieve full enrollment is 291 jobs and \$10.1 million in labor income.

The expansion will produce over \$1 million in new revenue for the City of Santa Fe. At full enrollment, NMSA will generate \$51,145 in annually recurring municipal tax revenue. Between 2016 and 2018 construction activities related to the renovation will contribute an additional \$997,567 in tax and fee revenue for the city.

City of Santa Fe Fiscal Impacts	
Recurring (annual at full enrollment)	
Gross Receipts Tax	\$48,347
Lodgers Tax	\$3,104
Non-recurring (one-time 2016-18)	
Gross Receipts Tax	\$626,349
Permits & Fees	\$371,218
Total	\$1,049,018
Source: Author calculations	

Ten-Year Economic Contribution

The additional economic output generated by the visitors, students, and funding NMSA attracts to Santa Fe will total \$80.3 million over the ten-year period, an average of over \$8 million per year. Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.5 million over the ten-year period.

Introduction

New Mexico School for the Arts (NMSA) is preparing to relocate from St. Francis Cathedral School in downtown Santa Fe to the Sanbusco Market Center property adjacent to the Santa Fe Railyard and expand enrollment from 215 students to 300 students. NMSA-AI, a nonprofit arts organization, commissioned Kelly O'Donnell PhD to estimate NMSA's impact, pre- and post expansion, on the Santa Fe economy for the ten-year period beginning school year 2016 (SY16). This report presents the results of that analysis and describes the data and methodology that were used.

The pre-expansion economic impacts presented here are updates to an economic impact analysis performed for NMSA-AI by the UNM Bureau of Business and Economic Research (BBER) in 2013. The methodology used here to estimate recurring economic impacts closely follows that described in the BBER report. In addition to updating the BBER estimates, this report projects the economic impacts of the planned expansion through 2025, estimates the impact of the school's \$29.8 million purchase and renovation of Sanbusco Center, and calculates the state and local fiscal impact of all economic activity related to NMSA.

Because a major objective of this study is to predict the economic and fiscal impact of the relocation and expansion, results presented in the foregoing tables, unless otherwise noted, are annual economic impacts for 2019, when the expansion is expected to have been completed and enrollment has reached 300. Annual impacts for each of the ten years from 2016 through 2025 and total impacts over the full ten-year period are presented in Table 13 at the end of this report.

Data

The revenue, expenditure, employment and enrollment data for this study were provided by NMSA. The school currently has 215 students. Sixty-five students (30%) are from households outside Santa Fe County. Currently, 20 of these students board at the school and the remainder commute. NMSA anticipates that between 2017 and 2019 enrollment will increase to 300. The new facility's close proximity to the Railrunner will make the school more accessible, and the number of students from outside the county is expected to more than double. NMSA and NMSA-AI currently employ 75 faculty and staff. Employment is expected to increase in proportion to enrollment during the expansion period.

Major sources of revenue for NMSA in SY 2014-15 are presented in Table 1. Sixty-three percent of NMSA's 2014-15 revenue was derived from sources outside Santa Fe County.

Table 1: New Mexico School for the Arts and NMSA-Art Institute (NMSA-AI) Sources of Revenue, SY 2014-15

New Mexico School for the Arts and NMSA-Art Institute, Sources of Revenue, SY 2014-15			
	In-County	Out-of-County	Total
State Education Funding	-	\$1,895,748	\$1,895,748
Contributions	\$1,126,404	\$435,475	\$1,561,879
Earned Income	\$119,693	\$48,981	\$168,674
Investment Income	-	\$2,062	\$2,062
Federal telecommunications funding	-	\$9,583	\$9,583
Other	\$231,325	\$171,486	\$402,811

Total	\$1,477,422	\$2,563,335	\$4,040,757
Source: NMSA and NMSA-AI budget documents			

NMSA expenditures for SY 2014-15 are presented in Table 2. Eight-five percent of NMSA employees reside within Santa Fe County. Overall, 79 percent (\$3.07 million) of NMSA's total expenditures went to individuals and businesses within Santa Fe County.

Table 2: New Mexico School for the Arts and NMSA-Art Institute Expenditures, SY 2014-15

NMSA and NMSA-AI Expenditures by Category, SY 2014-15	
Instruction/art programs	\$1,932,897
Outreach/admissions	\$89,408
Student services	\$84,564
Residential	\$245,554
Instruction support	\$373,519
School administration	\$286,206
General administration	\$372,752
Facilities	\$234,333
Food	\$20,147
Development	\$274,155
Total	\$3,913,535
Source: NMSA and NMSA-AI 2014-15 budget documents	

Methodology

This study seeks to quantify the *net* economic activity attributable to NMSA -- the economic activity that would not occur if the school did not exist. To isolate this activity, it is assumed that only expenditures made in Santa Fe County with funds derived outside the county have a net impact on the county economy. This standard assumption recognizes that NMSA revenue derived within Santa Fe County would, in the absence of NMSA, flow to other county activities. NMSA's contribution to the Santa Fe economy thus derives from its ability to attract revenues from sources outside the county. The direct economic impact of NMSA's expenditures is then the product of it's total spending (\$3.9 million), the share of NMSA revenue derived from out-of-county sources (63%), and the share of NMSA expenditures made within the county (79%):

$$\text{Direct Impact} = (\text{Total Expenditures}) \times (\% \text{ Out-of-County Revenues}) \times (\% \text{ In-County Expenditures})$$

$$\$1.94 \text{ million} = \$3.9 \text{ million} \times .63 \times .79$$

NMSA's total impact on the county economy exceeds its direct impact because NMSA's in-county expenditures are re-spent within the local economy, creating "multiplier effects" and "indirect" and "induced" economic impacts. The analysis presented here uses IMPLAN 3.0 in conjunction with the most recent (2014) economic data for Santa Fe County to estimate the direct, indirect, and induced impacts on output, employment, and income attributable to NMSA. Estimates of tax impacts utilize the economic impact results from IMPLAN, but are estimated using standard public sector fiscal impact methodologies and Santa Fe-specific statutory and effective state and local tax rates.

Results

NMSA's total economic impact is composed of four components: (1) current operations; (2) expenditures by students; (3) expenditures by visitors; and (4) the Sanbusco Market Center renovation. NMSA will renovate the Sanbusco

property between 2016 and 2018 and expand enrollment from 215 to 300 students between 2017 and 2019. Table 3 presents NMSA's annual economic impact at full enrollment (2019) and total construction expenditure.

Table 3: NMSA Annual Economic Impact at Full Enrollment and Total Construction Expenditure

NMSA Economic Impact at Full Enrollment			
	Output	Labor Income	Jobs
Operations (annual, 2019)	\$5,235,324	\$2,899,179	120
Student Expenditures Full Enrollment (annual, 2019)	\$473,440	\$182,836	5
Visitor Expenditures Full Enrollment (annual, 2019)	\$197,612	\$65,491	3
Total Annual Recurring	\$5,906,377	\$3,147,507	128
Construction (Total 2016-2018)	\$24,984,893	\$6,918,413	163
Total	\$30,891,270	\$10,065,919	291

Source: IMPLAN 3.0

Economic Impacts of NMSA Operations

Table 4 presents the annual direct, indirect, and induced impacts of NMSA operations on the Santa Fe economy at full, post-expansion enrollment. School operations are estimated to produce \$5.2 million in economic output, \$2.9 million in wages and salaries paid to the county residents, and 120 jobs annually by the end of school year 2019.

Table 4: Economic Impact of NMSA-At Post-Expansion Operations at Full Enrollment (2019)

Economic Impact of NMSA Operations at Full Enrollment (2019)			
	Output	Labor Income	Jobs
Direct	\$2,740,153	\$2,050,426	96
Indirect	\$969,498	\$319,940	11
Induced	\$1,525,673	\$528,813	13
Total Operations	\$5,235,324	\$2,899,179	120

Source: IMPLAN 3.0

Economic Impacts of Student and Visitor Spending

NMSA students and visitors contribute to the Santa Fe economy when they spend money at local businesses. Spending by students and visitors from outside the county brings new money into the local economy, producing a net economic impact of eight jobs and \$248,327 in annual income.

Currently, 65 (30%) of NMSA's 215 students are from households outside the county. Expenditures by out-of-county students currently total roughly \$142,821 per year (\$2,197 per student) and include items such as dorm fees, groceries, transportation, books, supplies, and clothing. After the expansion, out-of-county students are expected to make up 50 percent of enrollment and student expenditures will total \$332,143 annually. Table 5 presents the economic impact of student spending at full enrollment, which totals \$473,440 in economic output, \$182,836 in labor income, and 5 jobs.

In 2014-15 an average of 125 people attended each of NMSA's 43 events and performances and 600 attended each of the two 2015 Art Spring Showcase performances held at the Lensic Theater in downtown Santa Fe. Approximately 25 percent of the 6,575 visitors came from outside Santa Fe.¹

At full enrollment, 2,188 out-of-county visitors are expected to spend an average of \$61.43 for a total expenditure of \$134,392 per year, resulting in three additional jobs and \$65,491 in labor income. Table 5 presents the impact of visitor expenditures at full enrollment.

Table 5: NMSA Student and Visitor Spending Impacts Post-Expansion, Full Enrollment

NMSA Student and Visitor Spending Impacts Post-Expansion, Full Enrollment (2019)			
	Output	Labor Income	Jobs
Student Spending	\$473,440	\$182,836	5
Visitor Spending	\$197,612	\$65,491	3
Total	\$671,053	\$248,327	8

Source: IMPLAN 3.0

Construction Impacts

Extensive renovations will be necessary to convert Sanbusco Center from a shopping mall to a school with dormitories, practice halls, and performance spaces. In addition to spending \$7.3 million to purchase the Sanbusco property, NMSA will invest an estimated \$23.3 million in renovations. The estimate of the economic impact of the renovations assumes that 75 percent of funding for the project derives from outside the county. Renovation spending will likely begin toward the end of 2016 and extend into 2018, generating \$25 million in additional output, \$6.9 million in labor income, and 163 person-years of construction employment. It is important to note that Sanbusco's current tenants are relocating to Santa Fe's other retail properties, including De Vargas Center and Santa Fe Place. So, in addition to re-purposing and revitalizing the Sanbusco property, the NMSA expansion will increase retail occupancy rates elsewhere in community.

Table 6: Economic Impact of Sanbusco Center Renovation

Economic Impact of Sanbusco Center Renovation			
	Output	Labor Income	Person-years of employment
Direct	\$17,507,250	\$4,504,857	102
Indirect	\$4,060,456	\$1,223,122	32
Induced	\$3,417,187	\$1,190,434	29
Total	\$24,984,893	\$6,918,413	163

Source: IMPLAN 3.0

Fiscal Impacts

NMSA operations, spending by students and visitors, and the Sanbusco Center renovation will all generate tax and fee revenue for the city and the state.

Table 7: City of Santa Fe Fiscal Impacts

City of Santa Fe Fiscal Impacts	
Recurring (annual at full enrollment)	\$51,451
GRT	\$48,347
Lodgers Tax	\$3,104
Non-recurring	\$997,567
GRT	\$626,349
Permits & Fees	\$371,218
Total	\$1,049,018

Source: Author calculations

City of Santa Fe Taxes and Fees

At full enrollment, NMSA will contribute \$51,451 in annual recurring revenue for the City of Santa Fe. The renovation project will contribute an additional \$997,567, for a total fiscal impact of \$1.05 million. NMSA generates revenue for the city

from gross receipts tax, occupancy (lodger's) tax, and city-imposed fees. Schools and non-profits are exempt from property tax in New Mexico; thus, NMSA will not directly contribute to property tax revenue.¹

Gross Receipts Taxes

Gross receipts tax is a significant source of revenue for both the city and the state. The State of New Mexico imposes a 5.125% Gross Receipts Tax (GRT) on the sale of most goods and services. Counties and municipalities impose local option gross receipts taxes as increments to the state's base rate. The current GRT rate within the City of Santa Fe is 8.3125%. In addition to city-imposed local option gross receipts taxes, the city receives a 1.225% municipal GRT credit from the state. The municipal credit and City of Santa Fe local option taxes total 3.0375% and are listed in Table 8 below.

Table 8 City of Santa Gross Receipts Tax Rates, January-June 2016

City of Santa Gross Receipts Tax Rates, January-June 2016	
Revenue Source	Rate
Municipal Gross Receipts Credit	1.2250
City of Santa Fe Local Option Gross Receipts Taxes	
Capital Improvements	0.5000
City Operations	0.5000
Municipal GRT (Bus Systems, Quality of Life, Revenue Loss)	0.2500
Municipal GRT Environmental (WW)	0.0625
Infrastructure:	
Solid Waste	0.0625
Santa Fe Rail Yard	0.0625
Police	0.0625
Chavez Center	0.0625
Water	0.2500
TOTAL	3.0375
Source: Santa Fe Municipal Budget	

GRT from NMSA Operations

NMSA operations are expected to generate \$39,628 in annual GRT revenue for the City of Santa Fe from 2019 onward. The estimate assumes that 45 percent of labor income generated by NMSA operations is expended on gross receipts taxable commodities.

GRT from Student and Visitor Spending

At full enrollment, student and visitor expenditures are expected to total \$466,535 and generate an annual average of \$8,718 in city GRT revenue. The estimates assume that 50 percent of student expenditures and 90 percent of visitor expenditures are gross receipts taxable.

GRT from Sanbusco Renovation

Construction spending will be a significant source of non-recurring tax revenue between 2016 and 2018. Gross receipts taxes will be levied on final sales of construction goods and services and on a portion of the income earned by construction workers. The estimate assumes that 75 percent of funding for the construction project originates outside Santa Fe and that 45 percent of income earned by construction workers is spent on gross receipts taxable commodities.

¹ Property tax is a significant source of revenue for local governments. NMSA may contribute to property tax revenue through its impact on jobs and income or by increasing property values near the Sanbusco site. However, these impacts are not included in the revenue estimates.

Table 9 provides a detailed breakdown of city GRT revenue by expenditure type and GRT credit or increment.

Table 9 City of Santa Fe Gross Receipts Tax Revenue by Expenditure Type and Revenue Source

City of Santa Fe Gross Receipts Tax Revenue by Expenditure Type and Revenue Source				
	Operations (2019)	Student & Visitor Spending (2019)	Renovation (2016-18)	Total
Municipal Gross Receipts Credit	\$15,982	\$3,516	\$252,602	\$272,099
City of Santa Fe Local Option Gross Receipts Taxes				
Capital Improvements	\$6,523	\$1,435	\$103,103	\$111,061
City Operations	\$6,523	\$1,435	\$103,103	\$111,061
Municipal GRT (Bus Systems, Quality of Life, Revenue Loss)	\$3,262	\$718	\$51,551	\$55,530
Municipal GRT Environmental (WW)	\$815	\$179	\$12,888	\$13,883
Infrastructure:				
Solid Waste	\$815	\$179	\$12,888	\$13,883
Railyard	\$815	\$179	\$12,888	\$13,883
Police	\$815	\$179	\$12,888	\$13,883
Chavez Center	\$815	\$179	\$12,888	\$13,883
Water	\$3,262	\$718	\$51,551	\$55,530
TOTAL	\$39,628	\$8,718	\$626,349	\$674,695
Source: Author calculations				

Lodger's Tax

The City of Santa Fe imposes a 7 percent occupancy tax on hotel rooms in addition to the gross receipts tax. The estimate assumes that taxable lodging accounts for 33 percent of expenditures by out-of-county visitors. NMSA will generate \$3,167 in lodger's tax at full enrollment.

Fees

Assuming direct construction costs of \$23.34 million, the NMSA renovation will generate one-time fees to the City of Santa Fe totaling \$371,218.

Table 10 City of Santa Fe Fee and Permit Revenue from Sanbusco Renovation

City Fee and Permit Revenue from Sanbusco Renovation	
Impact Fees	\$189,195
Building Permit	\$104,013
Plan Review	\$78,010
Total	\$371,218

The Santa Fe Land Development Code provides for impact fees of \$1,621 per 1,000 square feet for public/institutional projects.

City building permits cost \$5,893.37 for the first \$1 million project value, and \$4.40 per \$1,000 thereafter. Based on the estimated direct construction cost of \$23.34 million, building permits will cost \$104,013. City plan review fees will total \$78,010, 75 percent of building permit costs.

Table 11. City of Santa Fe Public/Institutional Development Impact Fees

City of Santa Fe Public/Institutional Development Impact Fees	
Use	Fee per 1,000 sq. ft.
Roads	\$1,460
Parks	\$0
Fire	\$113
Police	\$48
Total	\$1,621
Source: Santa Fe Land Development Code	

State of New Mexico Taxes

The jobs and economic activity directly and indirectly attributable to NMSA generate gross receipts tax and personal income tax for the state general fund. Recurring impacts will total \$162,197 annually - \$104,182 in personal income tax and \$58,015 in gross receipts tax. Non-recurring state fiscal impact will total \$1.2 million.

NMSA's recurring state and city fiscal impacts at full enrollment and the non-recurring tax impacts resulting from construction spending are presented in Table 12.

Table 12. NMSA-AI State and Local Tax Impacts

NMSA State and Local Tax Impacts at Full Enrollment (2019)			
	Local	State	Total
Recurring (all non-construction, 2019)	\$51,451	\$162,197	\$213,648
Non-Recurring (construction, total spending 2016-18)	\$997,567	\$1,231,882	\$2,229,449
Total	\$1,049,018	\$1,394,079	\$2,443,097
Source: Author calculations			

Ten-Year Impacts

Table 13 presents annual economic and fiscal impacts for ten years beginning 2016 as well as total impacts for the ten-year period 2016-2025. NMSA will increase the productivity of Santa Fe's economy by attracting student, visitor, operations, and capital improvement funding from outside the county. The additional economic output generated by NMSA will total \$80.3 million over the ten-year period, an average of over \$8 million per year.

Between 2016 and 2025 NMSA will support an annual average of 136 jobs, labor income averaging \$3.6 million annually and totaling \$36.4 million, and city tax and fee revenue averaging \$148,081 per year and totaling \$1.48 million over the ten-year period.

NMSA Expansion --Ten Year Total and Average Annual Impacts												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	Ten Year Total	Annual Average
Output												
NMSA Operations	\$3,726,400	\$4,173,568	\$4,674,397	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$5,235,324	\$49,221,634	\$4,922,163
Student Spending	\$203,579	\$230,408	\$385,854	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$473,440	\$4,133,924	\$413,392
Visitor Spending	\$139,906	\$156,974	\$176,125	\$197,612	\$201,564	\$205,596	\$209,708	\$213,902	\$218,180	\$222,543	\$1,942,110	\$194,211
Construction	\$6,246,223	\$12,492,447	\$6,246,223	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$24,984,893	\$2,498,489
Total	\$10,316,109	\$17,053,397	\$11,482,599	\$5,906,377	\$5,910,329	\$5,914,360	\$5,918,472	\$5,922,666	\$5,926,944	\$5,931,308	\$80,282,561	\$8,028,256
Labor Income												
NMSA Operations	\$2,063,579	\$2,311,208	\$2,588,553	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$2,899,179	\$27,257,596	\$2,725,760
Student Spending	\$78,619	\$88,980	\$149,011	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$182,836	\$1,596,461	\$159,646
Visitor Spending	\$46,367	\$52,023	\$58,370	\$65,491	\$66,801	\$68,137	\$69,500	\$70,890	\$72,308	\$73,754	\$643,642	\$64,364
Construction	\$1,729,603	\$3,459,206	\$1,729,603	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,918,413	\$691,841
Total	\$3,918,168	\$5,911,418	\$4,525,538	\$3,147,507	\$3,148,816	\$3,150,152	\$3,151,515	\$3,152,905	\$3,154,323	\$3,155,769	\$36,416,112	\$3,641,611
Jobs (Person Years)												
NMSA Operations	86	96	108	121	121	121	121	121	121	121	1133*	136
Student Spending	2	2	4	5	5	5	5	5	5	5	42*	136
Visitor Spending	2	2	3	3	3	3	3	3	3	3	26*	136
Construction	41	81	41	0	0	0	0	0	0	0	163*	136
Total	131	182	155	128	1364*	136						
Taxes												
City	\$562,980	\$352,605	\$202,122	\$51,451	\$51,587	\$51,725	\$51,866	\$52,010	\$52,156	\$52,306	\$1,480,808	\$148,081
County	\$1,487,573	\$1,487,378	\$1,487,153	\$1,486,942	\$1,486,730	\$1,486,519	\$1,486,312	\$1,486,109	\$1,485,910	\$1,485,714	\$1,079,079	\$107,908
State	\$5,794	\$6,394	\$6,994	\$7,594	\$7,794	\$7,994	\$8,194	\$8,394	\$8,594	\$8,794	\$30,510	\$3,051
Local government	\$12,218	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$371,218	\$37,122
State	\$420,752	\$742,308	\$452,051	\$162,197	\$162,265	\$162,334	\$162,404	\$162,476	\$162,549	\$162,623	\$2,751,958	\$275,196
Total	\$983,731	\$1,094,914	\$654,173	\$213,648	\$213,851	\$214,058	\$214,270	\$214,485	\$214,705	\$214,929	\$4,232,765	\$423,277

*person-years

About the Author

Kelly O'Donnell PhD is an economic consultant, member of the UNM economics department faculty, and a senior research fellow at the UNM Robert Wood Johnson Center for Health Policy. She has held a number of senior positions in New Mexico state government including director of state tax policy, deputy and acting cabinet secretary for economic development, board chair of the New Mexico Spaceport Authority, and superintendent of the New Mexico Regulation and Licensing Department.

¹ Bureau of Business and Economic Research, (2014, January). Economic Impact of Santa Fe School for the Arts on the Santa Fe County Economy, FY 2013.

To: City of Santa Fe, Board of Adjustment
Gary Friedman, Chair
Colleen Dearing
Patricia Hawkins
Douglas Maahs
Donna Reynolds
Daniel Werwath
Rachel Winston

Attn: Daniel Esquibel
Land Use Senior Planner
P.O. Box 909
200 Lincoln Ave.
Santa Fe, NM 87504-0909

January 16, 2016

Fr: Nicoletta Munroe
701 Dunlap St.
Santa Fe, NM 87501

Re: Case 2015-121, Sanbusco Center/ New Mexico School for the Arts

Dear Members of the Board,

I am a resident of the Historic Guadalupe District in Santa Fe. This letter concerns the planned transformation of the Sanbusco Market Center from a retail, office, and restaurant complex, into a charter school location.

The identity of the Historic Guadalupe neighborhood centers upon a configuration of historic buildings, that include the landmark Sanbusco Market Center, the Railyard shopping esplanade, the Santuario de Guadalupe church, residences registered on the State and National Historic registers, and the Guadalupe corridor of shops and restaurants.

The Sanbusco Market Center is enjoyed by patrons from Santa Fe, and people from New Mexico, and the entire United States each year. Visitors study the history of New Mexico from the documentary photographs inside, and on the face of the Sanbusco Market Center, which is itself registered with the National Historic Register and the State Historic Preservation office.

If a charter school moves into this building, we as a people will lose access to this landmark, which is like a museum of history.

The Sanbusco Market Center belongs to all of New Mexico, and the entire United States because it is controlled by the Department of the Interior in Washington D.C., being an historic landmark.

Our history is held in the building, and the site.

The New Mexico School for the Arts charter school does not have the right to occupy an historic building that belongs to all of New Mexico.

Best Regards,


Nicoletta Munroe

ESQUIBEL, DANIEL A.

From: Susan Munroe <susan@munroesmith.com>
Sent: Thursday, January 28, 2016 12:25 PM
To: BUSHEE, PATTI J.; GONZALES, JAVIER M.; LINDELL, SIGNE I.; BUSHEE, PATTI J.; ESQUIBEL, DANIEL A.
Subject: Sambusco Center

Follow Up Flag: Follow up
Due By: Thursday, January 28, 2016 4:00 PM
Flag Status: Flagged

1/28/2016

Dear Javier, Signe, Patti and Dan:

My son has owned a house in the Guadalupe Historic District since 2005 where his sister has lived ever since, loving the ambiance and conveniences. He bought the house because of the neighborhood's urban feel, its walkability to restaurants and shops, and for its delightful cultural mix.

It is my view that all those neighborhood positives will be seriously compromised by replacing a retail space and installing a high school with 300 students.

The news that the Santa Fe School for the Arts and its very affluent donors purchased the site at a bankruptcy sale last fall, beating out two other bidders, neither of which were retailers, was a shock. The fact that there was no real citizen pushback seemed bizarre. I also note that a neighborhood awareness sign was put up on the Borders front door (where no one would look.) And a meeting was held with few attendees and no objections. The school did what it had to do by law, put up a sign albeit obscure. And as usual, Santa Fe residents didn't do their homework and think about what such a school would do to the neighborhood. Morningstar all over again.

Last night I went to the Guadalupe Historic District neighborhood meeting, evidently the first one to be held in two years. It was there I heard from its president that the city would likely approve the school and that it plans to open in fall of 2017.

Someone was there from the planning department and maybe 50 neighbors, all of whom signed in. There was a feeling of resignation among the group, that it was a done deal. Some felt that having more young people around would bring life to the neighborhood. Others felt ripped off. They bought their homes for the reasons similar to my son's and they should feel ripped off. And there is some rumor that no one shops in the Sambusco stores any more. Well I do. I shop at Bodhi Bazaar, On Your Feet, World Market and eat at Tesoro, The fact that Sambusco went bankrupt, the fact is that the stores themselves didn't. Sambusco is well kept and convenient and not commercial the way deVargis mall is. The trade off is not attractive.

And let's remember that retail outlets are dead **all over town**.

If the city could have been foresighted and enticed a market like Montanita, or split the old Borders with a drug store and grocery, you'd have a vital neighborhood with increasing real estate values. But values are going to plunge with this school plan. Stores will leave and we'll end up with a yoghurt stand. That's it.

I have questions:

- Why has this project been so secretive?
- Where did the money come from? Is there a list of donors?

- Will there be plans and drawings made public? Surely the school has plans for the building if it's to open in less than a year.
- Who is the architect/builder?
- Is it safe to have teenagers around railroad trains? Having read an article in a recent Atlantic monthly about brilliant, overachieving Palo Alto students regularly suiciding in front of commuter trains, I don't think the Railyard is a wise choice of location. (see link) <http://www.theatlantic.com/magazine/archive/2015/12/the-silicon-valley-suicides/413140/>
- Can this property and its students be made safe from vandals and shooters?
- Who/what has the liability?
- Can public charter schools have dorm rooms?
- Is it lawful or a good idea for kids to be running in and out of school with surrounding bar happy hours in full swing?
- What about the traffic nightmare; the ancient water and sewer pipes beneath Aqua Fria? This school may be zoned CBD but it is adjacent to an historic residential area that's already physically fragile. Will the historic designation be overlooked or enforced?

Finally, I think the process which got us to today -- everyone saying it's already a done deal -- is appalling. Just awful and smells of cronyism.

I'll attend the Board of Adjustment Meeting on Feb 2 and see what happens. I would love reassurance that Sambusco is an ideal place for a school. But we all know that isn't true. The commuter students can be bussed from to and from their trains. Why do they have to jeopardize a wonderful urban neighborhood? So they can pop into Site Santa Fe?

Yours sincerely,

Susan Spalding Munroe
susan@munroesmith.com
 505-577-5630

START

Slide 1

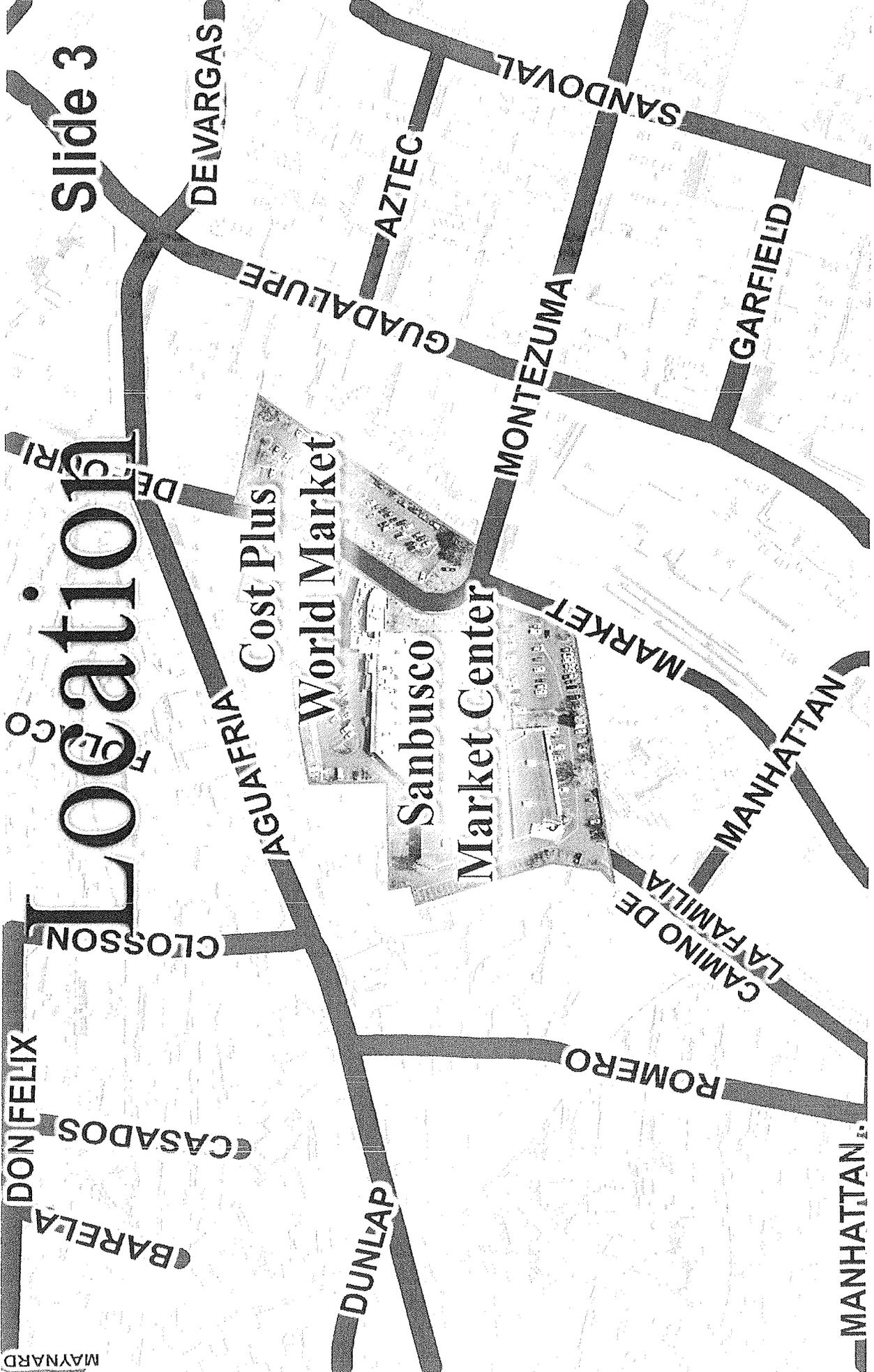
Presentation

8 to 10 Minutes

24 Slides

Slide 2

- Intro
- Location
- Existing Site Conditions
- Proposed Application
- Special Use Permit
- Conclusion and
Recommendation



slide 3

Location

FLECO

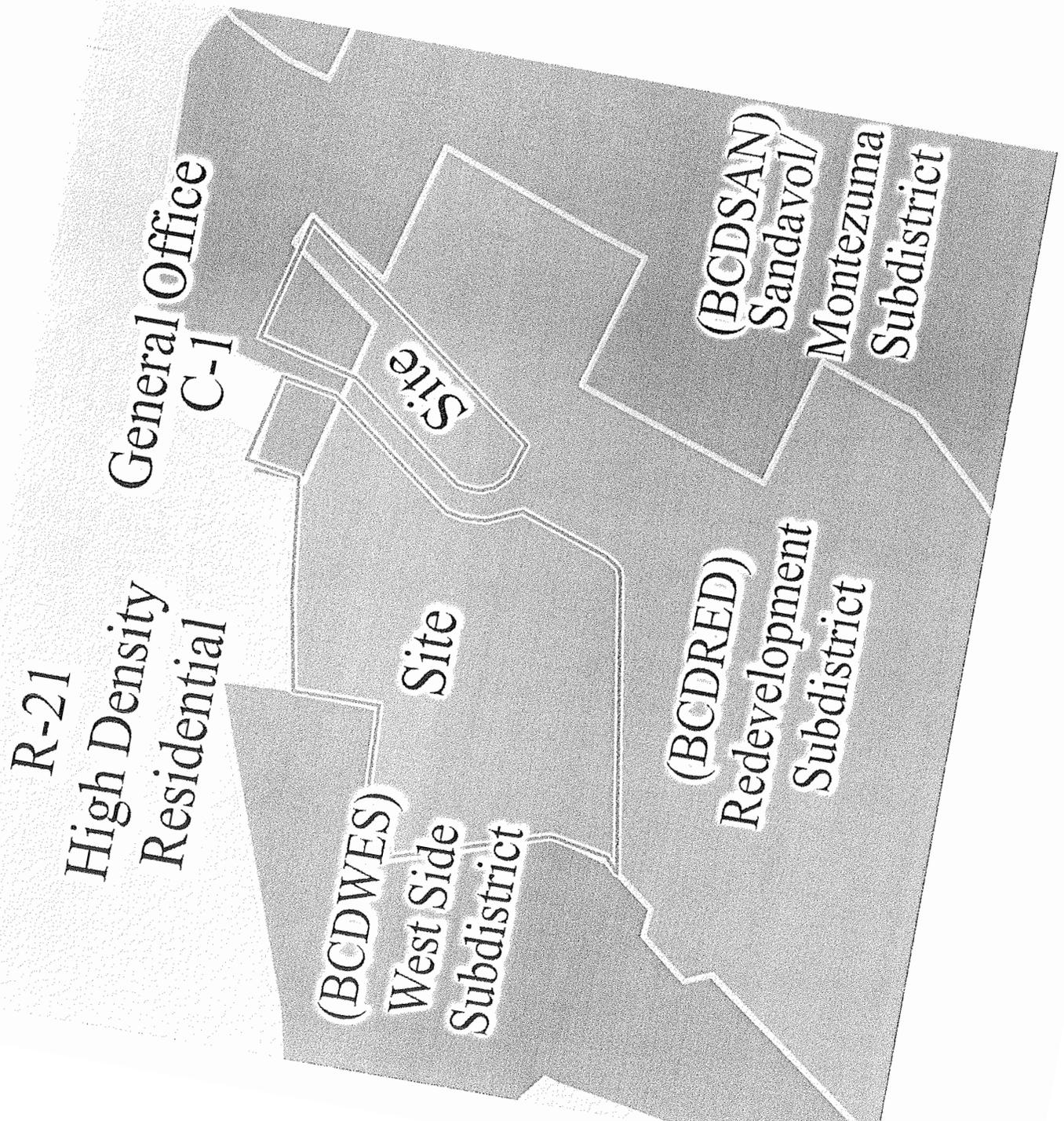
Cost Plus

World Market

Sanbusco

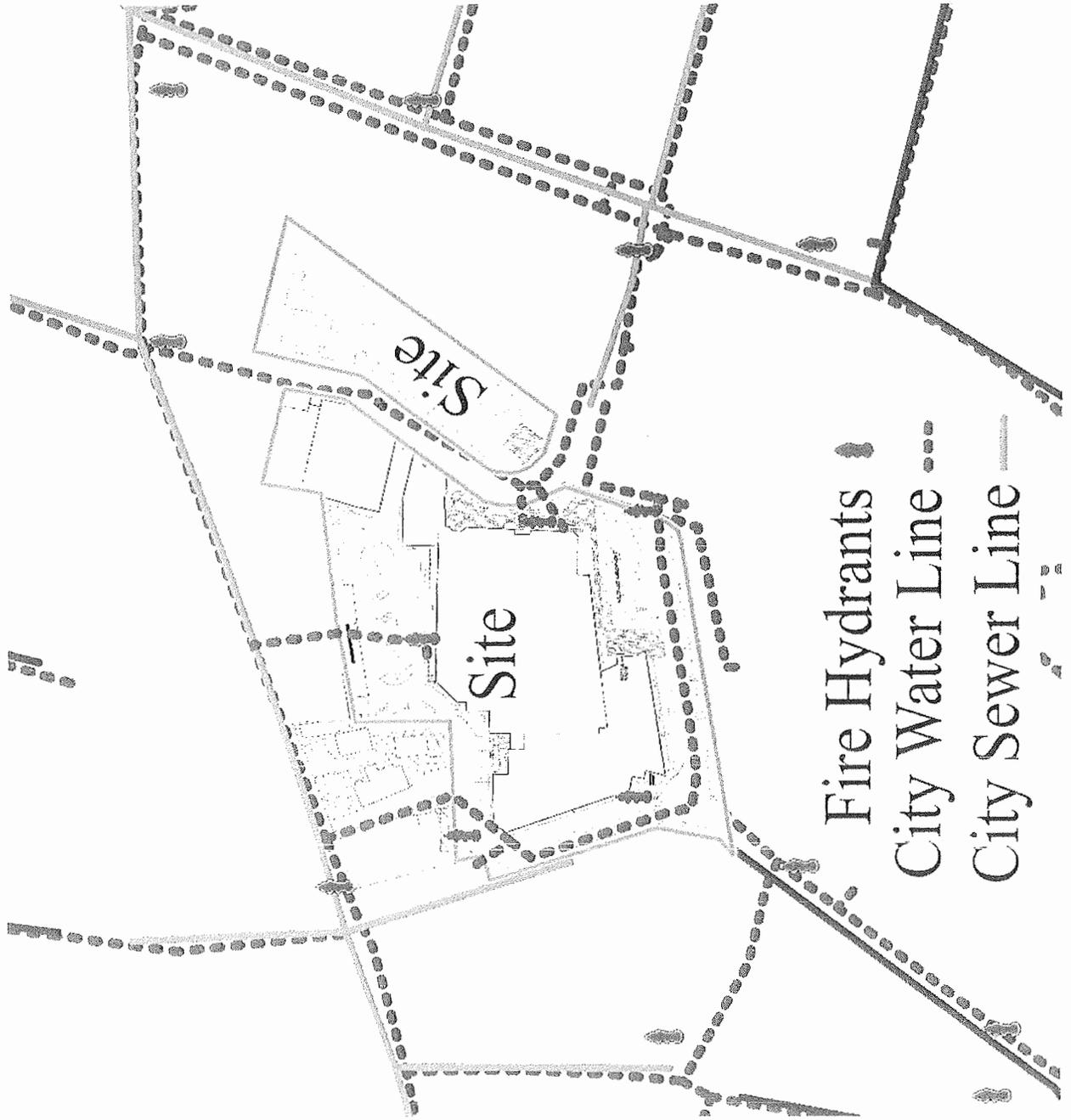
Market Center

Slide 4
● Existing
Conditions



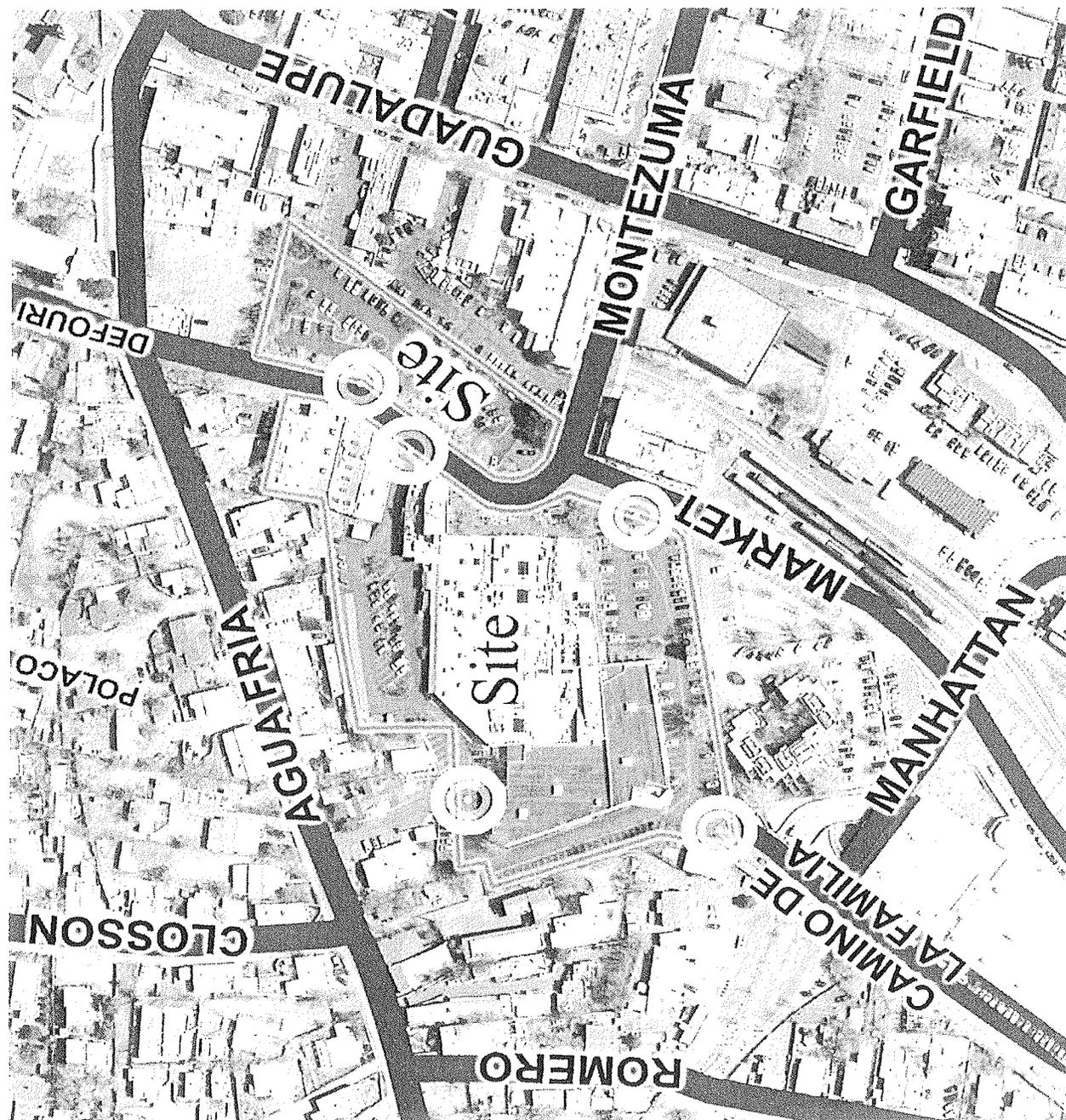
Slide 5

● Existing Conditions



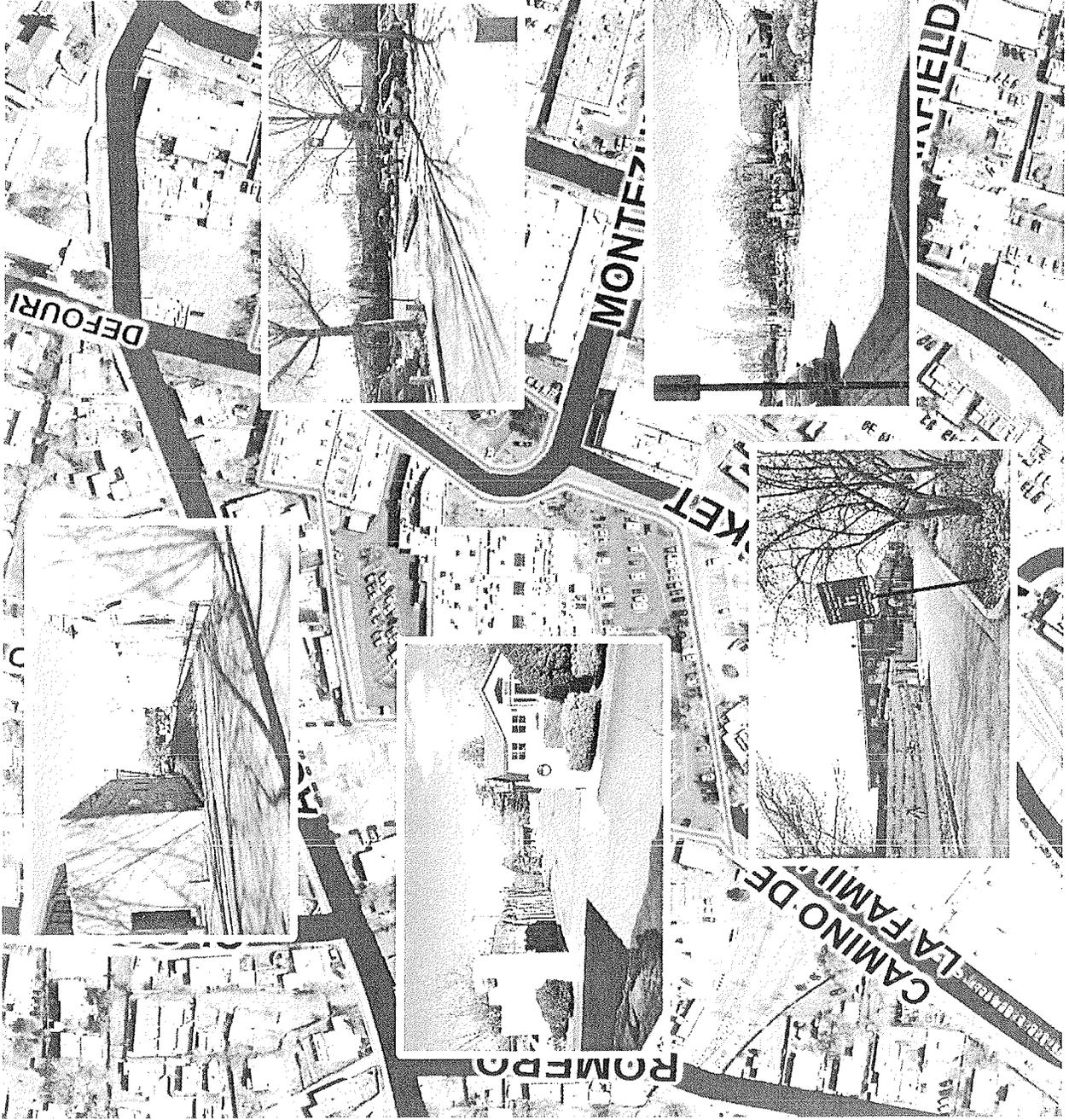
Slide 6

- Existing Conditions
- Access & Traffic



Slide 7

- Existing Conditions
- Access & Traffic



Remaining Business

- **On Your Feet / On Your Little Feet**
- **Pranzo Italian Grill**
- **Raaga- Fine Indian Dinning**
- **Radish and Rye Restaurant**
- **Office tenants**

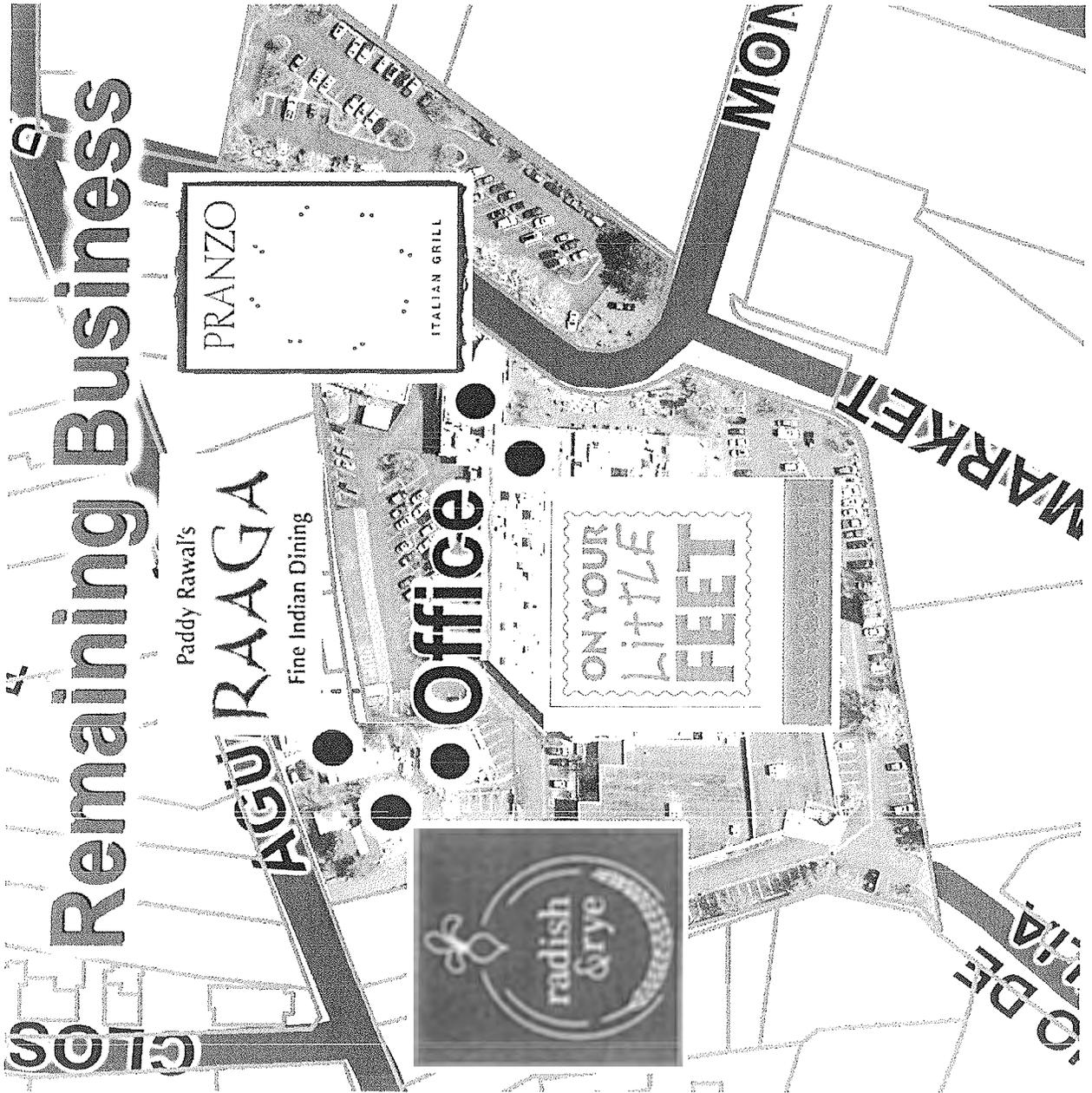
Slide 8

- **Existing Conditions**
- **Access & Traffic**

SO Remaining Business

Slide 9

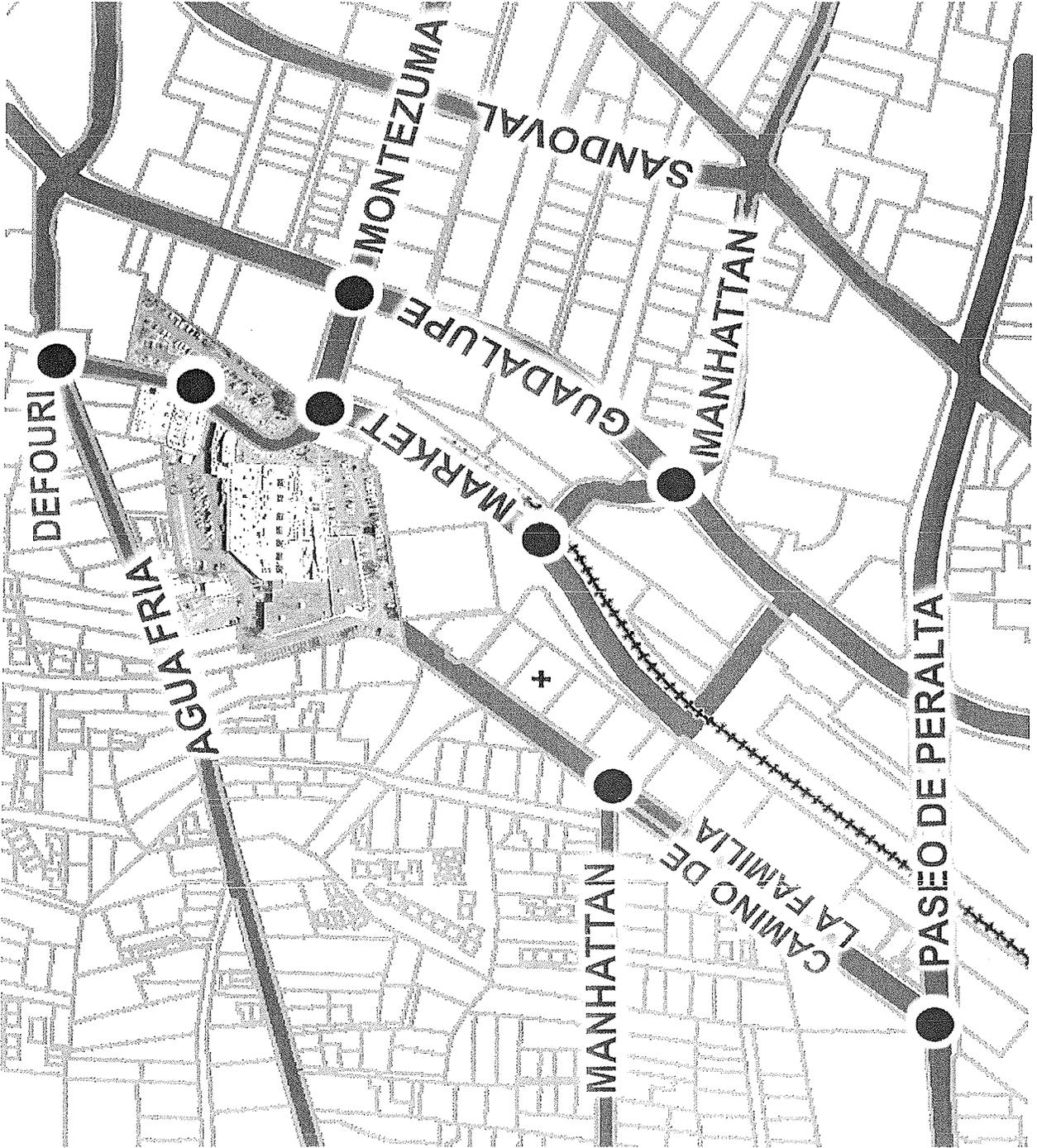
- Existing Conditions
- Access & Traffic



- **S. Guadalupe St. / Montezuma Ave. Slide 10**
- **Montezuma Ave. / Market St.**
- **Montezuma Ave. / Parking Lots (Accross from World Market**
- **Agua Fria St. / Montezuma Ave. / Defouri St.**
- **S. Guadalupe St. / Manhattan Ave.**
- **Manhattan Ave. / Market St.**
- **Manhattan Ave. / Camino de La Familia**
- **Paseo de Peralta / Camino de La Familia**

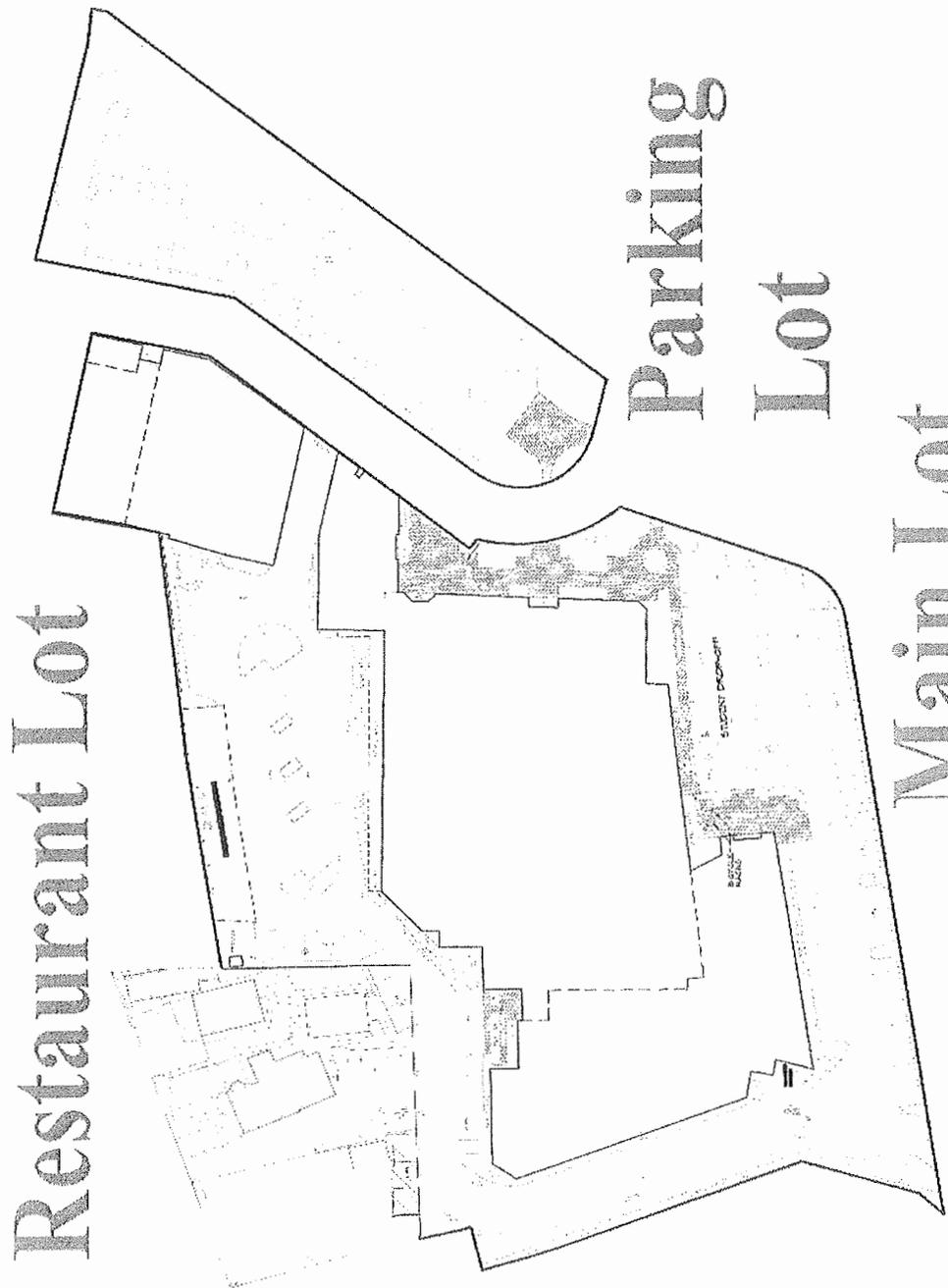
Slide 11

Existing Conditions Access & Traffic



Slide 12

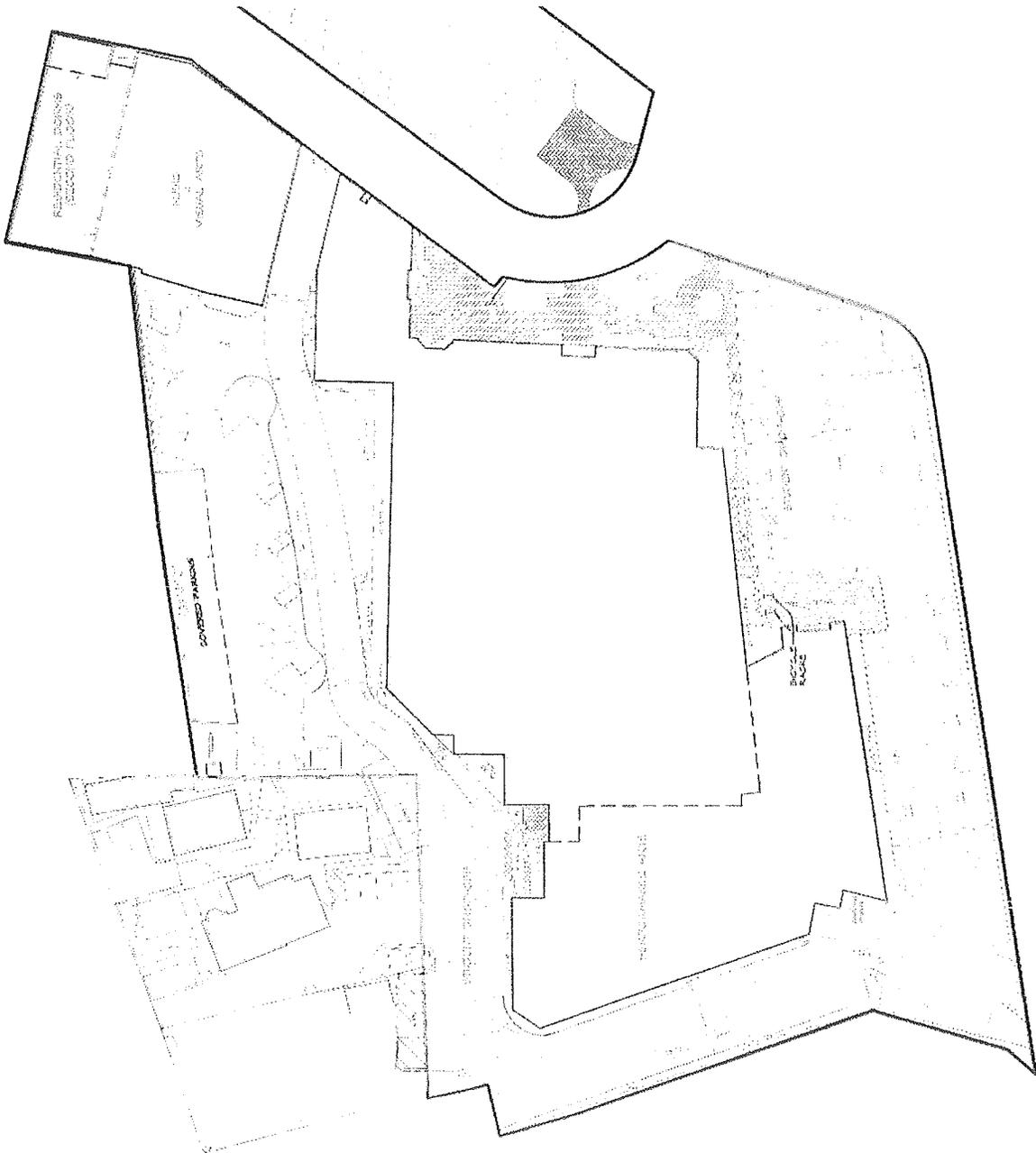
- Existing Conditions
- Access & Traffic
- Parking & Loading



Main Lot
274 Parking Spaces

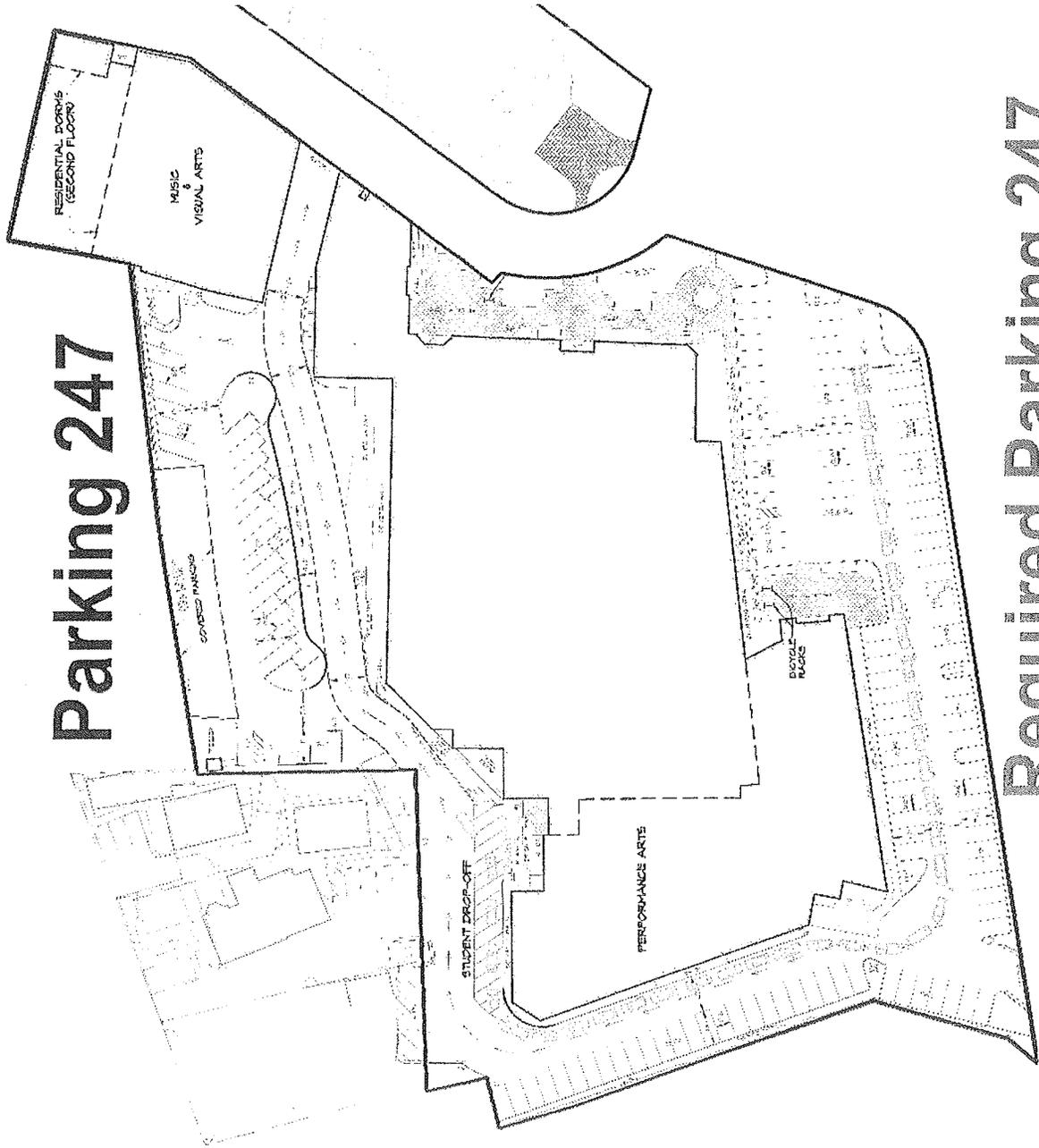
Slide 13

- Existing Conditions
- Access & Traffic
- Parking & Loading



Slide 14

Parking 247



Required Parking 247

- Existing Conditions
- Access & Traffic
- Parking & Loading

Parking 247



Slide 15

- Existing Conditions
- Access & Traffic
- Parking & Loading
- Fire

Required Parking 247

Slide 16

Special Use Permit

Chapter 14-3.16(D)(1)

Approval Criteria

(a) that the land use board has the authority under the section of Chapter 14 described in the application to grant a special use permit;

14-2.4 BOARD OF ADJUSTMENT

(C) Powers and Duties

2) to hear and decide applications for special use permits as provided in Section 14-3.6 and Article 14-6 (Permitted Uses and Use Regulations)...

Chapter 14-3.16(D)(1)

(b) that granting the special use permit does not adversely affect the public interest,

Slide 20

Review by city staff has determined that the proposed use is consistent with applicable city ordinances and policies that are adopted to protect the public interest, including minimum standards of Chapter 14 S FCC.

Chapter 14-3.16(D)(1)

Slide 21

(c) that the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the abutting property and other properties in the vicinity of the premises under consideration.

Slide 22

- *Buildings are compatible with others in the vicinity*
- EXISTING AND HISTORIC BUILDINGS
- *Buildings are adaptable to buildings, abutting the property*
- ADAPTIVE REUSE OF HISTORIC BUILDINGS

- ***Uses are compatible with others in the vicinity***
 - **CHAPTER 14 PERMITS SCHOOLS WITHIN THE BCD**
- ***Uses are adaptable to buildings, abutting the property***
 - **ADAPTIVE REUSE OF HISTORIC BUILDINGS**

Slide 24

END

Slide 24

END

ESQUIBEL, DANIEL A.

From: Susan Munroe <susan@munroesmith.com>
Sent: Thursday, January 28, 2016 12:25 PM
To: BUSHEE, PATTI J.; GONZALES, JAVIER M.; LINDELL, SIGNE I.; BUSHEE, PATTI J.; ESQUIBEL, DANIEL A.
Subject: Sambusco Center

Follow Up Flag: Follow up
Due By: Thursday, January 28, 2016 4:00 PM
Flag Status: Flagged

1/28/2016

Dear Javier, Signe, Patti and Dan:

My son has owned a house in the Guadalupe Historic District since 2005 where his sister has lived ever since, loving the ambiance and conveniences. He bought the house because of the neighborhood's urban feel, its walkability to restaurants and shops, and for its delightful cultural mix.

It is my view that all those neighborhood positives will be seriously compromised by replacing a retail space and installing a high school with 300 students.

The news that the Santa Fe School for the Arts and its very affluent donors purchased the site at a bankruptcy sale last fall, beating out two other bidders, neither of which were retailers, was a shock. The fact that there was no real citizen pushback seemed bizarre. I also note that a neighborhood awareness sign was put up on the Borders front door (where no one would look.) And a meeting was held with few attendees and no objections. The school did what it had to do by law, put up a sign albeit obscure. And as usual, Santa Fe residents didn't do their homework and think about what such a school would do to the neighborhood. Morningstar all over again.

Last night I went to the Guadalupe Historic District neighborhood meeting, evidently the first one to be held in two years. It was there I heard from its president that the city would likely approve the school and that it plans to open in fall of 2017.

Someone was there from the planning department and maybe 50 neighbors, all of whom signed in. There was a feeling of resignation among the group, that it was a done deal. Some felt that having more young people around would bring life to the neighborhood. Others felt ripped off. They bought their homes for the reasons similar to my son's and they should feel ripped off. And there is some rumor that no one shops in the Sambusco stores any more. Well I do. I shop at Bodhi Bazaar, On Your Feet, World Market and eat at Tesoro, The fact that Sambusco went bankrupt, the fact is that the stores themselves didn't. Sambusco is well kept and convenient and not commercial the way deVargis mall is. The trade off is not attractive.

And let's remember that retail outlets are dead **all over town**.

If the city could have been foresighted and enticed a market like Montanita, or split the old Borders with a drug store and grocery, you'd have a vital neighborhood with increasing real estate values. But values are going to plunge with this school plan. Stores will leave and we'll end up with a yoghurt stand. That's it.

I have questions:

- Why has this project been so secretive?
- Where did the money come from? Is there a list of donors?

- Will there be plans and drawings made public? Surely the school has plans for the building if it's to open in less than a year.
- Who is the architect/builder?
- Is it safe to have teenagers around railroad trains? Having read an article in a recent Atlantic monthly about brilliant, overachieving Palo Alto students regularly suiciding in front of commuter trains, I don't think the Railyard is a wise choice of location. (see link) <http://www.theatlantic.com/magazine/archive/2015/12/the-silicon-valley-suicides/413140/>
- Can this property and its students be made safe from vandals and shooters?
- Who/what has the liability?
- Can public charter schools have dorm rooms?
- Is it lawful or a good idea for kids to be running in and out of school with surrounding bar happy hours in full swing?
- What about the traffic nightmare; the ancient water and sewer pipes beneath Aqua Fria? This school may be zoned CBD but it is adjacent to an historic residential area that's already physically fragile. Will the historic designation be overlooked or enforced?

Finally, I think the process which got us to today -- everyone saying it's already a done deal -- is appalling. Just awful and smells of cronyism.

I'll attend the Board of Adjustment Meeting on Feb 2 and see what happens. I would love reassurance that Sambusco is an ideal place for a school. But we all know that isn't true. The commuter students can be bussed from to and from their trains. Why do they have to jeopardize a wonderful urban neighborhood? So they can pop into Site Santa Fe?

Yours sincerely,

Susan Spalding Munroe
susan@munroesmith.com
 505-577-5630

To: City of Santa Fe, Board of Adjustment
Gary Friedman, Chair
Colleen Dearing
Patricia Hawkins
Douglas Maahs
Donna Reynolds
Daniel Werwath
~~Rachel Winston~~

Attn: Daniel Esquibel
Land Use Senior Planner
P.O. Box 909
200 Lincoln Ave.
Santa Fe, NM 87504-0909

January 16, 2016

Fr: Nicoletta Munroe
701 Dunlap St.
Santa Fe, NM 87501

Re: Case 2015-121, Sanbusco Center/ New Mexico School for the Arts

Dear Members of the Board,

I am a resident of the Historic Guadalupe District in Santa Fe. This letter concerns the planned transformation of the Sanbusco Market Center from a retail, office, and restaurant complex, into a charter school location.

The identity of the Historic Guadalupe neighborhood centers upon a configuration of historic buildings, that include the landmark Sanbusco Market Center, the Railyard shopping esplanade, the Santuario de Guadalupe church, residences registered on the State and National Historic registers, and the Guadalupe corridor of shops and restaurants.

The Sanbusco Market Center is enjoyed by patrons from Santa Fe, and people from New Mexico, and the entire United States each year. Visitors study the history of New Mexico from the documentary photographs inside, and on the face of the Sanbusco Market Center, which is itself registered with the National Historic Register and the State Historic Preservation office.

If a charter school moves into this building, we as a people will loose access to this landmark, which is like a museum of history.

The Sanbusco Market Center belongs to all of New Mexico, and the entire United States because it is controlled by the Department of the Interior in Washington D.C., being an historic landmark.

Our history is held in the building, and the site.

The New Mexico School for the Arts charter school does not have the right to occupy an historic building that belongs to all of New Mexico.

Best Regards,

Nicoletta Munroe
Nicoletta Munroe

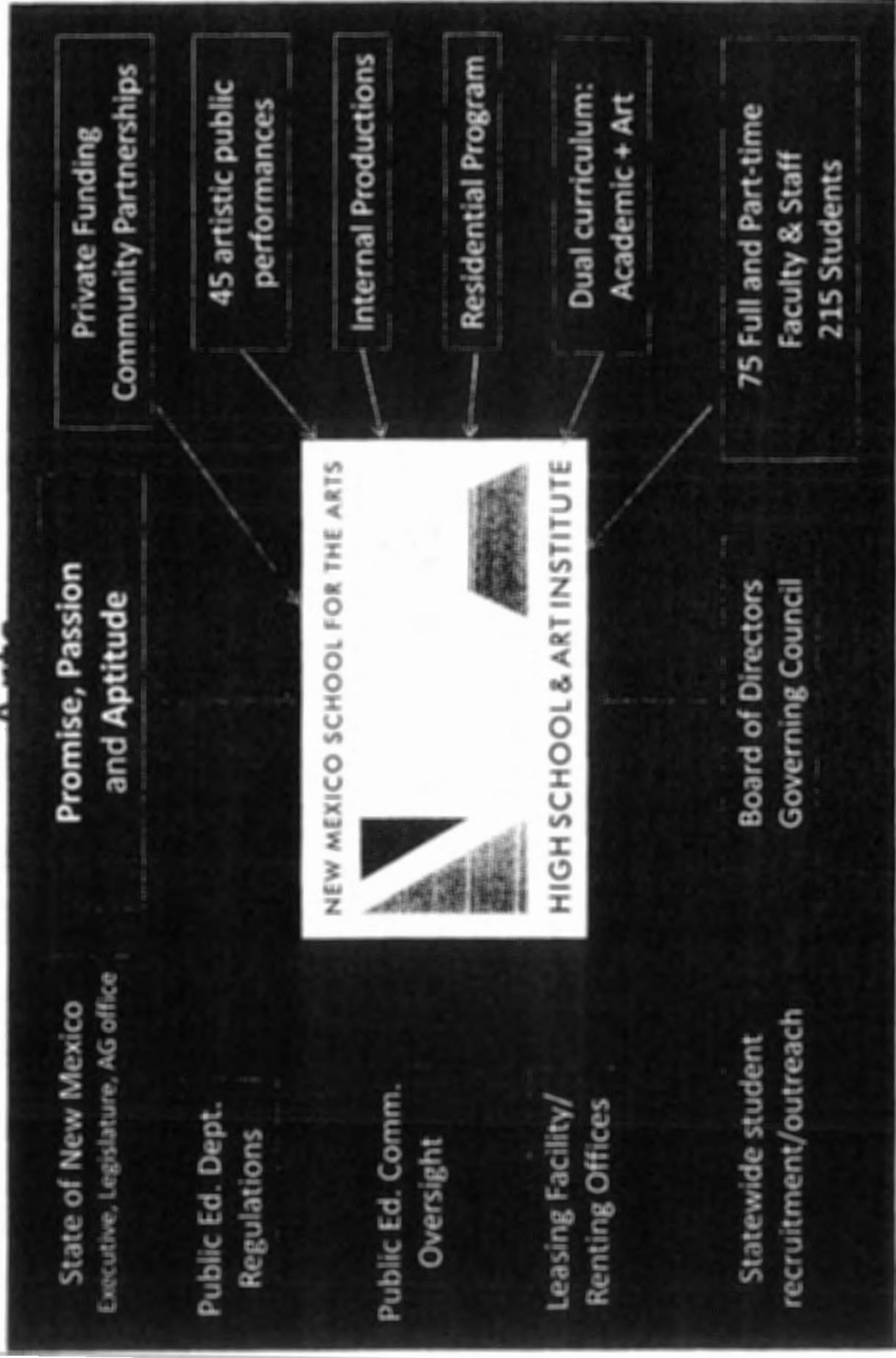
Exhibit "5"

Board of Adjustment Meeting

City of Santa Fe
City Hall Chamber Room
February 2, 2016

Exhibit "C"

Understanding New Mexico School for the Arts



A Statewide High School

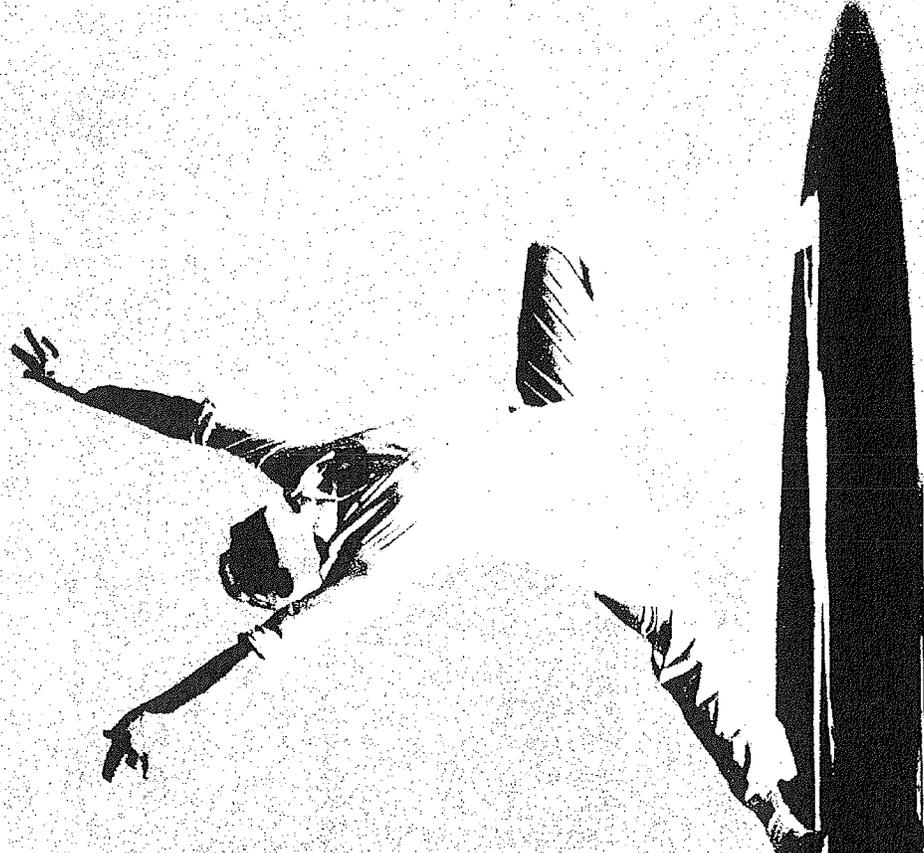
New Mexico School for the Arts Enrolled Students ●

New Mexico School for the Arts Student Applicants ●



New Mexico Congressional Districts and Counties

DANCE



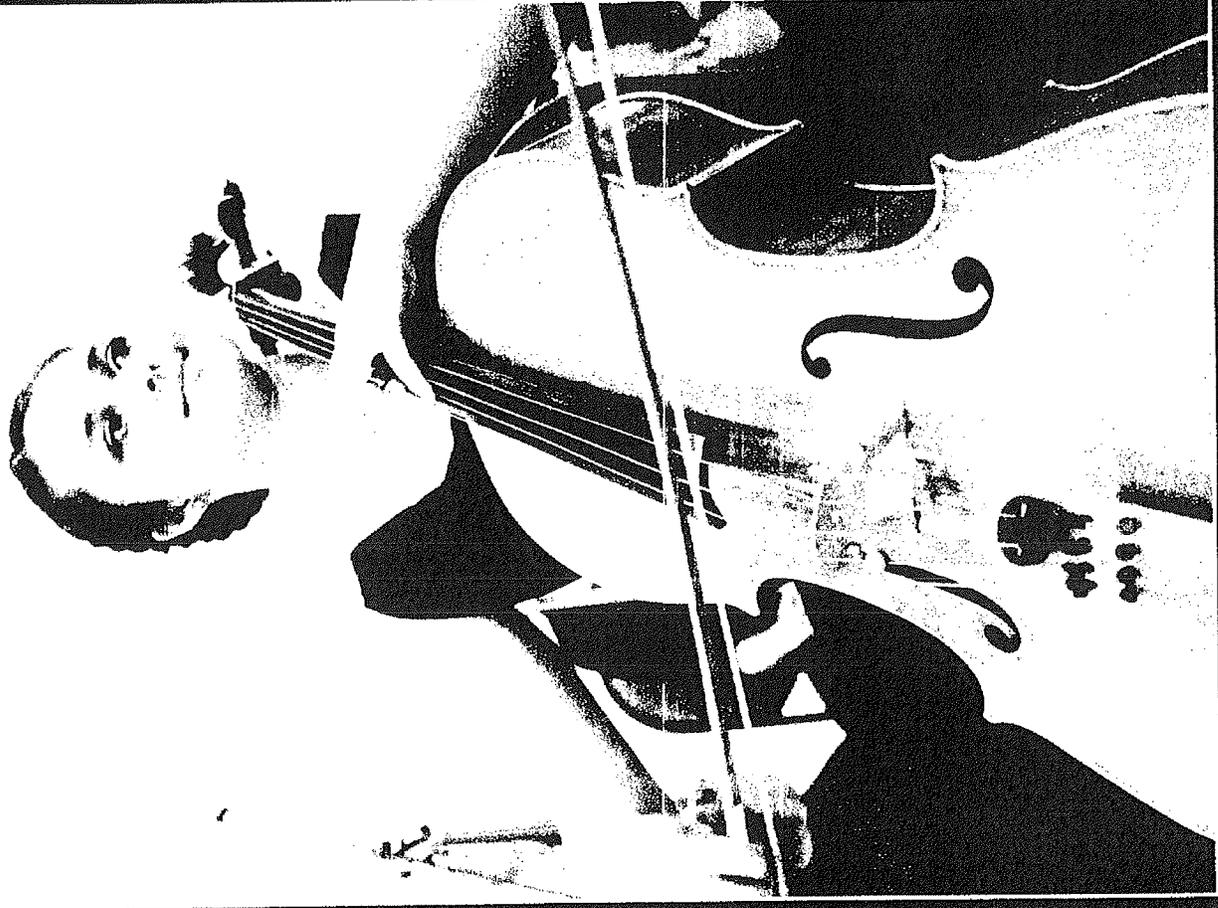
NMSA is classified as a
Title I school by the
46% of student
population are children
of disadvantaged

Overall graduation rate
86% and 100% of
experienced 100% senior
graduation

MUSIC

NMSA has received four consecutive "A" grades from the New Mexico Public Education Department

In 2015, US News & World Report named New Mexico School for the Arts the 10th Best High School New Mexico.



THEATRE

The National Art Schools Network named NMSA as an "Exemplary School".

New Mexico Public Education Department has nominated NMSA to become a United States "Blue Ribbon School".



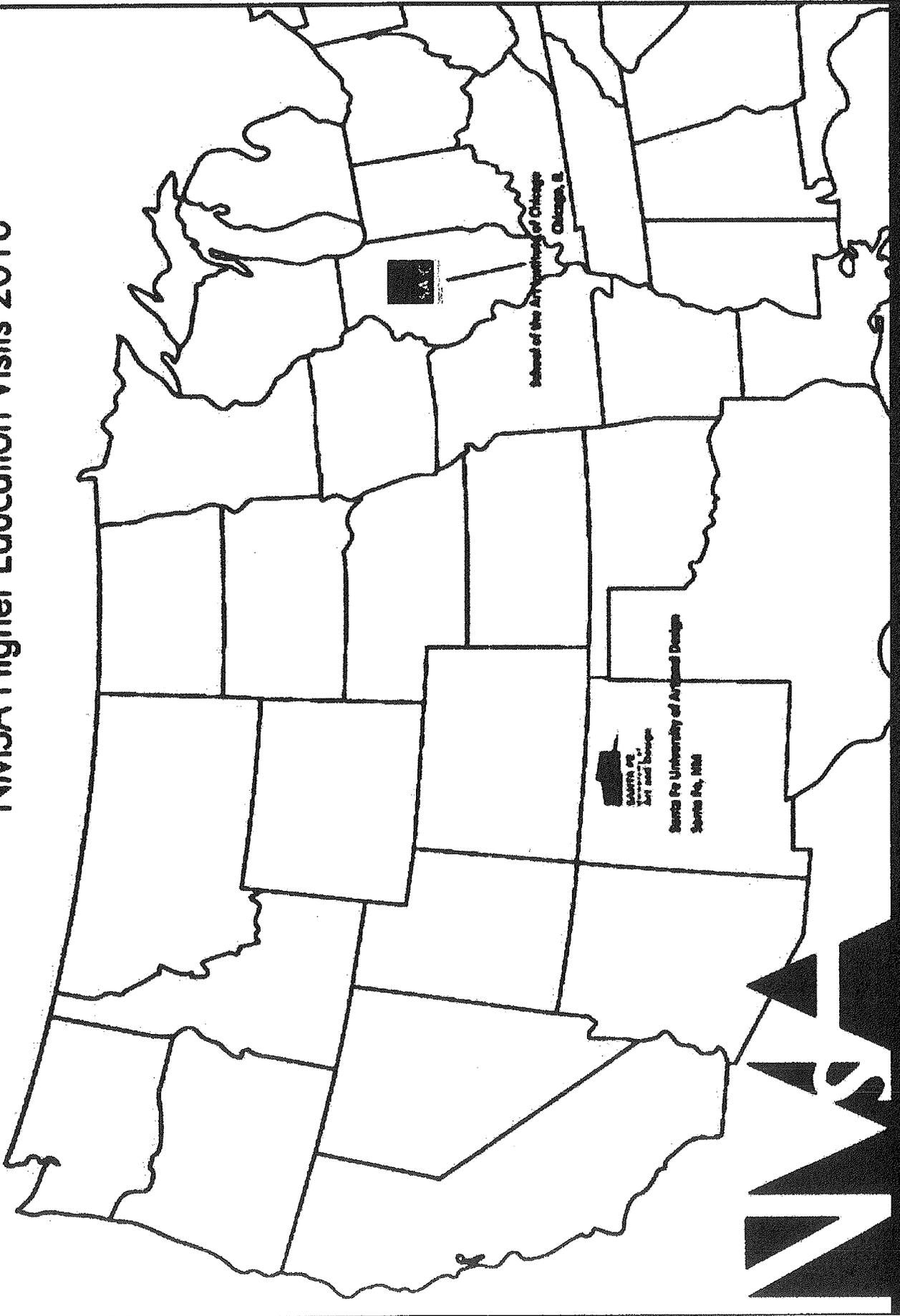
VISUAL ARTS

Our 2014-15 graduates received \$5.4 million in Higher Education Scholarships and Financial Aid.

Over 60 universities and nationally accredited art institutes recruit our students.



NMSA Higher Education Visits 2010



New Mexico School for the Arts

ECONOMIC IMPACT ANALYSIS OVERVIEW

About the Author

Kelly O'Donnell, PhD, is an economic consultant, member of the UNM Economics Department faculty, and a senior research fellow at the UNM Robert Wood Johnson Center for Health Policy.

NMSA Annual Economic Contribution at Full Enrollment

The NMSA renovation and expansion is expected to be at full enrollment (300) by 2019. With 300 students enrolled, NMSA will generate \$5.9 million in annual economic activity, \$3.1 million in annual labor income, and 128 jobs.

NMSA Renovation Jobs and Tax Contribution

During the renovation period, construction activities will support an additional 163 construction-related jobs. The renovation will produce over \$1 million in new revenue for the City of Santa Fe (GRT, Lodgers Tax, Permits and City fees).

New Mexico School for the Arts

ECONOMIC IMPACT ANALYSIS OVERVIEW

NMSA 10-Year Economic Contribution

Over the next 10 years NMSA will generate an economic output from visitors, students, and various funding sources of \$80.3 million. Between 2016 and 2025 NMSA will support an annual average of 136 jobs, annual labor income averaging \$3.6 million and City tax and fees averaging \$148,081 per year, totaling about \$1.5 million over the ten-year period.



Minutes Exhibit 1

SUMMARY INDEX
BOARD OF ADJUSTMENT MEETING
Tuesday, February 2, 2016

<u>ITEM</u>	<u>ACTION</u>	<u>PAGE</u>
CALL TO ORDER & ROLL CALL	Quorum	1
APPROVAL OF AGENDA	Approved	2
APPROVAL OF MINUTES – DECEMBER 17, 2015	Approved	2
FINDINGS/CONCLUSIONS: CASE #2015-114 – 233 CANYON ROAD SPECIAL USE PERMIT	Approved	2
<u>NEW BUSINESS</u>		
CASE #2015-121. 500 MONTEZUMA ST. SPECIAL USE PERMIT. SANTA FE PLANNING GROUP, INC., AGENT FOR SANBUSCO 2015, LLC, AND THE NEW MEXICO SCHOOL FOR THE ARTS INSTITUTE, REQUEST A SPECIAL USE PERMIT FOR A SCHOOL USE ON 5.11± ACRES. THE PROPERTY IS ZONED BCDRED (BUSINESS CAPITAL DISTRICT REDEVELOPMENT SUBDISTRICT DISTRICT – COMMUNITY COMMERCIAL) AND LOCATED WITHIN THE WESTSIDE-GUADALUPE HISTORIC REVIEW DISTRICT AND HISTORIC DOWNTOWN ARCHAEOLOGICAL REVIEW DISTRICT	Approved w/all conditions	2-22
STAFF COMMUNICATIONS	None	22
MATTERS FROM THE BOARD	Information/discussion	22-23
ADJOURNMENT		24



**MINUTES OF THE
CITY OF SANTA FE
BOARD OF ADJUSTMENT
City Councilor Chambers
200 Lincoln Avenue
February 2, 2016**

A. CALL TO ORDER

A regular meeting of the City of Santa Fe Board of Adjustment was called to order by Gary Friedman, Chair, at approximately 6:00 p.m., on Tuesday, February 2, 2016, in the City Council Chambers, 200 Lincoln Avenue, Santa Fe, New Mexico.

B. ROLL CALL

Members Present

Gary Friedman, Chair
Rachel L. Winston, Vice-Chair
Coleen Dearing
Patricia Hawkins
Douglas Maahs
Donna Reynolds
Daniel H. Werwath

Others Present

Lisa Martinez, Director, Land Use Department
Greg Smith, Director, Current Planning Division
Dan Esquibel, Land Use Planner Senior, Current Planning Division
Zachary Shandler, Assistant City Attorney
Melessia Helberg, Stenographer

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

MOTION: Rachel Winston moved, seconded by Patricia Hawkins, to approve the Agenda, as presented.

VOTE: The motion was approved unanimously on a voice vote.

D. APPROVAL OF MINUTES – DECEMBER 17, 2015

MOTION: Douglas Maahs moved, seconded by Daniel Werwath, to approve the minutes of the meeting of December 17, 2016, as presented.

VOTE: The motion was approved unanimously on a voice vote.

E. FINDINGS/CONCLUSIONS: CASE #2015-114. 233 CANYON ROAD SPECIAL USE PERMIT.

A copy of the Findings of Fact and Conclusions of Law in case #2015-114, 233 Canyon Road Special Use Permit is incorporated herewith to these minutes as Exhibit "1."

MOTION: Daniel Werwath moved, seconded by Patricia Hawkins, to approve the Findings of Fact and Conclusions of Law in Case #2015-114, 233 Canyon Road Special Use Permit, as presented.

VOTE: The motion was approved on a voice vote, with Rachel Winston, Patricia Hawkins, Douglas Maahs, Donna Reynolds and Daniel Werwath voting in favor of the motion, no one voting against, and Coleen Dearing abstaining because she wasn't here when the case was heard.

F. NEW BUSINESS

1. **CASE #2015-121. 500 MONTEZUMA ST. SPECIAL USE PERMIT. SANTA FE PLANNING GROUP, INC., AGENT FOR SANBUSCO 2015, LLC, AND THE NEW MEXICO SCHOOL FOR THE ARTS INSTITUTE, REQUEST A SPECIAL USE PERMIT FOR A SCHOOL USE ON 5.11± ACRES. THE PROPERTY IS ZONED BCDRED (BUSINESS CAPITAL DISTRICT REDEVELOPMENT SUBDISTRICT DISTRICT – COMMUNITY COMMERCIAL) AND LOCATED WITHIN THE WESTSIDE-GUADALUPE HISTORIC REVIEW DISTRICT AND HISTORIC DOWNTOWN ARCHAEOLOGICAL REVIEW DISTRICT. (DAN ESQUIBEL, CASE MANAGER)**

A Memorandum dated January 21, 2016 for the February 2, 2016 Meeting, to the Board of Adjustment, from Daniel A. Esquibel, Land Use Planner Senior, Current Planning Division, in this matter, is incorporated herewith to these minutes as Exhibit "2."

A copy of a power point presentation in this matter, entered for the record by Daniel Esquibel, is incorporated herewith to these minutes as Exhibit "3."

An email from Susan Munroe dated January 28, 2016, to Councilor Bushee, Mayor Gonzales, Councilor Lindell and Daniel Esquibel, in opposition to the project, entered for the record by staff, is incorporated herewith to these minutes as Exhibit "4."

A letter dated January 16, 2016, from Nicoletta Munroe, to the Board of Adjustment and Daniel Esquibel, in opposition to the project, entered for the record by staff, is incorporated herewith to these minutes as Exhibit "5."

A power point presentation *Understanding New Mexico School for the Arts*, entered for the record by Riis Gonzales, Director, New Mexico School for the Arts, is incorporated herewith to these minutes as Exhibit "6."

A Memorandum dated January 26, 2016, to the Board of Adjustment, from Fabian Trujillo, Director, Economic Development Division, regarding Economic Development Impact Analysis – New Mexico School for the Arts, entered for the record by Riis Gonzales, is incorporated herewith to these minutes as Exhibit "7."

Presentation by Staff

Daniel Esquibel presented information regarding this case via power point. Please see Exhibits "2," and "3," for specifics of this presentation.

Mr. Esquibel noted for the record that staff recommends approval of Case #2015-121, 500 Montezuma St., Special Use Permit, subject to conditions identified in Exhibit A to the Staff Memorandum (Exhibit "2"). He said everything in the graphic presentation [Exhibit "3"] is included in the Staff Memorandum and attachments (Exhibit "2").

Questions from Board prior to Public Hearing

Patricia Hawkins asked Mr. Esquibel how old and how historic is the Sanbusco Market, noting it is being referred to as an historic structure, and Mr. Esquibel referred the question to David Rasch.

David Rasch said there are 3 structures on the property. The Sanbusco Center is a building from the late 19th early 20th century. It has a very large addition that is non-historic, formerly known as Border's. He said that addition may cause the building to lose its status, which currently is listed as a contributing historic building. A status review will be performed and it may lost its status because of Border's. Both the World Market Building and the lumbershed to the rear, that isn't publicly visible from the street, have no historic status on them right now. There is a Federal Plaque on the World Market Building identifying the site and the story of the site is a lumberyard at the north end of the railyard. He said they will have to do historic status reviews of those two buildings.

Mr. Rasch continued, "The lumbershed may be a reconstructed replica of the historic lumbershed and it may be a non-contributing building. And the World Market Building has had some alterations, and I am unsure if the Historic Districts Review Board will consider it a non-contributing or a contributing building. But currently, we have one contributing building and two non status buildings."

Chair Friedman said part of this application doesn't require structural changes to any of the buildings at this point in time.

Mr. Esquibel said, "I understand the Applicant hasn't hired an architect and are still vetting through that. However, if they are going to do any modifications to the building, since it is in the Historic District, it will have to go through historic design review. They will be doing extensive remodeling for tenant improvement to the building, but as far as exterior renovations, we won't know until they come in for building permit."

Chair Friedman then this is the first step as to how the final project looks, and Mr. Esquibel said, "Right."

Donna Reynolds said Mr. Esquibel noted there are 274 parking spaces, and asked if that is what the school is entitled to, or does it include all the retail parking spaces.

Mr. Esquibel said there currently are 274 parking spaces. However, they lost some parking spaces, as the result of the 20 foot drive that wraps around the building to accommodate fire apparatus, bringing it to 247 spaces. He said a school has specific category requirements to meet parking requirements, and they felt perfectly within that with the balance of the parking spaces. He said in the BCD commercial businesses are allowed 1 space for every 300 sq. ft. of net leasable space, so between Raga, Radish & Rye and the other businesses, we came up with 17. He said, "They are right at Code at 247 spaces."

Ms. Reynolds said it was noted that the parking spaces themselves were non-conforming.

Mr. Esquibel said that is true. He said they tried to find any kind of documentation regarding Sanbusco's itself, and the only file he found was in Historic Preservation which didn't provide anything regarding zoning. He said, "I don't know how those stalls got to be substandard. We looked at the Code back in the day, and they actually were more rigorous than they are today. But we consider those at this point in time legal, non-conforming as far as the design. And they've been operating like that for many many years."

Ms. Reynolds asked if staff analysis was done to show what the spacing would be if you had to meet legal standards today.

Mr. Esquibel said it would fall below standards and require a variance to the parking requirements.

Douglas Maahs asked if the parking lot across Montezuma is part of the allotted 247 spaces.

Mr. Esquibel said yes.

Mr. Maahs said then this lot is included in that number.

Mr. Esquibel said yes.

Public Hearing

Presentation by the Applicant

Scott Hoefft, Santa Fe Planning Group, Inc., Agent for the Applicant, 109 St. Francis Drive, was sworn. Mr. Hoefft introduced the team in attendance, saying they will be as brief as possible in the presentation and just present the most poignant elements. He said everyone introduced won't be presenting, and have been brought along to answer questions. He introduced Riis Gonzales, Director, NM School for the Arts and Dr. Kelley O'Donnell, Economic Analysis who will be making presentations. Additionally available for questions are Ann Cummings, Leasing Agent, Sanbusco; Henry Baca, Sanbusco; and Mike Gomez, Traffic Engineer.

Mr. Hoefft said, "Before we get to Mr. Gonzales' presentation, I want to clarify a couple of points. One is about the historic issue and the buildings. I just want to emphasize again, the application this evening is for a Special Use Permit. This is the first step. And why we're doing it in this manner, is that we need to prove the concept that this use actually can be permitted on the site. Those are educational uses and a dormitory use. From there, the next step would be if there are building alterations we would work with Mr. Rasch and we would submit plans to understand the status review, and that would be to determine the non-conforming or conforming issue. That would go to the H-Board, so tonight, it's just use only."

Mr. Hoefft continued, "In terms of the parking question, what is provided on the site are 247 spaces, and the school requires 200 spaces pursuant to the Code. We have provided spaces for the retailers that are staying such as "On Your Feet, On Your Little Feet, Pranzo's, all those have been provided on the site and have been designated as such. The restaurants to the north side of the site have also been provided with parking. And so the site has a few extra spaces actually. Going to your comment about some of the spaces. Yes, over the years, parking spaces have shifted a little bit. Some are longer than others, some are wider than other, and essentially what we're referring to there. All of the spaces are exactly conforming. There are some adjustments here and there, absolutely, because of the time, and then the striping was done in the parking lot. But we do have a little bit of buffer in the parking calculations. So with that cleanup, with the presentation, I'm going to highlight a few more points that I think are necessary, but I'm going to turn it over to Riis Gonzales, Executive Director, of the School, who is going to give you a brief overview of the School. Thank you."

Riis Gonzales, Director, New Mexico School for the Arts, Art Institute [previously sworn], a non-profit associated with the School, located at 202 E. Marcy. He said creating the school began about 10 years ago, and it took about 4 years to get the legislation passed by the Legislature. He said there are

approximately 100 charter schools in New Mexico, but the School for the Arts is the only one created by the Legislature. He said they had to seek an AG's Opinion, and the process took a long time, commenting they are existing and thriving. He said the School has to follow all N.M. Education Department regulations, and all Public Education Commission Regulations and Oversight, since they are a Charter School. He said the Schools leases facilities in 19 spaces all over Santa Fe, and they are excited to hopefully move into a permanent home. He said that 46% of the student population are economically disadvantaged.

Mr. Gonzales continued his presentation of information regarding the School and its curriculum via power point. Please see Exhibit "6," for specifics of this presentation.

Mr. Gonzales said, "We just want to say thank you. Thank you for your support, and hopefully this passes and we can build our school. Thanks so much."

Mr. Gonzales provided a copy of a Memorandum from Fabian Trujillo, Director, Economic Development Division, to the members of the Board [Exhibit "7"].

Dr. Kelly O'Donnell, 1473 West Ella Drive, Corrales, NM, Professor of Economics and a private consultant [previously sworn]. Dr. O'Donnell said she does economic analysis, economic development analysis, primarily of health care and education projects. She was brought on board to update a study that was done in 2013 by UNM Bureau of Business & Economic Research, that had looked at the economic impact of the school at that time, and obviously found a positive economic impact. In light of the fact the school was expanding, increasing its enrollment, it was decided that study should be updated. She said he study focuses on the relatively short term tenure horizon of the immediate economic impacts – jobs created, income created, revenue to the City and to a lesser extent, the revenue to the State.

Dr. O'Donnell continued, saying it is important when we talk about the economic impact of education, particularly Arts education that, particularly here in New Mexico, the single best economic development investment we can make is in education. One of the City's most important, valuable and inherent economic assets are its arts and culture, and fostering that is a very good long term investment in economic development. In the short term, this will be an engine of job creation, and bringing additional funds into the community. She said when you have a school that is attracting students from outside the County, attracting visitors from outside the County to productions, and drawing significant federal and grant funding, all contribute to net economic development. So it is as much a driver of economic development as a manufacturing plant or tourism, although obviously not on that scale.

Dr. O'Donnell continued, saying we need to reaffirm how we think about education, and in this instance we will be supporting 120-140 jobs on an on-going basis, doubling that number during the construction period, and produce, in the short term, GRTs and City and State fees of roughly \$1 million, and ongoing revenue to City government of about \$150,000 annually after the expansion and construction is complete.

Mr. Hoeft said he would like to “back clean-up,” and come back through issues he thinks are important that he heard in the presentations that need to be reemphasized. He said Mr. Gonzales indicated there will be 215 students, but the intent of their charter is to go up to 300 students. He said currently the population is 215, and they are bursting at the seams at the current location which is approximately 30,000 sq. ft. at Alameda and Paseo. He said if you walk through the school you will see kids in the hallway.

Mr. Hoeft continued, saying the reason for this location is that it will triple the space for the School at 97,000 sq. ft. He said it also is close to a Rail Runner stop, noting that 25% of the students will commute to the school via the Rail Runner. He said the third reason is that it is an arts district. He said it is a wonderful arts & cultural district that's been developed over the last 15 years. He said there are many components making up this district including galleries, Site Santa Fe, Warehouse 21, and 12 galleries, 2 museums, restaurants. He asked, “What would be a better component to anchor the north end of the cultural arts district than a performing arts school. Then what you can begin to envision is the synergy between these uses, galleries, existing tenants and how the students can interact with the entire Railyard economic engine. He said they feel this will be a valuable contribution to that. He said there already is a school near the Railyard, at the edge near Warehouse 21 and Site Santa Fe, and it's the Tierra Encantada Charter School, on Paseo and about 900 feet away from the subject site.

Mr. Hoeft said another thing to consider is, for the local merchants and hotels in the area, the school generates a lot of activity, noting more than 70 colleges and universities visit each year, 60 professional artists and guest lectures. He said during audition week, there are up to 500 parents and students arriving at the school. There are 100 teachers coming in from around the State. And all these people need places to lodge which is an economic engine for the Railyard area and surrounding hotels.

Mr. Hoeft said, “I'm going to read this conclusion, which I think is important, which is what the Board of the New Mexico Schools for the Arts supports: *By nurturing New Mexico's artistic talent, NMSA via this new location at Sanbusco Center will help preserve the arts and cultural economy of the State by training youth to practice their art here in galleries, or join local art companies, many within a short distance of the proposed educational home. And this adaptive reuse project in this location at Sanbusco is absolutely critical to making this vision become a reality.*”

Mr. Hoeft continued, “One final point I'll make, is that we did meet with Richard Czoski of the Railyard Corporation, because there's a letter in the packet. And Richard's concerns were how we were going to work the parking situation and if we are going to continue to keep the parking available for uses other than the School. We met with Richard and we'd like to commit that, yes we will. But during School hours we need to have security and a campus that's somewhat locked down. It does leave a lot of availability for evening, weekend, and summer hours. And those are the times when the Railyard needs the most help with its parking situation. So with that, our team stands for questions, including traffic as well as building management right now. Thank you very much.”

Ms. Winston said she read the economic impact study and sees the positive economic impact, and asked how it would be offset by, for example, the loss of use of the commercial space on tax rolls.

Dr. O'Donnell said, "I looked at that, obviously. And I was really encouraged. If the retail establishments that are currently located at Sanbusco were going away there would be a net negative impact, I think. But as I understand it, the ones that are leaving are relocating to DeVargas and other sites throughout the City with vacancies. As such, the value of those properties should go up somewhat and there will be an offset there. You have to acknowledge the fact that this is a non-profit use and non-profits are exempt from property tax. So that will be property tax that is no longer collected on this property. However, again to some extent, that will be offset by increased property values elsewhere in the City."

Ms. Winston asked the current occupancy rates of businesses at the mall at the property was purchased.

Dr. O'Donnell said, "60%."

Ms. Reynolds asked the amount of the property taxes that were collected.

Dr. O'Donnell said it was \$154,000 annually, currently.

Ms. Reynolds said most of the data talks about 25 dormitories [rooms?], but your data talks about 65 students being on board. She asked, "Is that including it and then there are other students that will be living in the area, are you keeping the 20 dorms [rooms?] at the other location. I'm just trying to get a sense of what the dormitory situation will be because there is confusion."

Dr. O'Donnell said at full enrollment of 300 students, 150 are expected to be from outside Santa Fe County, 25 of whom will be borders, and the remainder will be commuting on the Rail Runner. They will be commuting from outside the County, one way or another, whether it is Park and Ride, in a car or on the Rail Runner. So it is 25 boarders.

Ms. Reynolds asked if the construction financing has been secured.

Mr. Gonzales said rough estimates are that it will cost \$25-\$30 million to renovate and build what they want. He said they are in the midst of starting a private capital campaign, noting they have secured approximately \$10 million pledges and gifts. He said they will continue to fundraise and to seek funding from the State, as a State public school, as well as City, County and federal funding.

Mr. Hoefft said, to follow-up, the approval of the Special Use Permit is absolutely critical for the continued funding, to be able to fundraise for the project, saying, "I can't emphasize enough how important this step is for the project's success."

Chair Friedman asked what is the time frame to open the school.

Mr. Hoefft said report indicates the 2017 school session, and they are still sticking with that date.

Chair Friedman asked if they will be doing things in phases.

Mr. Hoefft said yes, commenting the first thing is to be able to have the student population move over and then it's going to be a bit of a work in progress.

Ms. Dearing said one of the Railyard's concerns was about the exit from the underground parking potentially being blocked, and asked if that has been addressed.

Mr. Hoefft said yes. He said they met with Mr. Czoski at the Railyard, and the concern is that at certain times when you come out of the parking garage when there is congestion, they can come out of the parking garage and still head through the Sanbusco parking lot and exit. He said they think this is a find idea.

Mr. Werwath asked said it is his understand that public educational facilities need to have perimeter fencing around there, and asked if there is anything in current planning dealing with how the site will be secured and the impact it might have on pedestrian permeability.

Mr. Hoefft said the site is bounded on the north by a wall, on the west by a wall, on the south by a wall for half the site, and the only area of permeability is toward Montezuma, and there is a wall beyond the parking lot. He said they have been working through how to manage that, because Montezuma is a public street, and we have addressed the question at this stage so far is not walling-in the property, but handling it via security with security teams and to be able to have people walking the property.

Mr. Hoefft continued, saying Mr. Czoski said he didn't mind if we wanted to wall the rest of the property on the south side, because right now *Outside Magazine* forms one of our barriers. He said, "But again, we haven't got there to the design essentially."

Ms. Reynolds asked in the area of the Radish and Rye if there is any kind of gating and fencing. She said she knows the people in the community use that area to cut through that area, particularly bicyclists and pedestrians. She is curious how that will be managed with these young people in the area.

Mr. Hoefft said they have to keep that open for two reasons. One is the restaurants need the access and we can't totally enclose the property and not have access for vehicles and loading vehicles. He said they see it as gating in key areas, combined with security watching what is happening around the property. He said we can't shut down the property from access, because the 5 points of access in the area need the accessibility.

Ms. Winston asked what will be the procedure for liquor license applications within 300 feet of the school, or will that be required.

Mr. Hoefft asked Charlotte Hetherington to answer this question.

Charlotte Hetherington, Partner, Cuddy & McCarthy Law Firm [previously sworn]. Ms. Hetherington said she represents the New Mexico School for the Arts, Art Institute. She said, "There is an existing liquor license which Cost Plus World Market holds. It is a lessee of that license, and when it moves, which it intends to do at the end of April, that license will not be reused in the same location. The license has applicability within the boundaries of the City of Santa Fe, and so we will look for another willing lessee in another location."

Ms. Wilson asked if Pranzo's license will be affected by its proximity to the School.

Ms. Hetherington said, "Pranzo's has an existing liquor license, so it's an existing license. Its license would be grandfathered because it's appropriate for its location."

Ms. Reynolds asked if the expansion of the school to 300, includes expanding into the creative writing and media arts, or is that beyond the 300.

Mr. Gonzales said "The numbers do include creative writing and cinema arts in the 300. We already have a minor in creative writing right now, and we have to find funding for those programs, but we have enough applicants right now to go to 300 today if we wanted to. So it's more of a strategic mission by the School to dive into creative writing and cinema arts."

Mr. Werwath said he has one concern with proximity to an arts and cultural district that already has a number of liquor licenses and potential venues where this could be an issue – particularly in thinking that the 300 foot rule impacts new licenses as well as special events. He said this is the only major issue of incompatibility he can see with future use. He asked if it is possible, as a condition of approval of the Special Use Permit, for the School organization to agree not to oppose the issuance of a liquor service permit, special dispenser's permit, or the establishment of a new Restaurant License. He said, "Specifically, what I'm concerned with is whether or not the School would have to provide a letter either in support or not in support of the Special Event Permit. If it's A, a condition we could attach to a Special Use Permit; and B, if that's something the school would be amenable to."

Zachary Shandler, Assistant City Attorney, "I'm looking at the Special User Permit conditions, and I don't see one that jumps out at me that you're contemplating there. The way I understand your condition would be that they would not oppose a special event dispenser permit."

Mr. Werwath said, "Sure, or the provision of a new liquor license in that area, which is heavily populated with bars and restaurants, many of which have turned over in the last 10 years or so. So I'm thinking from an economic development perspective, that it might not be good to place a school in an area right now where there are a significant number of folks that would have to then be subject to a special hearing. And I don't think that the hearing could be avoided, but I would really like to ensure that the School in the future does not become an entity that shows up to oppose the issuance of special dispenser permits or other things, as they grant a special use permit in this neighborhood that already has a pattern of existing use."

Mr. Shandler said, "I think I would have to give you a strained reading for that condition to be among the list that the City Council is allowed to look at. I do know the counsel for the school non-profit, and I believe she's done a fair amount of work in this area, and she might want to comment on the process."

Ms. Hetherington said, "I will give you my unresearched opinion. First of all, there is another school in the area, there's another high school in the area, and it would seem strange to me that this Board would want to impose conditions on one school which have not been imposed on another, similar school in the same area. Secondly, liquor licenses are issued by the State, and we can't control the State's processes for public hearings and notifications. I will say that every license that is issued in Santa Fe, as well as every other location in New Mexico, carries with it, whether an event or any other kind of license, the obligation that the dispenser make sure, or take reasonable steps to make sure that it is not dispensing to minors. I think if the concern is minors drinking alcohol, there's already a built-in-concern."

Mr. Werwath said, "The presence of minors impeding normal economic development and existing patterns of use, which includes the consumption of alcohol. That's my concern."

Ms. Hetherington said, "I am not aware of any data that shows that the presence of minors in an area of commercial activity lessens the profitability of the commercial enterprise just because they are minors."

Mr. Werwath said it's a more nuanced question. He said, "I guess I would parse it out in saying that Tierra Encantada is on the site of the Alvord Community School which is a long established school use. This is a new school use that impedes other, potential new liquor service permits and special dispenser permits, within a 300 foot radius, right. So what we're doing is starting to create a patchwork of overlays where there is an extra burden on a business or a special event person to be able to serve alcohol in what is ostensibly an arts and culture district. So what I'm trying to get at is whether or not.... what I guess I'm trying to get at is that I don't want to see a situation where we grant a special use permit to this use that then becomes an active element in disrupting the current and established uses in the neighborhood. Because basically, and maybe it's something you're not familiar with, I'm intimately familiar with this from other work I do. A special dispenser permit for alcohol when it's within 300 feet of a school, requires the okay of the school in the special hearing before the City Council, and I don't think we can get out of a special hearing, that's State law. But, to me the issue is more about what I really don't want to see is a Special Use Permit granted to the School and then the school become an entity that is saying no, we don't want you to have a special event, dispenser permit or a new restaurant or bar in this neighborhood because there's a school here. If that makes sense. It's a compatibility issue."

Mr. Shandler said, "It is a hotly contested issue about the alcohol in the downtown area, but based on my personal knowledge of these hearings, schools rarely even participate. So I think you may be anticipating an issue..... and maybe the public had a different personal knowledge than I've observed, but I think you're anticipating a problem that has not occurred, and likely will not occur."

Mr. Werwath said then his experience with Special Dispenser Permits, it's not required that you get communication from the institution that triggers the 300 foot rule. He said in his experience he has had to get letters from them to include in his submissions for Special Event Permits.

Mr. Shandler said, "And I'll bet the School organization, since they're in the downtown area and just in place might have some personal knowledge. It is a requirement, but I cannot think of an instance where a school has objected. And it seems it's also common practice where they don't send a letter, and that's seen as a sign of no objection."

Ms. Hetherington asked to present Dr. O'Donnell to address the issue from the economic standpoint."

Dr. O'Donnell said, "I have some personal experience with this. I ran the agency that issues liquor licenses for the State of New Mexico for a number of years. And the process is a Multi-step process, but the big decisions are generally made at the State level. And in my experience there were times when the issuance of a liquor license was opposed by community members, but I never recall those community members being schools. We granted waivers of the 300 foot rule on an almost daily basis, because just about everything is within 300 feet of a church or school in this State. So, what I'm saying, from an economic development perspective, because I've also done economic development, I've not had that be an issue. And as a liquor regular, that was never an issue either. So, is it possible. Perhaps. But in my personal experience working with these things I never saw it be a problem, and given there are already liquor licenses right there, I would see very little justification for opposition. And these guys certainly aren't going to do it."

Mr. Werwath said he is asking because of his practical experience over the past few years with the City Council and its attitude toward these things and the experience of entrepreneurs. He saw this recently with a business that was starting to sell hard cider. They couldn't find a manufacturing facility because there were so many small church groups in industrial areas. He thinks this is a legitimate, long-term concern for him.

Lisa Martinez, Director, Land Use Department, said, "Clearly we have a unique circumstance here that I think the School pretty well understands what they're getting into with all the surrounding businesses that do have liquor licenses, including an adjacent movie theater that has one as well. And certainly we are going to have students attending movies there, I would assume, and they're going to be right next to it. So I'm hopeful that there will be no significant issues that arise in the future. The business are there, the restaurants, the bars, the movie theater, so hopefully we won't have any problems in the future. I think the School knows good and well exactly where they're moving into."

Mr. Gonzales said they know what they're moving into, hopefully, noting they have been located in the St. Francis School, and we've given waivers to the brewery and every hotel in the area and "we plan to continue that for sure."

Ms. Winston asked if students will be exempt from having to seek a busking permit. She said if we approve this, she wants to have busking all over the Railyard – street performances by students.

Mr. Gonzales said, "Our students will love to be busking and not have to pay a fee for that, and they would be out there."

Ms. Winston asked if the students will be exempt from having to obtain a permit.

Mr. Shandler said, "The Railyard Corporation has its own busking policy, so I think that's what would govern that area. Richard."

Speaking to the Request

All those speaking were sworn en masse and asked to limit remarks to 3 minutes

Richard Czoski, 332 Read Street, Executive Director, Santa Fe Railyard Community Corporation [previously sworn]. Mr. Czoski said Railyard Board has considered the presence of the School in the area and are in favor of it, think it will be a great use. They do have concerns, some of which are in the letter he drafted and some which still remained to be defined, such as how the lock-down will work. He said they still have those concerns, but by and large are very much in favor of it and think it will be a great addition to the neighborhood and look forward to being good neighbors to them and them being good neighbors to us because we have to coexist. He said he was mentioned a few times in Mr. Hoeff's presentation, and would be happy to answer any questions.

Ms. Winston said she is curious about busking and if it will be encouraged.

Mr. Czoski said students will have to comply with the same busking requirements as everyone else. We have underlying City requirements for that, noting the Railyard is a City-owned property, but the streets are public. He said, "If the students busk on their own land, so be it, but on the Railyard they would have to comply. And we've already worked out... actually the School has had events on the Railyard, so we've already worked through a protocol with the School."

Jerry Richardson, 703 Don Felix Street, Historic Guadalupe Neighborhood, and President, Historic Guadalupe Neighborhood Association, [previously sworn]. Mr. Richardson said he wants to make it clear he is speaking on his own behalf and not the Association. He said he called a meeting of the Neighborhood Association last Wednesday, with 37 people in attendance, and there wasn't a consensus for or against this project. He said the group agreed not to take a vote on the project, and everyone was urged to come here and make their own opinions clear to this Board, which he is doing today. He said he recognizes there have been vacancies throughout Sanbusco and other shops in the area, right now there are 3-4 vacancies on Guadalupe Street, empty storefronts, which isn't healthy for the community. He said he thinks the New Mexico School for the Arts is a great school, great program and a real asset to our community. He said, in his opinion, it will add to the vitality of the area to have the school there, and personally he is in support.

Mr. Richardson continued, saying he said he has one concern which is a neighborhood concern which was brought to the attention of the Association last Wednesday. He said Noah Berke, City Land Use and Councilor Signe Lindell were in attendance. He said the problem is that Sanbusco was allowed to be constructed and send all of its drainage onto Agua Fria Street. He said he doesn't know exactly what is being drained, because there is no visible drainage from rooftops onto parking lots. He said he can tell that the whole back parking lot behind Borders and everything in that area drains into a big 12 inch pipe that comes out through the back wall of Sanbusco's and along a concrete ditch along the street that accesses the Guadalupe Inn right off Agua Fria, and it all flows onto Agua Fria Street. He said it is a problem in the summer with downpours, but more of a problem in the winter. He said anyone who has driven along Agua Fria between St. Francis and Guadalupe in the winter is an ice floe because the water stays in the shade.

Mr. Richardson continued saying, "There are tons of water coming from the Sanbusco property that goes onto Agua Fria, and there is no storm drain where the water comes out, and it has to flow along that whole side of Agua Fria, and crosses Agua Fria at Irvine Street before it gets to a City drain. He said this is a public safety issue, noting he brought it to the attention of the School who said they would look into it. He said the City Engineer came out and reviewed it with him this morning, and they may be able to clarify things a little for you. Anyway, that's a concern I would love to see addressed in this whole permitting process."

Joey Chavez, 2318 Botolph Road, Dean of Students, and Chair Theater Department, NM School for the Arts, [previously sworn], said to allow the School at this site is incredible. First, the historic relevance of the downtown and the arts there. He said he attended Guadalupe School, which was turned into a shopping center. He said one of his old family homes is one of the restaurants off Guadalupe. He said to bring the liveliness of the School to the end of the rail where students can get off the train and right to school. The train schedule will determine when "we have to start school and end school." He said the current location is cramped. He said they love being downtown and people like to come by and see students performing. He said a world class education will be available at this world class facility at this wonderful site where they can access neighbors galleries, museums, Warehouse 21, and such. He said, "We've always been a good neighbor where we are now and looking forward to the students being able to be there. Thank you."

Gabriel Kessler, 401 Sunset Street, [previously sworn], said he is a Senior at the New Mexico School for the Arts, in the Theater Department with a Creative Writing minor, noting he is the President of the Student Council. He said he getting ready to fly to Chicago for college auditions, noting he is hoping to get a BFA in Theater Arts, and he is having to practice his monologue in the basement where they keep the costumes and props for the Theater Department, because someone else was using the rehearsal hall. He said it would be amazing to have sufficient space to create in a really fine place. He said the Railyard has become one of his favorite places to hang-out with his friends, commenting there is the Violet Crown and Jean Cocteau, and so much culture in the area. There is an amazing fusion of youth – go to an NMSA production, a movie at the Violet Crown, and to a late night dance at Warehouse 21. He said, "There will be this amazing hub of culture, which he won't experience, but hopes to visit and be a part of it later down the road."

Eric Kreitz, 59 Encantado Road, Assistant Principal, NM School for the Arts [previously sworn], said he has been with the school for 4 years. He said a big part of his job is to see the potential of the students, and they are achieving great things in the arts and in their academics. He also sees untapped potential because of the restrictions of the building where they are located currently. Mr. Kreitz said we need a new building because, for examples, students lose an hour each day commuting back and forth to NDI, and feel disconnected from the other students because they do their art elsewhere. He said theater and music students are rehearsing in halls, stairwells and bathroom foyers, in every nook and cranny. He said visual arts students lack facilities to work in every available medium, for example, there is no darkroom. He said academic classes are bursting into the halls, and we are limited by our space. He said dormitory students lose time commuting back and forth daily to the current dormitory space. He said they have to turn away qualified New Mexico students from the School.

Mr. Kreitz said the reason for Sanbusco. He said they are an access school, and the mission is to provide access for qualified students for an arts mastery and academic program that serves a diverse student population. He said 46% of the students meet the federal definition of economically disadvantaged. He said Sanbusco would offer space for 100 more talented youth to attend the school, access to the cultural heart of Santa Fe, access to on-site dormitories, access to transportation by Rail Runner, and our students coming from Los Alamos, Las Vegas and Espanola on Park & Ride, and it would provide access to dance, theater, musical and visual arts facilities so our students can reach their full potential.

Melodi Wyss-Feliciano, [previously sworn], said she is better known as Suca's mom, noting her daughter attends the School, and the first time she has had a school home that filled her heart. She said they are starting to make plans for the move and her daughter is excited to graduate from NMSA. She has a unique perspective as the only business owner at the site. She and her husband have had Rock, Paper, Scissors for 14 ½ years at Sanbusco, and her daughter at 15 has grown up inside their business. She said the busiest business she's seen is On Your Feet and On Your Little Feet, where she bought her daughter's shoes growing up. They have been inside Sanbusco for 4 years which was a big move and expansion of their business. She said they are grateful to NMSA for the joy it has brought her daughter's heard. She said when her daughter was 5, she said was going to Broadway and they want to support her, and are happy that she has a school that is setting a role model, and believes the School is good for the City and its citizens. She said they are a destination business, and easily 40 people walk through their doors every day. She said other businesses are making plans to move. She said they are expanding their staff, and this will be a blessing in disguise. She said as long as tenants like Raga, Ristra, Pranzo's, On Your Feet and Get it Together are cared for, they can continue to provide services. She thinks the School is the absolute best use for the land.

Aaron Feliciano, 500 Montezuma Avenue, Suite 110[previously sworn], said he is Melodi's husband. He said having a child at NMSA, and being moved out of Sanbusco, in your shoes, he would see malls with low occupancy being combined in this way. He said they will have a full mall and the synergy from one busy mall on that side, rather than two that are slow. They anticipate great sales and great growth. He said on the other side at NMSA, they are bursting from the seams. He said the bigger

point is they've earned the draw from the kids that come from all across the State to audition and they all don't get in. He said the expansion will mean more kids get to attend the School, commenting NMSA is that good.

Mr. Feliciano continued saying, the kids that attend the School are kids that often were bullied because didn't fit at their school. He said his son had to go out of state to find a school where he would fit. He said they are fortunate to be in a City where there is a School for kids who typically would be bullied at their school. They now are in a place where they fit in, thrive in academics. They're all committed, know everybody had to audition to get in and they automatically have respect for one another. They work really hard at academics and the arts. He thanked the School for changing lives in this way. He said, "I couldn't imagine any other decisions for you guys to make than to make this go through."

David Sandoval, 4178 Cheyenne Circle, [previously sworn], said he is a parent, and was the President of the Parents Association last year, and this year, he is the Treasurer. He said he had reservations when his daughter said she wanted to attend the School as a Freshman, because he was unsure how this blend would work. He did his research and learned that this School is the only model of its kind in the Nation. He said we're breaking new ground in Santa Fe in a very good way. He said it is true that the School is bursting at the seams, and related his experience. The student body is unique, cohesive, get along with one another and support one another. He said his daughter has thrived at NMSA, and graduates this year. He said, "I can't think of her being any happier or doing any better." One of his big concerns was how she would thrive academically and she's done remarkably. He said, as a member of the Parents Association, he has been at the School during registration, auditions, and it is heartbreaking when the kids don't make it into the school. He said the new facility is huge and the kids need their own personality and space. He said there is no parking at the current location. He said to have the School in this location is a huge thing for the community.

Manuel Monasterio, 1089 Governor Dempsey, [previously sworn], said he will try not to be repetitive. He is the parent of a freshman, Sophia, who is thriving at the NMSA, and a son, Alex 21, who is an art student, but there was no school for him like NMSA, and he attended another school out of State. He said the school clearly is succeed, and is on track to continue to succeed. He said the reason he is on the Board is because he believes strongly in what they are and will accomplish. He said he is convinced that in 5-10 years, they will be writing documentaries about this school. He is the husband of a woman who attended the North Carolina School for the Arts, which is similar to this one, and these kinds of schools often are in areas that improved dramatically after the School arrives. He said he was a tenant in Sanbusco 1998-2001, and still is a patron of those businesses. He thinks this is a win/win for the entire community. He is in support of this application. He said the School does life changing work and wants to support that effort, and "hope that you do also."

Shelby Bradley, 532 Agua Fria Street, was sworn, said he and his family moved to the neighborhood about a year ago, and their house abuts the property the Board is reviewing. They are on the wall, just the other side of the lumbershed the presenter spoke about. He said they were very excited

about the area in general and with the Sanbusco Center businesses in the area. They are patrons of the Felicianos' business, go to Teca-Tu to buy for their dogs. He said part of him will be sad to see the change happen, but they are very excited about the prospect of the School to be their immediate neighbor. He said their concern was earlier this year when the business was auctioned they didn't know what was going to happen, and their chief concern was to get a good neighbor. He said they are excited about the School as the new neighbor. He said as an immediate neighbor he would voice their support for the project.

Nicolette Monroe, 701 Dunlap, [previously sworn], said she resides in this historic district. Her house is over 50 years old, and eligible to be on the State register, and may be eligible for the National Historic Register. She said the Sanbusco Center was built before 1880 and it is a landmark building, and is designated under the National Historic Register and the State Register, as is the building next door. She feels this project adversely affects the community. She said City Code Section 14-2.4 specifies how this Board makes its determination. She 14-3.6(D) provides, *'Approval Criteria and Conditions. 1. Necessary Findings.'* She said under (b) the Board has to determine that *'granting the special use permits does not adversely affect the public interests,'* and under 14-3.6(D)(r) *'Conditions may not be imposed that restrict the use to a specific person or group.'*

Ms. Monroe continued saying no one disputes the merits of the School, the School is admired and the School can get property elsewhere, build a new campus full of options. She said the project, as proposed, completely shuts out the community. She said inside Sanbusco Center there are photographs and text that describe the history of the place. It is built in the industrial style, and attracts people from across New Mexico and the United States, noting originally this was a lumberyard on the rail line and it was a commerce center and it still is a retail center. It was renovated in the 1980's and that's when it got its national status on the Historic Register. If we close this building and allow it to be a school, we really disenfranchise our community. There are major issues such as the licenses for beverages. She said Pranzo's has been serving beverages for 25 years and that license will stay there, which means beverages are served on campus.

Ms. Monroe continued, saying she believes this is a dangerous proposal in terms of safety. She said they can't fence the building because of the way it is designed. And she questions the 5 ingresses and egresses, and whether it is a safe environment for kids to go to school.

Ms. Monroe continued, saying she is concerned about the economic impact report that was prepared by the City because it does not provide a comparison of what Sanbusco earns with the School. She said was a GRT generator, it paid property tax and it also is an anchor building, which means the building attracts patrons to the area in the historic district for shopping. She said the City has nothing in its report from the business community, the residents. She is concerned about property values, commenting she thinks the School will lower the property tax values in the district. She said it is incredibly selfish for us to serve a few hundred students and teacher. Also, it is the only parking in the area and people use it to go to restaurants or on Guadalupe. She doesn't know if the businesses will survive. She wants this Board to consider the community, whether or not you issue the permit, and not just the School. The school has other options. They can buy land from the County and build a brand new performing arts center and have a state of the art facility.

Stefanie Beninato, P.O. [inaudible], [previously sworn], said she agrees with the previous speakers that nobody is contesting that the school is a model for Arts Education and has done well. She is concerned about the safety aspects of the School. There are many exits that need to be secured. She said generally, schools are pretty locked down at this point [inaudible]. She said they will go down to the Railyard space that is a park, which is outside. She is concerned about what will happen if there is a bomb threat and the whole area is locked down, and how the businesses will appreciate that. She is also concerned about the parking. She said we heard that 215 students will be attending and there are going to 130 jobs at that school. That means 130 parking space minimum and parking for the students, and when it goes to 300 students, there won't be sufficient parking at Sanbusco. She is concerned about the compatibility. She is concerned about the loss of GRTs and property taxes. She said the construction jobs are short term. She isn't so concerned about liquor licenses. She said Walmart was close to our schools, and it was selling package liquors and there was concern about that. She said there are package liquor stores on the Railyard, a package liquor store across St. Francis and Agua Fria, so there is a wide exposure to alcohol. And the way the School describes it, these kids are going to be wandering around to galleries, and being buskers, which is a situation where it is that, or a locked-down or students will be wandering around, and she wonders about their safety. She noted there is a homeless shelter in the area and related problems in the area. She doesn't think this Board should be deciding based on the merits of the School that it will meet the criteria under the Ordinance.

Monica Prerodsky, 1004 Don Cubero, physical therapist, [previously sworn], said the previous speakers brought up a lot of her concerns. She is an educator, a physical therapist and has worked with the SF Public Schools, Los Alamos and has been at NMSD for 10 years, so your school sounds amazing. She said at NMSD they went through a huge transformation, but they are very locked-out. She said it is a residential school, they have 24 hour security with gates and IDs to get in and out, and everything is very secure there. She thinks it will be very problematic in this location, especially in terms of people walking through different areas, as well as that part of the day you have security and part of the day you don't so people can move through. She said it is quite involved, and a bigger picture than she thought before she worked there. She said she doesn't like paying for parking and she can walk there, but a lot of people don't want to go there because they want a free place to park and believes that will be an issue. People might not shop there as much because they have to pay for parking.

Ms. Prerodsky continued, saying with all these people coming off the train will need to go to the bathroom, noting there are some at the Farmers Market, but the hours are limited, and businesses don't like people coming in just to use their bathrooms. She asked if there are plans to add bathrooms for the public for when they come off the train. She said a lot of people use that toilet during the weekend.

Ms. Prerodsky continued, saying her final thought is she knows there is an idea that we will figure it out, but she wants a plan before approval to make sure there is good access and security. She said it doesn't always work out when you wait, so she wants the Board to figure that out, and hopefully that would be part of the plan before moving forward. She said it is an amazing school and she sees the passion in everyone and hopes that will continue, she just questions whether or not this is the best location.

Arthur Firstenberg, 247 Barela Street, [previously sworn]. Mr. Firstenberg said he is not opposed to this project, although he will be a neighbor and thinks an art school would be most welcome. He said it is a residential neighborhood which has concerns he would like to bring to the Board's attention. One has to do with the access by the residential neighbors to the Railyard. He walks next to Radish and Rye and around the west side of Sanbusco Center to the Railyard. He said last year that was gated in a couple of places last year, and there was no bicycle access. He has used that access to the Railyard every day for the last 8 years, and there have been statements asking you to let other people use it for walking and bicycling. The Applicant also said there was some gating, and we haven't heard where. It would be good if there was a Condition of Approval that the access from the residential neighbors to the Railyard will not be barred for foot or bicycle traffic.

Mr. Firstenberg continued, saying he heard there would be a fair amount of construction, noting it is a large site. We told that there would be 120 jobs and later a resident auditorium. He said there are immediate neighbors who are going to be negatively impacted during construction by the delays, noise and dust. He asked the length of construction. He said there should be some sort of mitigation as a condition of approval.

Mr. Firstenberg continued, saying he wants to point out there are neighbors immediately next to the site, and when anything live is happening at the Railyard, he hears it at his house. He said it is an effect he doesn't mind, he doesn't mind the busking, but the impacts on the immediate residential neighbors should be considered, and some conditions should be on the project approval.

The Public Testimony Portion of the Public Hearing was Closed

Ms. Hawkins asked if the issue of the drainpipe at Agua Fria will be addressed in the building permit process.

R. B. Zaxus, Acting Director, Technical Review Division, said she visited the site today with Mr. Richardson. She said all the drainage from the whole site goes out that pipe to Agua Fria. In addition, there are upper portions of Agua Fria and east of there from the Church, a lot of those houses drain toward Agua Fria in the street itself, so that adds to the flow where the pipe comes out on Agua Fria."

Ms. Zaxus continued, "To answer your question directly, we do not have an Ordinance that would cause them to fix the situation because it's not new development, and it's basically all impervious. If it was a brand new development, we would require them to store some of the stormwater on-site before it could be released at a slower rate. But it just doesn't apply in this particular situation. She did speak with Streets today about its perspective. She said Streets has no money to put pipes in the road to fix it, so that's not going to happen. She said there are speed bumps along Agua Fria. She spoke to the Streets Division Director today and he indicated that some of the water is back up against the speed bumps and he's not able to get through. So he has to fix those speed bumps, but she doesn't know how much that will help the current situation, because all that water is still going to be coming in that direction.

Ms. Hawkins asked if having the school there will aggravate the situation.

Ms. Zaxus said no, there would be the same amount of drainage.

Ms. Reynolds said the DeFouri Bridge will be under construction in the near future, and asked the schedule, commenting she is thinking about the overall construction in the area and how it might impact or impede the whole community.

John Romero, Director, Traffic Engineering Division, said they will be bidding that project within the next 2 weeks, so there probably will be construction in March or April, and the construction time is 60-90 days. He said DeFouri will be closed during that time while the bridge is removed and replaced.

Ms. Reynolds said in the past conditions have been added relating to concerns of the neighborhood during construction, and keeping some of the noise and dust mitigated.

Mr. Esquibel said it is not within the purview of this Board to attach conditions to be monitored by staff. He said typically we do monitor those during construction period. The Inspection Division always looks at that and a SWEP that is reviewed by Ms. Zaxus, so a lot of that is handled automatically.

Mr. Maahs said then the security issues of the student body would not in be in the purview of this Board, or would that be in our purview.

Mr. Esquibel said that would be a private matter with the School and its insurance company, and the City wouldn't get involved in trying to police something as a condition of approval.

Chair Friedman asked about the pedestrian access to the Railyard by its neighbors.

Mr. Esquibel said that arose at a public meeting, and the applicant would be more in tune to answer that question, since that wasn't anything that was provided in the review process. It came up after the fact.

Greg Smith, Director, Current Planning Division, said, "The Board or the Planning Commission would have the authority to require dedication of a trail if the trail is shown on a publicly adopted trails plan. Staff is not aware of any plan that shows this as the location for a public trail."

Chair Friedman said then it's private property.

Mr. Hoefft said, "It is part of our conditions of approval. I would like to point to the ones from the Traffic Division, which indicates, as a condition of approval, we are required to do a pedestrian safety plan.

Chair Friedman asked if that would address whether pedestrians will still have access to the Railyard.

Mr. Hoeft said, "In listening to the comments, what became apparent are contradictory goals. One, we hear that to keep the campus open is an important thing, for example, for Richard at the Railyard. At the other hand there is a need to keep the facility itself locked down. May I interject that if you consider the School as being locked down, the doors, around the school during hours. Just like it is now at the current school. You have to go through a process to be able to get into the school. However, we are leaning toward trying to keep the campus itself, the property more fluid, because there is a public street that goes through at Montezuma. Combined with that, there currently is access that the residents currently use, and so that would be our goal. To keep the school secure, while at the same time, doing whatever we can to keep the property open."

Chair Friedman said so your goal is to balance security with pedestrian access use, and Mr. Hoeft said that is correct.

Mr. Maahs said the only thing under discussion in terms of access, is the driveway that goes through to the restaurant, Radish and Rye, as one of the access points. All of the access points are actually public access at all times.

Mr. Hoeft said, "In the back corner by the parking garage that essentially leads to the Railyard, the southwest corner and the one to the restaurants, the main access in front down Montezuma and the access to Border's from Market Street. So these are the four main points into the site."

Ms. Reynolds asked if it is possible to add a condition of approval that once the building is constructed, if they are going to gate, or eliminate or reduce public access, that we would require them to have a community public meeting and engage the public to get its feedback before moving forward with such a plan.

Mr. Smith said, "I think the Board has the authority to require conditions of approval to them at the time of development. The Board has some authority to establish and review during the amendment process. It's not clear to me that the Board has the authority to delegate the responsibility to consider those issues through any other process or group."

Ms. Hawkins said she is confused and asked if we are talking about pedestrian access at private access points.

Chair Friedman said we're not talking about public.... and that was the first point addressed by Mr. Smith. We're not talking about public pedestrian trails.

Ms. Hawkins said she is talking about pathways people have become accustomed to using. She asked if anybody is cutting off the access to the Railyard with this development, and Mr. Esquibel said no.

Mr. Esquibel said, "If there are any walls or fences, again, all the cosmetic attributes that would be developed on this property, need to go through the Historic Design Review Board, so they will be vetted through another committee with another public hearing that will allow public input at that point."

MOTION: Rachel Winston moved, seconded by Daniel Werwath, regarding Case #2015-121, Special Use Permit Approval Request for a school use on 5.11± acres, on property zoned BCDRED and located within the Westside Guadalupe Historic Review District, and Historic Downtown Archaeological Review District, to approve the Applicant's request, incorporating Staff's Finding of Fact and Conclusions of Law and subject to the conditions of approval as shown on Exhibit A.

FRIENDLY AMENDMENT: Ms. Reynolds proposed a condition of approval to ensure that construction is mitigated using the best practices to control dust, noise and traffic at the time of construction. **THE AMENDMENT WAS FRIENDLY TO THE MAKER.**

1. **DISCUSSION ON FRIENDLY AMENDMENT PRIOR TO AGREEMENT BY SECOND:** Mr. Shandler said he tried to put down a list of the conditions, but imagines that's pretty hard to read. He said, "I think Mr. Esquibel said that language is pretty consistent with your existing practice. Mr. Esquibel said, "Lisa as head of our department can speak to it better than I can, but I believe we definitely have a rigorous process of inspections, and a lot of that is already taken care of to best of our ability, which I'm assuming is top of the line. We have many staff members who train for this and this is their only review process for what they do. That condition is something we already do for every building permit falling under that particular issue."

WITHDRAWAL OF FRIENDLY AMENDMENT: Ms. Reynolds withdrew her friendly amendment.

VOTE: The motion was approved unanimously on a voice vote.

G. STAFF COMMUNICATIONS

There were no staff communications.

H. MATTERS FROM THE BOARD

Chair Friedman thanked all the staff that were here this evening to answer questions. He complimented Mr. Esquibel on his great presentation.

Mr. Werwath said he wants to recognize the immense amount of work that went into putting this presentation together, commenting it is a complex case, and he appreciates all Mr. Esquibel's efforts to put together this presentation and get all of the right information for the Board.

Lisa Martinez, Director, Land use Department, extended a special commendation to Mr. Esquibel for the work that went into the presentation.

Mr. Esquibel said he used Windows to do it.

Ms. Reynolds said she lives in the area and asked who to contact if there are construction problems.

Mr. Smith said the staff is well aware of the community's concern with proactive enforcement of Chapter 7 and Chapter 10 regulations about dust control and such and will be on top of it.

Chair Friedman thanked the Board members for their participation tonight, saying the questions were right on point, very perceptive and really raised some good issues that we had the opportunity to discuss and hear about. He said, "I thought it was a really good hearing.

Ms. Reynolds asked if the construction timeline goes beyond two years, how do you handle it.

Mr. Esquibel said the School wants and plans, if at all possible, to start next year. He said, "So they will start construction in the Fall, and they want to be operational by the first part of next year, so you won't see a large construction time for this. And for the most part, all of it is internal, and with the abundance of parking in the area, once all the tenants have left, you will not see any kind of construction sprawl all over the neighborhoods. It will be maintained and contained within the property."

[Ms. Reynolds remarks here are inaudible because her microphone was turned off]

Mr. Maahs said, "If they do it in phases, as a general contractor, I can tell you, the longer the construction goes on, the more expensive it becomes in terms of losses."

Mr. Werwath said, "They did mention that they have \$10 million committed which is a huge amount of money. This has been on the table for a year"

Chair Friedman said now that they have the Special Use approval, assuming there are no contests, they can get more money coming in.

[Ms. Hawkins remarks here were inaudible because her microphone was turned off]

Mr. Smith said, "I would remind the Board that the *pro forma* or the financial liability of a particular applicant is not necessarily within the scope, and make it clear for the record, that this is informal discussion not related to the action previously taken."

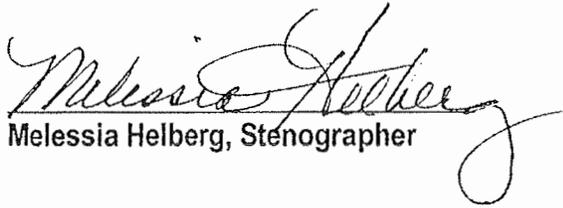
Chair Friedman said, "Just for the record that had no basis on the decision, correct."

Ms. Dearing said, "If I could just add, my office is actually located in the Railyard, and I'm really excited about this. I think it's great. We need more kids downtown. I think it's great."

I. ADJOURNMENT

There was no further business to come before the Board, and the meeting was adjourned at approximately 8:15 p.m.

Gary Friedman, Chair



Melessia Helberg, Stenographer

City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law

Case # 2015-121—500 Montezuma Street Special Use Permit
Owner/Applicant's Name—Sanbusco 2015 LLC & New Mexico School for the Arts Institute
Agent's Name—Santa Fe Planning Group

THIS MATTER came before the Board of Adjustment (Board) for hearing on February 2, 2016 (Hearing) upon the application (Application) of Sanbusco 2015 LLC & New Mexico School for the Arts Institute (Applicant). The Applicant seeks a special use permit for a school use on 5.2+ acres. The property is zoned BCDRED and BCDGAN (Business Capital District Redevelopment & Sandoval/Montezuma Subdistricts- Community Commercial) and located within the Westside-Guadalupe Historic Review District and Historic Downtown Archaeological Review District.

After conducting a public hearing and having heard from staff and all interested persons, the Board hereby FINDS, as follows:

FINDINGS OF FACT

1. The Board heard reports from staff and received testimony and evidence from the Applicant. Members of the public interested in the matter spoke at the hearing.
2. Pursuant to Code §14-2.4(C)(2) the Board has the authority to hear and decide applications for special use permits as provided in Code §§14-3.6 (Special Use Permits) and 14-6 (Permitted Uses).
3. Pursuant to Code §14-3.6(B) the Board has the authority to hear and decide applications for special use permits in accordance with applicable provisions of Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14; or to deny special use permits when not in harmony with the intent and purpose of Code Chapter 14.
4. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", a public or private school is a permitted use in most locations in a Business Capital District.
5. Pursuant to Code §14-6.1(C) Table 14-6.1-1, entitled "Table of Permitted Uses", a special use permit is required when a public or private school is in a Business Capital District and is located within 200 feet of residentially zoned property.
6. The Property is in a Business Capital District.
7. The Property is within 200 feet of approximately eighteen R-21 parcels on both sides of Agua Fria, including several that abut the north edge of the school parcel
8. A special use permit is required for the Applicant's use on the Property because of its proximity to residentially zoned property.
9. Code Section 14-3.6(C) sets out the procedures to be followed prior to the grant by the Board of a special use permit, including:



- (a) Approval of a site plan and other site development drawings necessary to demonstrate that the Project can be accomplished in conformance with applicable Code standards [Section 14-3.6(C)(1)];
 - (b) Submittal of an application indicating the Code section under which the special use permit is sought and stating the grounds on which it is requested [Section 14-3.6(C)(2)]; and
 - (c) That a special use permit is limited to the specific use and intensity granted, requiring a new or amended special use permit if the use is changed or intensified [Section 14-3.6(C)(3)].
10. Code Section 14-3.6(D)(1) sets out certain findings that the Board must make to grant a special use permit, including:
- (a) That the Board has the authority to grant a special use permit for the Project [Section 14-3.6(D)(1)(a)]; *Section 14-2.4(C) grants the Board the authority under the section of Chapter 14 described to grant a special use permit.*
 - (b) That granting a special use permit for the Project does not adversely affect the public interest [Section 14-3.6(D)(1)(b)]; *The proposed use is consistent with applicable city ordinances and policies that are adopted to protect the public interest, including minimum standards of Chapter 14. Architectural and historic issues will be reviewed by the City's Historic District Review Board.*
 - (c) That the Project is compatible with and adaptable to adjacent properties and other properties in the vicinity of the Project [Section 14-3.6(D)(1)(c)].
 - i. *There is already a high school in the area (Tierra Encantada Charter School).*
 - ii. *Staff has not identified potential impacts in terms of noise or traffic to the adjacent and nearby residential uses.*
 - iii. *The project is an infill project proposing adaptive reuse of existing buildings already established within the BCDRED.*
 - iv. *Architectural compatibility will be reviewed by the City's Historic District Review Board.*
11. Code Section 14-3.6(D)(2) authorizes the Board to specify conditions of approval for a special use permit to accomplish the proper development of the area and to implement the policies of the general plan.
12. Code Section 14-3.1(F)(2)(a)(viii) requires an ENN for special use permits and Code Section 14-3.1(F)(4)-(6) establishes procedures for the ENN, including:
- (a) Compliance with the notice requirements of Code Section 14-3.1(H) [Section 14-3.1(F)(4)];
 - (b) Timing for the ENN meeting and the principles underlying its conduct [Section 14-3.1(F)(5)]; and
 - (c) Guidelines for the conduct of the ENN meeting [Section 14-3.1(F)(6)].
13. Notice was properly given in accordance with the notice requirements of Code Section 14-3.1(H)(1)(a)-(d).
14. An ENN meeting was held on December 10, 2015 at the old Border's location in Sanbusco Center.
15. The ENN meeting was attended by the Applicant, City staff, and approximately thirty three other interested parties, and the discussion followed the guidelines set out in Code Section 14-3.1(F)(6).

16. The Applicant submitted a site plan and an application indicating the Code section under which the special use permit was being sought and stating the grounds for the request.
17. Board staff provided the Board with a report dated January 21, 2016 (Staff Report) evaluating the factors relevant to the proposed special use permit and recommending approval by the Board of such special use permit, subject to the conditions set out in the Staff Report (the Conditions).

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the power and authority under Code §§14-2.4(C)(2) and 14-3.6(B) and Code §14-6.1(C) Table 14-6.1-1 to grant the special use permit applied for in this request.
2. The special use permit was properly and sufficiently noticed via mail, publication, and posting of signs in accordance with Code requirements.
3. The ENN meeting complied with the requirements established under the Code.
4. The granting of the special use permit will not adversely affect the public interest.
5. The Project is compatible with and adaptable to adjacent properties and to other properties in the vicinity of the Project.
6. The special use permit granted herewith is granted for the specific use of the Property and intensity applied for and no change of use or more intense use shall be allowed unless approved by the Board under a new or amended special use permit or as otherwise permitted by applicable Code.

WHEREFORE, IT IS ORDERED ON THE 1st DAY OF MARCH, 2016 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

1. That the special use permit is approved as applied for, subject to the Conditions presented in Staff's report.
2. The special use permit granted herewith shall expire if (a) it is not exercised within three (3) years of the date these Findings of Fact and Conclusions of Law are adopted by vote of the Board, subject to any right of the Applicant under applicable Code to request an extension of such time or (b) it ceases for any reason for a period of three hundred and sixty five (365) days.

Gary Friedman
Chair

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:

Zachary Shandler
Assistant City Attorney

Date:

February 02, 2016
Board Of Adjustment
Case # 2016-121
**500 MONTEZUMA ST.
SPECIAL USE PERMIT**

EXHIBIT A

Conditions of Approval

EXHIBIT A

Conditions of Approval
Case #2015-121

500 Montezuma St. Special Use Permit - New Mexico School For The Arts Institute

	Condition	Department	Staff
1	If the sewer system serving the site needs to be modified the School for the Arts shall be required to submit a technical sewer service	Wastewater Management Division	Stan Holland, P.E. January 19, 2016
2	In addition 500 Montezuma Street is served with an 4" fire service connection. All backflow preventers must be evaluated and upgraded if necessary to meet current requirements.	Water Division	Dee Beingessner P.E. December 30, 2015
3	The comments below should be considered as Conditions of Approval to be addressed prior to final sign-off unless otherwise noted: The Developer shall provide a Pedestrian Safety Improvement Plan for the vicinity of the proposed school to be approved by the Public Works Department (PWD), Traffic Engineering Division. The Developer shall be responsible for the design and construction of safety improvements as detailed in the final, approved Pedestrian Safety Improvement Plan.	Traffic Engineering Division	John Romero P.E. January 15,2016
4	The Pedestrian Safety Improvement Plan shall include, but is not limited to the following areas: <ul style="list-style-type: none"> • Montezuma Avenue/Market Street intersection; • Montezuma Avenue, between Agua Fria Street and the Guadalupe Street; and • Market Street where it is adjacent to the subject property. Prior to any new construction or remodel shall comply with the current code adopted by the governing body due to a change of use occupancy. 1. All Fire Department access shall be no greater than a 10% grade throughout. 2. Fire Department Access shall not be less than 20 feet width. 3. Shall meet the 150 feet driveway requirements must be met as per IFC, or an emergency turnaround that meets the IFC requirements shall be provided. 4. Fire Department shall have 150 feet distance to any portion of the building on any new construction.	Fire Marshal	Reynaldo Gonzales Fire Marshal December 31, 2015

EXHIBIT A

Conditions of Approval

Case #2015-121

500 Montezuma St. Special Use Permit - New Mexico School For The Arts Institute

	<p>5. Shall have water supply that meets fire flow requirements as per IFC 6. Must meet all fire protection requirements set forth by IFC 2009 edition for its classified occupancy.</p>		
5	<p>Parking lot adjacent to Montezuma Ave. must comply with SFCC 14-7.4 (A) Note 3 requires on-site parking to be separated from public sidewalks by a solid wall no less than 3 feet in height or by a landscaped area no less than four feet in width measured from the back of the sidewalk; or, in the absence of a sidewalk, from the property line, and planted with plant materials whose mature height is at least three feet, six inches. Landscaping must be protected from vehicular damage by placement of physical barriers.</p>	<p>Land Use Technical Review Division</p>	<p>Somie Ahmed, Planner Technician Senior December 30, 2015</p>
	<p>Provide a no stopping fire zone at the southwest corner of the building in front of the fire hydrant and loading area.</p>	<p>Land Use Current Planning Division</p>	<p>Dan Esquibel Land Use Planner Senior</p>

National Register of Historic Places Program: Frequently Asked Questions

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.

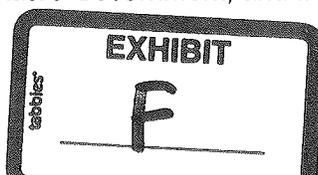
Frequently Asked Questions

What is the National Register of Historic Places?
What are the results of listing?
What are the restrictions, rules, and regulations for historic property owners?
Can I modify, remodel, or renovate, my historic house?
How do I apply for grant money or tax credits?
Are there insurance regulation implications of a house being listed in the National Register?
How do I get a plaque?
How do I get a copy of the file you have on a property?
How is a property listed in the National Register of Historic Places?
How can I update information for a property that is already listed?
I am pretty sure that a property is listed, but I cannot find it in your database, why is that?
How do I contact you, what is your address?
How old does a property have to be to qualify for listing?
I want to know if a property is listed, how can I do that?
I am a member of the National Trust for Historic Preservation, what can you do for me?
I want to use the photographs in your files, is it copyrighted?

What are the definitions of some of the terms and acronyms you use?
What is the difference between a National Park, a National Monument, a National Memorial, a National Historical Park, etc?
What is the preferred method of citation for a National Register of Historic Places nomination file?
These FAQs never answer my question, I still have a question

What is the National Register of Historic Places?

The National Park Service administers the National Register of Historic Places. The National Register is the official Federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. National Register properties have significance to the history of their community state, or the nation. Nominations for listing historic properties come from State Historic Preservation Officers, from Federal Preservation Officers for properties owned or controlled by the United States Government, and from Tribal Historic



Preservation Officers for properties on Tribal lands. Private individuals and organizations, local governments, and American Indian tribes often initiate this process and prepare the necessary documentation. A professional review board in each state considers each property proposed for listing and makes a recommendation on its eligibility. National Historic Landmarks are a separate designation, but upon designation, NHLs are listed in the National Register of Historic Places if not already listed.

You can find more information in our About Us section. You can find more information on the National Historic Landmarks program at their website.

What are the results of listing?

In addition to honorific recognition, listing in the National Register has the following results for historic properties:

- Consideration in planning for Federal, Federally licensed, and Federally assisted projects: -- Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties either listed in or determined eligible for listing in the National Register. The Advisory Council oversees and ensures the consideration of historic properties in the Federal Planning process.
- Eligibility for certain tax provisions -- Owners of properties listed in the National Register may be eligible for a 20% investment tax credit for the certified rehabilitation of income-producing certified historic structures such as commercial, industrial, or rental residential buildings. This credit can be combined with a straight-line depreciation period of 27.5 years for residential property and 31.5 years for nonresidential property for the depreciable basis of the rehabilitated building reduced by the amount of the tax credit claimed. Federal tax deductions are also available for charitable contributions for conservation purposes of partial interests in historically important land areas or structures.
- Consideration of historic values in the decision to issue a surface mining permit where coal is located in accordance with the Surface Mining Control Act of 1977; and
- Qualification for Federal grants for historic preservation, when funds are available. Owners of private property listed in the National Register are free to maintain, manage, or dispose of their property as they choose provided that no Federal monies are involved.

You can find more information on the results of being listed on our results page.

What are the restrictions, rules, regulations for historic property owners?

From the Federal perspective (the National Register of Historic Places is part of the National Park Service), a property owner can do whatever they want with their property as long as there are no Federal monies attached to the property. You can find this on our website at:

http://www.nps.gov/nr/national_register_fundamentals.htm

However, before this occurs, you can, or the property owner should contact the State historic preservation office (SHPO.) The SHPO is the state agency that oversees historic preservation efforts in their state. There may be state or local preservation laws that they should be aware of before they undertake a project with a historic property.

You can find contact information for the SHPOs at:

<http://www.nps.gov/nr/shpolist.htm>

If Federal monies are attached to the property then any changes to the property have to allow the Advisory Council on Historic Preservation (www.achp.gov) to comment on the project.

You can also read a copy of the National Register of Historic Places code of Federal regulations at:

<http://www.nps.gov/nr/regulations.htm>

You can also find general information for owners at:

http://www.nps.gov/nr/national_register_fundamentals.htm

Can I modify, remodel, or renovate, my historic house?

From the Federal perspective (the National Register of Historic Places is part of the National Park Service), a property owner can do whatever they want with their property as long as there are no Federal monies attached to the property. You can find this on our website at:

http://www.nps.gov/nr/national_register_fundamentals.htm

However, before this occurs, you can, or the property owner should contact the State historic preservation office (SHPO.) The SHPO is the state agency that oversees historic preservation efforts in their state. There may be state or local preservation laws that the owner should be aware of before they undertake a project with a historic property.

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You can also find general information for owners at:

http://www.nps.gov/nr/national_register_fundamentals.htm

Source: <http://www.nps.gov/nr/faq.htm>

This rule was filed as 4 NMAC 10.4.

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 4 PRESERVATION AND MAINTENANCE OF REGISTERED CULTURAL PROPERTIES

4.10.4.1 ISSUING AGENCY: Cultural Properties Review Committee. Contact State Historic Preservation Division, Office of Cultural Affairs.
[11-15-97; Recompiled 10/31/01]

4.10.4.2 SCOPE: The historic preservation division, the state historic preservation officer, the cultural properties review committee, owners of property listed in the state register of cultural properties.
[11-15-97; Recompiled 10/31/01]

4.10.4.3 STATUTORY AUTHORITY: This regulation is created pursuant to Section 5, Chapter 223, Laws of 1969, as amended, (1 8-6-5.F NMSA 1978). That section reads as follows: shall issue regulations pertaining to the preservation and maintenance of registered cultural properties in order to maintain the integrity of those properties.
[3-26-87; Recompiled 10/31/01]

4.10.4.4 DURATION: Permanent.
[11-15-97; Recompiled 10/31/01]

4.10.4.5 EFFECTIVE DATE: 3-26-87, unless a later date is cited at the end of a section. Reformatted to NMAC format effective 11-15-97.
[11-15-97; Recompiled 10/31/01]

4.10.4.6 OBJECTIVE: The purpose of Part 4 of Chapter 10 [4.10.4 NMAC] is to provide guidance to the cultural properties review committee and owners of registered cultural properties on the protection, preservation and maintenance of those properties to assure proper cultural or historical integrity.
[3-26-87; Recompiled 10/31/01]

4.10.4.7 DEFINITIONS: As used in this regulation:

- A. "Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include protective maintenance or stabilization where necessary in the case of archaeological sites.
- B. "Maintenance" means the act or process of applying measures which are necessary to maintain the historic integrity and structural soundness of a structure, including but not limited to ordinary operating maintenance.
- C. "Integrity" means the quality or characteristics which made the property eligible for listing in the new mexico register of cultural properties.
- D. "Registered cultural property" means a cultural property which has been placed on the state register of cultural properties either individually or as a property listed as significant or contributing within a district.

[3-26-87; Recompiled 10/31/01]

4.10.4.8 CONSULTATION WITH THE COMMITTEE

- A. Before any change greater than **ordinary** maintenance is made to a registered cultural property, the owner who is interested in maintaining register status should submit a description of the proposed change to the cultural properties review committee. The submittal should include adequate photographs of existing conditions and drawings of the proposed changes, along with copies of all existing documentation. It is the function and the wish of this committee not merely to approve or disapprove any changes, but to offer guidance and suggest alternatives when appropriate.
- B. Accomplished changes should be thoroughly documented. Before and after photographs of the work, and drawings, if any were used, should be sent to the historic preservation division for review by the cultural properties review committee.



[3-26-87; Recompiled 10/31/01]

4.10.4.9 GENERAL STANDARDS FOR PRESERVATION, PROTECTION, REHABILITATION OR RESTORATION FOR STRUCTURES

- A. Weather-related deterioration shall be prevented and measures to preserve the existing material shall be applied.
- B. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence.
- C. Missing elements shall be replaced in the exact form in which they appeared at the period of time represented, provided photographic or documented information is available, using like materials and methods or a substitute authorized by the state historic preservation officer.
- D. Structural stability shall be maintained or re-established without essentially changing the existing form.
- E. The surface cleaning of structures shall be undertaken only when necessary, and then only with extreme caution. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken
- F. Every reasonable effort shall be made to provide a use for a property that requires minimal alteration of the building, structure, or site and its environment or, if this is not feasible, to use a property for its originally intended purpose.

[3-26-87; Recompiled 10/31/01]

4.10.4.10 GENERAL STANDARDS FOR PRESERVATION, PROTECTION REHABILITATION OR RESTORATION FOR ARCHAEOLOGICAL SITES:

- A. Historic and prehistoric archaeological sites will be avoided by keeping land disturbance or modification outside the site boundary as established in the state register nomination.
- B. Sites shall be reasonably protected from erosion and other natural phenomena.
- C. Sites shall be protected from looting and vandalism by such methods as posting signs, fencing and monitoring.

[3-26-87; Recompiled 10/31/01]

4.10.4.11 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION FOR STRUCTURES:

- A. Prior to and during the undertaking of any alteration, the areas to be affected will be recorded in all phases by photography and written description.
- B. The distinguishing original qualities or character of a building, structure, or site and its environment will not be destroyed. The removal or alteration of any historic material or distinctive architectural feature will be avoided when possible. Any historic feature that is removed will be recorded and, if possible, stored for future study or reuse.
- C. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create a false sense of the historical development of a structure are discouraged.
- D. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right. Such significance must be recognized and respected.
- E. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site must be treated with sensitivity.
- F. Contemporary alterations or additions may be permissible if they do not destroy significant historical, architectural or cultural material. They shall be compatible in size, scale, color and material; or in rare cases may sympathetically contrast with the older work. It is desirable that contemporary additions and alterations express their own time and not copy the details nor style of the historic property.
- G. Whenever possible, alterations or additions will be accomplished so that if removed in the future, the integrity of the original structure is essentially unchanged.

H. Changes necessary to conform with local codes will be incorporated, if required by a building inspector. The Uniform Building Code, adopted by the state of New Mexico, provides for variances from code standards for historic structures. Such changes shall be made in a manner which alters the existing appearance of the structure as little as possible and otherwise conforms to standards of the cultural properties review committee.
[3-26-87; Recompiled 10/31/01]

4.10.4.12 GENERAL STANDARDS FOR MODIFICATION, ADAPTATION OR ALTERATION FOR ARCHAEOLOGICAL SITES:

A. Alteration of archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect.

B. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

C. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, these techniques and the treatment of recovered materials shall be in conformance with professional archaeological practices.

[3-26-87; Recompiled 10/31/01]

4.10.4.13 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION FOR STRUCTURES:

A. Completely new construction for which neither documentation nor precedent exists must be expressive of its own time. Such building, whether it be a discreet expansion of a historic building or a separate but closely related structure, shall be harmonious with the existing building, but shall avoid literal reproduction of specific architectural details.

B. The new building must be so located that the integrity and clarity of the historic site is not compromised. The functional demands of automobile and pedestrian circulation, the visibility required for control and protection of the site, the preservation of natural terrain and vegetation, must be solved in such a way that the values of the site are not diminished.

C. Total reconstruction or relocation will not be attempted except when, in the view of the cultural properties review committee, such undesirable procedures are the only means of preserving some of the values of extremely rare sites.

[3-26-87; Recompiled 10/31/01]

4.10.4.14 GENERAL STANDARDS FOR NEW CONSTRUCTION OR DEMOLITION FOR ARCHAEOLOGICAL SITES

A. New construction affecting archaeological sites will be limited to areas of existing disturbance and to areas devoid of cultural manifestations, so as to have the least possible physical and visual effect.

B. Mitigation of adverse effect on disturbed sites will require documentation, analysis and dissemination of results to standards established by the cultural properties review committee.

C. When archaeological techniques are used in the stabilization of a prehistoric or historic site or to obtain information on such sites, recovered material will be handled in conformance with professional archaeological practices.

[3-26-87; Recompiled 10/31/01]

4.10.4.15 REMOVAL OF PROPERTIES FROM THE REGISTER: Registered cultural properties shall be removed from the state register when in the opinion of the cultural properties review committee the properties have been altered to such an extent that their integrity has been lost and the values for which they were placed on the register no longer exist.

[3-26-87; Recompiled 10/31/01]

HISTORY OF 4.10.4 NMAC

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center & archives under:

CPRC Rule 72-3 Regulations Pertaining to the Preservation and Maintenance of Registered Cultural Properties and Objects of Antiquity or General Scientific Interest, filed 11-6-72, amended 9-13-73;

this rule was superseded by CPRC Rule 77-1 Regulations Pertaining to the Preservation and Maintenance of Registered Cultural Properties and Objects of Antiquity or General Scientific Interest, filed 4-25-77;
this rule was superseded by CPRC Rule 81-R3 Regulations Pertaining to the Preservation and Maintenance of Registered Cultural Properties in Order to Maintain the Integrity of those Properties, filed 11-20-81;
this rule was superseded by CPRC Rule 87-3 Regulations Pertaining to the Preservation and Maintenance of Registered Cultural Properties in Order to Maintain the Integrity of those Properties, filed 3-26-87.

History of Repealed Material: [RESERVED]

SHANDLER, ZACHARY A.

From: ESQUIBEL, DANIEL A.
Sent: Monday, April 04, 2016 8:29 AM
To: SHANDLER, ZACHARY A.
Subject: FW: Case 2016-32
Attachments: letter to- Brennan April4, 2016.docx; NHPA in Title 54 and Conversion Table.pdf

From: Nicoletta Munroe [<mailto:nicolettamunroe@gmail.com>]
Sent: Monday, April 04, 2016 8:23 AM
To: ESQUIBEL, DANIEL A.
Subject: Case 2016-32

Dear Mr. Esquibel,

Please read enclosed letter and statute.

I would like these documents to be included in the record for the Appellant.
A hard copy will be delivered to the office today.

Regards,

Nicoletta Munroe
(505) 984-1693
nicolettamunroe@gmail.com

CASE No. 2016-32: SANBUSCO CENTER/NEW MEXICO SCHOOL FOR THE ARTS

PUBLIC HEARING APRIL 13, 2016
7 P.M.
SANTA FE CITY COUNCIL, CITY HALL

Correspondence on: April 4, 2016

To: Office of the City Attorney

Attn: Kelley Brennan, City Attorney

Re: Case No. 2016-32 Sanbusco Center / New Mexico School for the Arts
Procedure from Land Use Dept.; and New Mexico School for the Arts

From: Nicoletta Munroe, Appellant

Enclosure (1): U.S.C. Title 54

Cc: Daniel Esquibel, Senior Planner Land Use Dept.

Dear Ms. Brennan,

It has come to my attention that specific rules within Chapter 14 of the Land Development Code for the City may not have been recognized by the New Mexico School for the Arts (Applicant).

The most pressing issue in this letter concerns the requirement for notice to be placed in the newspaper from Applicant (New Mexico School for the Arts), described in City Code, 14-3.1 (H)(2) within fifteen days prior to the hearing.

Further, notice at the building site when an Appeal is filed may be required from the City.

Additional issues concerning Case 2016-32 are presented here:

Architectural Plans; Federal Requirements

Specifically, at the Early Neighborhood Notification Meeting on December 10th, 2015, for the case, no architectural plans were submitted for the public to view at the ENN presentation. Only a plan view was given that showed the present configuration at Sanbusco Center. In the City Code, within Article 14-3: Review and Approval Procedures, under 14-3.1 General Provisions at, (C) Form of Application, at (2).

14-3.1 (C) (2)

“Each application shall include plans, calculations and reports sufficient to clearly demonstrate compliance with all applicable provisions of Chapter 14 and applicable state and federal regulations that are administered or enforced by the city. The number and format of the required documentation shall be as required by the land use director.”

I have provided the “National Historic Preservation Act”, U.S.C. Title 54 for review. It specifies federal, state, and local responsibilities concerning Landmarks and historic buildings on the National Register of Historic Places.

Thus far, there is very little evidence that the project is recognizing the status of the building Sanbusco Center, which is registered at the federal level, and has protections, even if it is owned by a private entity.

Please refer to Title 54 to review all necessary protections to ensure that Sanbusco Center is not under threat from negligence or nonfeasance from the State Historic Preservation Office or from the City level. Specifically, in Title 54 of the National Historic Preservation Act refer to:

- 54 U.S.C. Section 1 (b) (1), (2), (3), (4), (5), (6), and (7)
- 54 U.S.C. 300101 Policy (1), (2), (3), (4), (5), and (6)
- 54 U.S.C. 302108 Review of Threats to Historic Property (1), (2), (3)
- 54 U.S.C. 302303 Responsibilities of State Historic Preservation Officer (a), (b) (1) through (10)
- 54 U.S.C. 303902 Training in, and dissemination of information concerning professional methods and techniques for preservation of historic property
- 54 U.S.C. 304106 International Center for the Study of the Preservation and Restoration of Cultural Property (a) and (b)
- 54 U.S.C. 304110 Report by Secretary to Council
- 54 U.S.C. 305302 National Center for Preservation Technology and Training (a) through (e)
- 54 U.S.C. 305303 Preservation Technology and Training Board (a), (b), and (c)
- 54 U.S.C. 306102 Preservation Program (a), (b), and (c)
- 54 U.S.C. 306103 Recordation of Historic Property Prior to Alteration or Demolition
- 54 U.S.C. 306107 Planning and Action to Minimize Harm to National Historic Landmarks
- 54 U.S.C. 306108 Effect of Undertaking on Historic Property

Further, within the City of Santa Fe Code Chapter 14, Land Development, at 14-3.1 General Provisions, at (F) Early Neighborhood Notification Procedures, at (5) ENN Meeting,

14-3.1 (F) (5) states within the City Code that, “At the meeting, the applicant shall present schematic or preliminary plans for the proposed project and a drawing or other graphical representation suitable to reasonably indicate streets and structures within (200) foot status from the perimeter of the property that is the subject of the application.”

At the ENN meeting on December 10th, 2015 (which took place at the former Border’s space at Sanbusco Center, and was well attended by the business community and residents) only a plan view was given (an overhead, aerial view of the present configuration of buildings at Sanbusco Center). No actual drawings were presented from an architectural firm.

Next, at the ENN meeting the issue of historic review was not a major concern because the Land Use representative from the City stated that the Historic District Review Board considers the former Border’s building to be new, added-to, the contributing Sanbusco Center building. Further, it was stated that the proposed transformation of the former Border’s may not require review at all. However, because the former Border’s is connected to the Sanbusco Center building which is registered on the National Register, and may be a Landmark building, the plans to build at the site are integral and must be reviewed before a Special Use Permit is granted. As stated before, because plans were not rendered by an architect, and no professional drawings were available for review, it was PREMATURE to have an ENN meeting, or to have a request for a Special Use Permit go before the City.

Compatibility

Further, within the City Code, at 14-3.1 (6)(c), ENN Guidelines, Impacts on Prehistoric, Historic, Archaeological or Cultural Sites or Structures, Including Acequias and Historic Downtown, the City Code states,

14-3.1 (6)(c), “When applicable, the applicant shall state how existing Chapter 14 requirements for the historic districts and archaeological review are met. Consideration may

include the project's compatibility with any historic or cultural sites located on the property where the project is proposed."

The proposed project from the New Mexico School for the Arts is not compatible with the site at Sanbusco Center because the proposed project contradicts Chapter 14, at, 14-3.1 (F)(6)(f), Impact on Economic Base of Santa Fe.

14-3.1 (f)(6)(f) states, "When applicable, the applicant shall state how the provisions for the city's economic development plan and the general plan are met. Considerations may include:"

- (i) availability to jobs to Santa Fe residents
- (ii) whether or how the project promotes and encourages businesses consistent with the city's economic development plan and compatibility with neighborhood livability;
- (iii) market impacts on local businesses and potential displacement of local property and business owners; and
- (iv) how the project supports economic development efforts to improve living standards of neighborhoods and their businesses.

The New Mexico School for the Arts project proposed at Sanbusco Center has displaced businesses that were successful inside the main building at Sanbusco Center, some of whom were there for twenty years. Some businesses have moved, while others had to fold entirely.

Additionally, there are tenants who will stay at Sanbusco Center, who have 25-year leases. Pranzo, On Your Feet, On Your Little Feet, Raaga, and Radish and Rye will remain, and will have to share the building, and/or the campus with the school.

There is, however, not compatibility here, because, all three of the restaurant tenants have liquor licenses, and are on the premises of the proposed school. Additionally, Pranzo is on campus next-to the main building of the proposed school. So, liquor will be served on campus if the school occupies the main building at Sanbusco Center as a school building.

While New Mexico state law, 60-6B-10: Locations near church or school; restriction on licensing, concerning alcohol licenses within 300 feet of a school or church gives a provision for a waiver to the 300 foot rule, it does not address alcohol licenses on the premises of a school, nor does it address multiple licenses on a school campus.

Further, businesses in the area are not being considered in this case, by the City, because, other established restaurants in the area possess alcohol licenses. These establishments, and all of the restaurants, whether on campus or near campus, face liability insurance increases in costs when/if the school moves into the Sanbusco Center.

All of these variables prove that the project, as proposed by the school, is NOT COMPATIBLE with the current commercial activity at the site, and in the neighborhood.

Special Use Permits; the interests of the public

In 14-3.6 Special Use Permits at (B) Approval Authority, the Code states, The Board of Adjustment has

14-3.6 (B), “the authority to hear and decide applications for Special Use Permits as authorized in Chapter 14; to decide questions that are involved in determining whether special use permits should be granted; and to grant special use permits with such conditions and safeguards as appropriate under Chapter 14 or to deny special use permits when not in harmony with the intent and purpose of Chapter 14.”

And at (C)

14-3.6 (C), Procedures, (1) Site Plan Approval: “Special Use Permits shall include approval of a site plan and other site development drawings necessary to document that the type and extent of development proposed can be accomplished in conformance with applicable development standards.”

And at (D) Approval Criteria and Conditions: (1) Necessary Findings:

14-3.6 (D) (1), “To grant a Special Use Permit, a land use board shall make the following findings:

- (a) that the land use board has the authority under the section of Chapter 14 described in the application to grant a Special Use Permit.
- (b) That granting the Special Use Permit does not adversely affect the public interest, and
- (c) that the use and any associated buildings are compatible with and adaptable to buildings, structures and uses of the adjacent property and other properties in the vicinity of the premises under consideration.

And at 14-3.6 (D) (2), Conditions:

14-3.6 (D)(2), Conditions, “The land use board may specify conditions of approval that are necessary to accomplish the proper development of the area and to implement the policies of the general plan, including:

- (r) conditions may not be imposed that restrict the use to a specific person or group.

In this case the Board of Adjustment granted a Special Use Permit without looking at site plans or architectural renderings. And the Board issued the permit without examining 14-3.6 (D)(1)(b), that requires consideration of the public interest. Further, the Board issued the permit without considering 14-3.6 (D)(1)(c), which requires that the Board consider the buildings near the project. For example, the Board did not consider the incompatibility of the alcohol licenses on campus or near campus.

Most significantly, the Board did not consider the fact that granting the Special Use Permit, denies access to the main building at Sanbusco Center, of the entire community. Denying access to Sanbusco Center, of the community, violates 14-3.6 (D)(2) of the City Code. The Sanbusco Center is an historic site that holds a history of New Mexico and Santa Fe inside its main building that has archival photographs and text that provide a narrative of the founding of the City of Santa Fe. The entire State of New Mexico visits Sanbusco Center because of its historic narrative and its commercial presence. The inside of the main building was originally the Builders’ Supply Company built in 1881. It holds within its walls centuries of history evidenced in the museum quality archival photographs. These documents, and the building itself, provide a unique experience for the visitor that will be diminished, or lost, if the main building is closed to the public.

Further when considering this project, and whether it is compatible with our community we need to recognize City Code 14-5.2 Historic Districts, in (A) General Provisions, at (1):

14-5.2 (A)(1), states, “In order to promote the economic, cultural, and general welfare of the people of the city, and to ensure the harmonious, orderly and efficient growth and development of the city, it is deemed essential by the governing body that the qualities relating to the history of

Santa Fe, and a harmonious outward appearance, which preserve property values and attract tourists and residents alike, be preserved, some of these qualities being:

- (a) The continued existence and preservation of historic areas and buildings.

The issue of property values and cultural preservation in the Historic District must be considered. The re-contextualization of the Sanbusco Center from market center to charter school building with three restaurants on the premises that have alcohol licenses does not preserve the cultural history of Santa Fe, instead, it degrades our history.

Procedure for Appeal Hearing

Additionally, there is an issue concerning procedure for an Appeal, and responsibilities of the Applicant. In the City Code of Chapter 14 at 14-3.1 (H) (2) Notice requirements, Notice of Public Hearing Before the Governing Body:

14-3.1 (H)(2), states, "Notice shall be provided as required in Subsection 14-3.1 (H)(1)(a) or (e), as applicable. In addition, the applicant shall publish one notice in a local daily newspaper of general circulation at least fifteen calendar days prior to the public hearing."

14-3.1 (H)(1)(a)(iv), General Notice Requirements: "The notice requirements in Subsections 14-3.1 (H)(1)(b), (c) and (d), below apply to public hearings requires for all applications and ENN meetings, except that:

- (iv) Public Hearings concerning appeals must provide notice as described in Subsection 14-3.1 (H)(4).

Further, regarding 14-3.1 (H)(4), the code states:

14-3.1 (H)(4) Appeal Hearing Notice Requirements, "The following shall apply to all public hearings on appeals to land use boards or to the governing body."

- (a) Agenda Requirements: "The Land Use director shall place the appeal on the agenda of the body hearing the appeal and shall publish and post the agenda in accordance with the established procedures for that body."

In this case, the hearing is on April 13th, 2016. The Applicant is the New Mexico School for the Arts. If notice was given, by the Applicant, in a newspaper, then Appellant requests that the information be provided regarding which newspaper the notice was published in, and on which date? This information was published on or before March 29th, 2016.

Additionally, Appellant requests that the Land Use Dept. publish the hearing on the agenda for the City Council meeting of April 13th, 2016, which will be in the New Mexican newspaper prior to the City Council meeting.

Regards,

Nicoletta Munroe, Appellant

701 Dunlap St.
Santa Fe N.M. 87501
(505) 984-1693
nicolettamunroe@gmail.com

The National Historic Preservation Act
As amended through December 19, 2014
and Codified in Title 54 of the United States Code

[The National Historic Preservation Act (“Act”) became law on October 15, 1966, Public Law 89-665, and was codified in title 16 of the United States Code. Various amendments followed through the years. On December 19, 2014, Public Law 13-287 moved the Act’s provisions from title 16 of the United States Code to title 54, with minimal and non-substantive changes to the text of the Act and a re-ordering of some of its provisions. This document shows the provisions of the Act as they now appear in title 54 of the United States Code.

The Act’s name (the “National Historic Preservation Act”) is found in the notes of the very first section of title 54. 54 U.S.C. § 100101 note. While Public Law 13-287 did not repeal the Act’s findings, for editorial reasons those findings were not included in the text of title 54. The findings are still current law. However, rather than citing to the U.S. Code, when referring to the findings one may cite to: “Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515.” For ease of use, this document reproduces the text of those findings before proceeding to the title 54 text.

Finally, the attachment at the end of this document attempts to assist those preservation stakeholders who for many years have referred to the Act’s various provisions according to the section numbers used in the 1966 public law and subsequent amendments (“old sections”). The attachment cross-references each of the old sections to the corresponding outdated title 16 legal cite and current title 54 legal cite.]

Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:

... (b) The Congress finds and declares that—

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation’s heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments

and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Title 54 of the United States Code
Subtitle III—National Preservation Programs
Division A—Historic Preservation

Subdivision 1—General Provisions

Chapter 3001—Policy

Sec.
300101. Policy

54 U.S.C. § 300101. Policy

It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to—

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program;
- (3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.

Chapter 3003—Definitions

Sec.
300301. Agency.
300302. Certified local government.
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300318. State historic preservation review board.
300319. Tribal land.
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§ 300301. Agency

In this division, the term “agency” has the meaning given the term in section 551 of title 5.

§ 300302. Certified local government

In this division, the term “certified local government” means a local government whose local historic preservation program is certified pursuant to chapter 3025 of this title.

§ 300303. Council

In this division, the term “Council” means the Advisory Council on Historic Preservation established by section 304101 of this title.

§ 300304. Cultural park

In this division, the term “cultural park” means a definable area that—

- (A) is distinguished by historic property, prehistoric property, and land related to that property; and
- (B) constitutes an interpretive, educational, and recreational resource for the public at large.

§ 300305. Historic conservation district

In this division, the term “historic conservation district” means an area that contains—

- (1) historic property;
- (2) buildings having similar or related architectural characteristics;
- (3) cultural cohesiveness; or
- (4) any combination of features described in paragraphs (1) to (3).

§ 300306. Historic Preservation Fund

In this division, the term “Historic Preservation Fund” means the Historic Preservation Fund established under section 303101 of this title.

§ 300307. Historic preservation review commission

In this division, the term “historic preservation review commission” means a board, council, commission, or other similar collegial body—

(1) that is established by State or local legislation as provided in section 302503(a)(2) of this title; and

(2) the members of which are appointed by the chief elected official of a jurisdiction (unless State or local law provides for appointment by another official) from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent that those professionals are available in the community; and

(B) other individuals who have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and will provide for an adequate and qualified commission.

§ 300308. Historic property

In this division, the term “historic property” means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.

§ 300309. Indian tribe

In this division, the term “Indian tribe” means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 300310. Local government

In this division, the term “local government” means a city, county, township, municipality, or borough, or any other general purpose political subdivision of any State.

§ 300311. National Register

In this division, the term “National Register” means the National Register of Historic Places maintained under chapter 3021 of this title.

§ 300312. National Trust

In this division, the term “National Trust” means the National Trust for Historic Preservation in the United States established under section 312102 of this title.

§ 300313. Native Hawaiian

In this division, the term “Native Hawaiian” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes Hawaii.

§ 300314. Native Hawaiian organization

(a) IN GENERAL.—In this division, the term “Native Hawaiian organization” means any organization that—

- (1) serves and represents the interests of Native Hawaiians;
- (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (3) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

(b) INCLUSIONS.—In this division, the term “Native Hawaiian organization” includes the Office of Hawaiian Affairs of Hawaii and Hui Malama I Na Kupuna O Hawai’i Nei, an organization incorporated under the laws of the State of Hawaii.

§ 300315. Preservation or historic preservation

In this division, the term “preservation” or “historic preservation” includes—

- (1) identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation;
- (2) education and training regarding the foregoing activities; or
- (3) any combination of the foregoing activities.

§ 300316. Secretary

In this division, the term “Secretary” means the Secretary acting through the Director.

§ 300317. State

In this division, the term “State” means—

- (1) a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands; and
- (2) the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

§ 300318. State historic preservation review board

In this division, the term “State historic preservation review board” means a board, council, commission, or other similar collegial body established as provided in section 302301(2) of this title—

- (1) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law);
- (2) a majority of the members of which are professionals qualified in history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, landscape architecture, and related disciplines; and

(3) that has the authority to—

- (A) review National Register nominations and appeals from nominations;
- (B) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
- (C) provide general advice and guidance to the State Historic Preservation Officer; and
- (D) perform such other duties as may be appropriate.

§ 300319. Tribal land

In this division, the term “tribal land” means—

- (1) all land within the exterior boundaries of any Indian reservation; and
- (2) all dependent Indian communities.

§ 300320. Undertaking

In this division, the term “undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

- (1) those carried out by or on behalf of the Federal agency;
- (2) those carried out with Federal financial assistance;
- (3) those requiring a Federal permit, license, or approval; and
- (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

§ 300321. World Heritage Convention

In this division, the term “World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage, done at Paris November 23, 1972 (27 UST 37).

Subdivision 2—Historic Preservation Program

Chapter 3021—National Register of Historic Places

Sec.

302101. Maintenance by Secretary.

302102. Inclusion of properties on National Register.

302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List.

302104. Nominations for inclusion on National Register.

302105. Owner participation in nomination process.

302106. Retention of name.

302107. Regulations.

302108. Review of threats to historic property.

§ 302101. Maintenance by Secretary

The Secretary may expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

§ 302102. Inclusion of properties on National Register

(a) IN GENERAL.—A property that meets the criteria for National Historic Landmarks established pursuant to section 302103 of this title shall be designated as a National Historic Landmark and included on the National Register, subject to the requirements of section 302107 of this title.

(b) HISTORIC PROPERTY ON NATIONAL REGISTER ON DECEMBER 12, 1980.—All historic property included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this division.

(c) HISTORIC PROPERTY LISTED IN FEDERAL REGISTER OF FEBRUARY 6, 1979, OR PRIOR TO DECEMBER 12, 1980, AS NATIONAL HISTORIC LANDMARKS.—All historic property listed in the Federal Register of February 6, 1979, or prior to December 12, 1980, as National Historic Landmarks are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing in the Federal Register for purposes of this division and chapter 3201 of this title, except that in the case of a National Historic Landmark district for which no boundaries had been established as of December 12, 1980, boundaries shall first be published in the Federal Register.

§ 302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List

The Secretary, in consultation with national historical and archeological associations, shall—

(1) establish criteria for properties to be included on the National Register and criteria for National Historic Landmarks; and

(2) promulgate regulations for—

(A) nominating properties for inclusion on, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing that designation;

(C) considering appeals from recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic property for inclusion in the World Heritage List in accordance with the World Heritage Convention;

(E) making determinations of eligibility of properties for inclusion on the National Register; and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National

Register, for designation as a National Historic Landmark, or for nomination to the World Heritage List.

§ 302104. Nominations for inclusion on National Register

(a) **NOMINATION BY STATE.**—Subject to the requirements of section 302107 of this title, any State that is carrying out a program approved under chapter 3023 shall nominate to the Secretary property that meets the criteria promulgated under section 302103 of this title for inclusion on the National Register. Subject to section 302107 of this title, any property nominated under this subsection or under section 306102 of this title shall be included on the National Register on the date that is 45 days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves the nomination within the 45-day period or unless an appeal is filed under subsection (c).

(b) **NOMINATION BY PERSON OR LOCAL GOVERNMENT.**—Subject to the requirements of section 302107 of this title, the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if the property is located in a State where there is no program approved under chapter 3023 of this title. The Secretary may include on the National Register any property for which such a nomination is made if the Secretary determines that the property is eligible in accordance with the regulations promulgated under section 302103 of this title. The determination shall be made within 90 days from the date of the nomination unless the nomination is appealed under subsection (c).

(c) **APPEAL.**—Any person or local government may appeal to the Secretary—

- (1) a nomination of any property for inclusion on the National Register; and
- (2) the failure of a nominating authority to nominate a property in accordance with this chapter.

§ 302105. Owner participation in nomination process

(a) **REGULATIONS.**—The Secretary shall promulgate regulations requiring that before any property may be included on the National Register or designated as a National Historic Landmark, the owner of the property, or a majority of the owners of the individual properties within a district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property for inclusion or designation. The regulations shall include provisions to carry out this section in the case of multiple ownership of a single property.

(b) **WHEN PROPERTY SHALL NOT BE INCLUDED ON NATIONAL REGISTER OR DESIGNATED AS NATIONAL HISTORIC LANDMARK.**—If the owner of any privately owned property, or a majority of the owners of privately owned properties within the district in the case of a historic district, object to inclusion or designation, the property shall not be included on the National Register or designated as a National Historic Landmark until the objection is withdrawn.

(c) **REVIEW BY SECRETARY.**—The Secretary shall review the nomination of the property when an objection has been made and shall determine whether or not the property is eligible for inclusion or designation. If the Secretary determines that the property is eligible for inclusion or designation, the Secretary shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official, and the owner or owners of the property of the Secretary's determination.

§ 302106. Retention of name

Notwithstanding section 43(c) of the Act of July 5, 1946 (known as the Trademark Act of 1946) (15 U.S.C. 1125(c)), buildings and structures on or eligible for inclusion on the National Register (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

§ 302107. Regulations

The Secretary shall promulgate regulations—

- (1) ensuring that significant prehistoric and historic artifacts, and associated records, subject to subchapter I of chapter 3061, chapter 3125, or the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) are deposited in an institution with adequate long-term curatorial capabilities;
- (2) establishing a uniform process and standards for documenting historic property by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records in the Library of Congress; and
- (3) certifying local governments, in accordance with sections 302502 and 302503 of this title, and for the transfer of funds pursuant to section 302902(c)(4) of this title.

§ 302108. Review of threats to historic property

At least once every 4 years, the Secretary, in consultation with the Council and with State Historic Preservation Officers, shall review significant threats to historic property to—

- (1) determine the kinds of historic property that may be threatened;
- (2) ascertain the causes of the threats; and
- (3) develop and submit to the President and Congress recommendations for appropriate action.

Chapter 3023—State Historic Preservation Programs

Sec.

302301. Regulations.

302302. Program evaluation.

302303. Responsibilities of State Historic Preservation Officer.

302304. Contracts and cooperative agreements.

§ 302301. Regulations

The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust, shall promulgate regulations for State Historic Preservation Programs. The regulations shall provide that a State program submitted to the Secretary under this chapter shall be approved by the Secretary if the Secretary determines that the program provides for—

- (1) the designation and appointment by the chief elected official of the State of a State Historic Preservation Officer to administer the program in accordance with section 302303 of this title and for the employment or appointment by the officer of such professionally qualified staff as may be necessary for those purposes;

(2) an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(3) adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

§ 302302. Program evaluation

(a) WHEN EVALUATION SHOULD OCCUR.—Periodically, but not less than every 4 years after the approval of any State program under section 302301 of this title, the Secretary, in consultation with the Council on the appropriate provisions of this division, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this division.

(b) DISAPPROVAL OF PROGRAM.—If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this division, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this division, until the program is consistent with this division, unless the Secretary determines that the program will be made consistent with this division within a reasonable period of time.

(c) OVERSIGHT.—The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(d) STATE FISCAL AUDIT AND MANAGEMENT SYSTEM.—

(1) SUBSTITUTION FOR COMPARABLE FEDERAL SYSTEMS.—At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

(A) establishes and maintains substantially similar accountability standards; and

(B) provides for independent professional peer review.

(2) FISCAL AUDITS AND REVIEW BY SECRETARY.—The Secretary—

(A) may conduct periodic fiscal audits of State programs approved under this subdivision as needed; and

(B) shall ensure that the programs meet applicable accountability standards.

§ 302303. Responsibilities of State Historic Preservation Officer

(a) IN GENERAL.—It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program.

(b) PARTICULAR RESPONSIBILITIES.—It shall be the responsibility of the State Historic Preservation Officer to—

(1) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic property and maintain inventories of the property;

- (2) identify and nominate eligible property to the National Register and otherwise administer applications for listing historic property on the National Register;
- (3) prepare and implement a comprehensive statewide historic preservation plan;
- (4) administer the State program of Federal assistance for historic preservation within the State;
- (5) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- (6) cooperate with the Secretary, the Council, other Federal and State agencies, local governments, and private organizations and individuals to ensure that historic property is taken into consideration at all levels of planning and development;
- (7) provide public information, education, and training and technical assistance in historic preservation;
- (8) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to chapter 3025;
- (9) consult with appropriate Federal agencies in accordance with this division on—
 - (A) Federal undertakings that may affect historic property; and
 - (B) the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to that property; and
- (10) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

§ 302304. Contracts and cooperative agreements

(a) STATE.—A State may carry out all or any part of its responsibilities under this chapter by contract or cooperative agreement with a qualified nonprofit organization or educational institution.

(b) SECRETARY.—

(1) IN GENERAL.—

(A) AUTHORITY TO ASSIST SECRETARY.—Subject to paragraphs (3) and (4), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing the Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State:

- (i) Identification and preservation of historic property.
- (ii) Determination of the eligibility of property for listing on the National Register.
- (iii) Preparation of nominations for inclusion on the National Register.
- (iv) Maintenance of historical and archeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

(B) **AUTHORITY TO MAINTAIN NATIONAL REGISTER.**— Nothing in subparagraph (A) shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(2) **REQUIREMENTS.**—The Secretary may enter into a contract or cooperative agreement under paragraph (1) only if—

(A) the State Historic Preservation Officer has requested the additional responsibility;

(B) the Secretary has approved the State historic preservation program pursuant to sections 302301 and 302302 of this title;

(C) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that the Officer is fully capable of carrying out the responsibility in that manner;

(D) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to the contract or cooperative agreement; and

(E) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out that responsibility.

(3) **ESTABLISH CONDITIONS AND CRITERIA.**—For each significant program area under the Secretary’s authority, the Secretary shall establish specific conditions and criteria essential for the assumption by a State Historic Preservation Officer of the Secretary’s duties in each of those programs.

(4) **PRESERVATION PROGRAMS AND ACTIVITIES NOT DIMINISHED.**— Nothing in this chapter shall have the effect of diminishing the preservation programs and activities of the Service.

Chapter 3025—Certification of Local Governments

Sec.

302501. Definitions.

302502. Certification as part of State program.

302503. Requirements for certification.

302504. Participation of certified local governments in National Register nominations.

302505. Eligibility and responsibility of certified local government.

§ 302501. Definitions

In this chapter:

(1) **DESIGNATION.**—The term “designation” means the identification and registration of property for protection that meets criteria established by a State or locality for significant historic property within the jurisdiction of a local government.

(2) PROTECTION.—The term “protection” means protection by means of a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic property designated pursuant to this chapter.

§ 302502. Certification as part of State program

Any State program approved under this subdivision shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this division and provide for the transfer, in accordance with section 302902(c)(4) of this title, of a portion of the grants received by the States under this division, to those local governments.

§ 302503. Requirements for certification

(a) APPROVED STATE PROGRAM.—Any local government shall be certified to participate under this section if the applicable State Historic Preservation Officer, and the Secretary, certify that the local government—

(1) enforces appropriate State or local legislation for the designation and protection of historic property;

(2) has established an adequate and qualified historic preservation review commission by State or local legislation;

(3) maintains a system for the survey and inventory of historic property that furthers the purposes of chapter 3023;

(4) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(5) satisfactorily performs the responsibilities delegated to it under this division.

(b) NO APPROVED STATE PROGRAM.—Where there is no State program approved under sections 302301 and 302302 of this title, a local government may be certified by the Secretary if the Secretary determines that the local government meets the requirements of subsection (a). The Secretary may make grants to the local government certified under this subsection for purposes of this subdivision.

§ 302504. Participation of certified local governments in National Register nominations

(a) NOTICE.—Before a property within the jurisdiction of a certified local government may be considered by a State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission.

(b) REPORT.—The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission’s opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer.

(c) RECOMMENDATION.—

(1) PROPERTY NOMINATED TO NATIONAL REGISTER.—Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received

within 60 days, the State shall make the nomination pursuant to section 302104 of this title. The State may expedite the process with the concurrence of the certified local government.

(2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless, within 30 days of the receipt of the recommendation by the State Historic Preservation Officer, an appeal is filed with the State. If an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 302104 of this title. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

§ 302505. Eligibility and responsibility of certified local government

Any local government—

(1) that is certified under this chapter shall be eligible for funds under section 302902(c)(4) of this title; and

(2) that is certified, or making efforts to become certified, under this chapter shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary considers necessary or advisable.

Chapter 3027—Historic Preservation Programs and Authorities for Indian Tribes and Native Hawaiian Organizations

Sec.

302701. Program to assist Indian tribes in preserving historic property.

302702. Indian tribe to assume functions of State Historic Preservation Officer.

302703. Apportionment of grant funds.

302704. Contracts and cooperative agreements.

302705. Agreement for review under tribal historic preservation regulations.

302706. Eligibility for inclusion on National Register.

§ 302701. Program to assist Indian tribes in preserving historic property

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their historic property.

(b) COMMUNICATION AND COOPERATION.—The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to—

(1) ensure that all types of historic property and all public interests in historic property are given due consideration; and

(2) encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic property.

(c) TRIBAL VALUES.—The program under subsection (a) shall be developed in a manner to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this subdivision to conform to the cultural setting of tribal heritage preservation goals and objectives.

(d) SCOPE OF TRIBAL PROGRAMS.—The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each Indian tribe’s chief governing authority.

(e) CONSULTATION.—The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservations Officers, and other interested parties concerning the program under subsection (a).

§ 302702. Indian tribe to assume functions of State Historic Preservation Officer

An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with sections 302302 and 302303 of this title, with respect to tribal land, as those responsibilities may be modified for tribal programs through regulations issued by the Secretary, if—

- (1) the Indian tribe’s chief governing authority so requests;
- (2) the Indian tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the Indian tribe’s chief governing authority or as a tribal ordinance may otherwise provide;
- (3) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;
- (4) the Secretary determines, after consulting with the Indian tribe, the appropriate State Historic Preservation Officer, the Council (if the Indian tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 306108 of this title), and other Indian tribes, if any, whose tribal or aboriginal land may be affected by conduct of the tribal preservation program, that—
 - (A) the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under paragraph (3);
 - (B) the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and
 - (C) the plan provides, with respect to properties neither owned by a member of the Indian tribe nor held in trust by the Secretary for the benefit of the Indian tribe, at the request of the owner of the properties, that the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with sections 302302 and 302303 of this title; and
- (5) based on satisfaction of the conditions stated in paragraphs (1), (2), (3), and (4), the Secretary approves the plan.

§ 302703. Apportionment of grant funds

In consultation with interested Indian tribes, other Native American organizations, and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 302902(c)(1)(A) of this title with respect to tribal programs that assume responsibilities under section 302702 of this title.

§ 302704. Contracts and cooperative agreements

At the request of an Indian tribe whose preservation program has been approved to assume functions and responsibilities pursuant to section 302702 of this title, the Secretary shall enter into a contract or

cooperative agreement with the Indian tribe permitting the assumption by the Indian tribe of any part of the responsibilities described in section 302304(b) of this title on tribal land, if—

(1) the Secretary and the Indian tribe agree on additional financial assistance, if any, to the Indian tribe for the costs of carrying out those authorities;

(2) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this division; and

(3) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

(A) the Indian tribe’s traditional cultural authorities;

(B) representatives of other Indian tribes whose traditional land is under the jurisdiction of the Indian tribe assuming responsibilities; and

(C) the interested public.

§ 302705. Agreement for review under tribal historic preservation regulations

The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 306108 of this title, if the Council, after consultation with the Indian tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic property consideration equivalent to that afforded by the Council’s regulations.

§ 302706. Eligibility for inclusion on National Register

(a) IN GENERAL.—Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(b) CONSULTATION.—In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).

(c) HAWAII.—In carrying out responsibilities under section 302303 of this title, the State Historic Preservation Officer for Hawaii shall—

(1) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate the property to the National Register;

(2) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for the property; and

(3) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate the property to the National Register and to carry out the cultural component of the preservation program or plan.

Chapter 3029—Grants

Sec.

302901. Awarding of grants and availability of grant funds.

302902. Grants to States.

302903. Grants to National Trust.

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§ 302901. Awarding of grants and availability of grant funds

(a) IN GENERAL.—No grant may be made under this division unless application for the grant is submitted to the Secretary in accordance with regulations and procedures prescribed by the Secretary.

(b) GRANT NOT TREATED AS TAXABLE INCOME.—No grant made pursuant to this division shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(c) AVAILABILITY.—The Secretary shall make funding available to individual States and the National Trust as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be deemed to be one grant and shall be administered by the Service as one grant.

§ 302902. Grants to States

(a) IN GENERAL.—The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this division.

(b) CONDITIONS.—

(1) IN GENERAL.—No grant may be made under this division—

(A) unless the application is in accordance with the comprehensive statewide historic preservation plan that has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to chapter 2003 of this title;

(B) unless the grantee has agreed to make reports, in such form and containing such information, as the Secretary may from time to time require;

(C) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; or

(D) until the grantee has complied with such further terms and conditions as the Secretary may consider necessary or advisable.

(2) WAIVER.—The Secretary may waive the requirements of subparagraphs (A) and (C) of paragraph (1) for any grant under this division to the National Trust.

(3) AMOUNT LIMITATION.—

(A) IN GENERAL.—No grant may be made under this division for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 302303 of this title in any one fiscal year.

(B) SOURCE OF STATE SHARE OF COSTS.—Except as permitted by other law, the State share of the costs referred to in subparagraph (A) shall be contributed by non-Federal sources.

(4) RESTRICTION ON USE OF REAL PROPERTY TO MEET NONFEDERAL SHARE OF COST OF PROJECT.—No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the non-Federal share of the cost of a project for which a grant is made under this division.

(c) APPORTIONMENT OF GRANT AMOUNTS.—

(1) BASES FOR APPORTIONMENT.—The amounts appropriated and made available for grants to the States—

(A) for the purposes of this division shall be apportioned among the States by the Secretary on the basis of needs as determined by the Secretary; and

(B) for projects and programs under this division for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

(2) NOTIFICATION.—The Secretary shall notify each State of its apportionment under paragraph (1)(B) within 30 days after the date of enactment of legislation appropriating funds under this division.

(3) REAPPORTIONMENT.—Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which the notification is given or during the 2 fiscal years after that fiscal year shall be reapportioned by the Secretary in accordance with paragraph (1)(B). The Secretary shall analyze and revise as necessary the method of apportionment. The method and any revision shall be published by the Secretary in the Federal Register.

(4) TRANSFER OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— Not less than 10 percent of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this division shall be transferred by the State, pursuant to the requirements of this division, to certified local governments for historic preservation projects or programs of the certified local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, 50 percent of the excess shall also be transferred by the States to certified local governments.

(5) GUIDELINES FOR USE AND DISTRIBUTION OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— The Secretary shall establish guidelines for the use and distribution of funds under paragraph (4) to ensure that no certified local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single certified local government. The guidelines shall not limit the ability of any State to distribute more than 10 percent of its annual apportionment under paragraph (4), nor shall the Secretary require any State to exceed the 10 percent minimum distribution to certified local governments.

(d) ADMINISTRATIVE COSTS.—The total direct and indirect administrative costs charged for carrying out State projects and programs shall not exceed 25 percent of the aggregate costs (except in the case of a grant to the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau).

§ 302903. Grants to National Trust

(a) SECRETARY OF THE INTERIOR.—The Secretary may administer grants to the National Trust consistent with the purposes of its charter and this division.

(b) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development may make grants to the National Trust, on terms and conditions and in amounts (not exceeding \$90,000 with respect to any one structure) as the Secretary of Housing and Urban Development considers appropriate, to cover the costs incurred by the National Trust in renovating or restoring structures that the National Trust considers to be of historic or architectural value and that the National Trust has accepted and will maintain (after the renovation or restoration) for historic purposes.

§ 302904. Direct grants for the preservation of properties included on National Register

(a) ADMINISTRATION OF PROGRAM.—The Secretary shall administer a program of direct grants for the preservation of properties included on the National Register.

(b) AVAILABLE AMOUNT.—Funds to support the program annually shall not exceed 10 percent of the amount appropriated annually for the Historic Preservation Fund.

(c) USES OF GRANTS.—

(1) IN GENERAL.—Grants under this section may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(A) for the preservation of—

(i) National Historic Landmarks that are threatened with demolition or impairment; and

(ii) historic property of World Heritage significance;

(B) for demonstration projects that will provide information concerning professional methods and techniques having application to historic property;

(C) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and

(D) to assist individuals or small businesses within any historic district included on the National Register to remain within the district.

(2) LIMIT ON CERTAIN GRANTS.—A grant may be made under subparagraph (A) or (D) of paragraph (1) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 303901 of this title.

§ 302905. Religious property

(a) IN GENERAL.—Grants may be made under this chapter for the preservation, stabilization, restoration, or rehabilitation of religious property listed on the National Register if the purpose of the grant—

(1) is secular;

(2) does not promote religion; and

(3) seeks to protect qualities that are historically significant.

(b) EFFECT OF SECTION.—Nothing in this section shall be construed to authorize the use of any funds made available under this subdivision for the acquisition of any religious property listed on the National Register.

§ 302906. Grants and loans to Indian tribes and nonprofit organizations representing ethnic or minority groups

The Secretary may, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this subdivision to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

§ 302907. Grants to Indian tribes and Native Hawaiian organizations

The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this division as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to an Indian tribe or Native Hawaiian organization may be used as matching funds for the purposes of the Indian tribe's or Native Hawaiian organization's conducting its responsibilities pursuant to this subdivision.

§ 302908. Grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau

(a) IN GENERAL.—As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1901 et seq., 2001 et seq.), and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the 'Compact of Free Association' between the United States and Government of Palau, and for other purposes" (48 U.S.C. 1931 et seq.) or any successor enactment.

(b) GOAL OF PROGRAM.—The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each of those nations so that at the termination of the compacts the programs shall be firmly established.

(c) BASIS OF ALLOCATING AMOUNTS.—The amounts to be made available under this subsection shall be allocated by the Secretary on the basis of needs as determined by the Secretary.

(d) WAIVERS AND MODIFICATIONS.—The Secretary may waive or modify the requirements of this subdivision to conform to the cultural setting of those nations. Matching funds may be waived or modified.

§ 302909. Prohibited use of grant amounts

No part of any grant made under this subdivision shall be used to compensate any person intervening in any proceeding under this division.

§ 302910. Recordkeeping

A recipient of assistance under this division shall keep—

- (1) such records as the Secretary shall prescribe, including records that fully disclose—
 - (A) the disposition by the recipient of the proceeds of the assistance;
 - (B) the total cost of the project or undertaking in connection with which the assistance is given or used; and
 - (C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and
- (2) such other records as will facilitate an effective audit.

Chapter 3031—Historic Preservation Fund

Sec.
303101. Establishment.
303102. Content.
303103. Use and availability.

§ 303101. Establishment

To carry out this division (except chapter 3041) and chapter 3121, there is established in the Treasury the Historic Preservation Fund.

§ 303102. Contents

For each of fiscal years 2012 to 2015, \$150,000,000 shall be deposited in the Historic Preservation Fund from revenues due and payable to the United States under section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338), section 7433(b) of title 10, or both, notwithstanding any provision of law that those proceeds shall be credited to miscellaneous receipts of the Treasury.

§ 303103. Use and availability

Amounts in the Historic Preservation Fund shall be used only to carry out this division and shall be available for expenditure only when appropriated by Congress. Any amount not appropriated shall remain available in the Historic Preservation Fund until appropriated for those purposes. Appropriations made pursuant to this section may be made without fiscal year limitation.

Chapters 3033 Through 3037—Reserved

Chapter 3039—Miscellaneous

Sec.
303901. Loan insurance program for preservation of property included on National Register.
303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property.
303903. Preservation education and training program.

§ 303901. Loan insurance program for preservation of property included on National Register

(a) ESTABLISHMENT.—The Secretary shall establish and maintain a program by which the Secretary may, on application of a private lender, insure loans (including loans made in accordance with a mortgage) made by the lender to finance any project for the preservation of a property included on the National Register.

(b) LOAN QUALIFICATIONS.—A loan may be insured under this section if—

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

(2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed the amount and rate established by the Secretary by regulation;

(3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;

(4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;

(5) the repayment period of the loan does not exceed the lesser of 40 years or the expected life of the asset financed;

(6) the amount insured with respect to the loan does not exceed 90 percent of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet such other terms and conditions as may be prescribed by the Secretary by regulation, especially terms and conditions relating to the nature and quality of the preservation work.

(c) CONSULTATION.—The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(d) LIMITATION ON AMOUNT OF UNPAID PRINCIPAL BALANCE OF LOANS.—The aggregate unpaid principal balance of loans insured under this section may not exceed the amount that has been deposited in the Historic Preservation Fund but which has not been appropriated for any purpose.

(e) INSURANCE CONTRACTS.—Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(f) CONDITIONS AND METHODS OF PAYMENT AS RESULT OF LOSS.— The Secretary shall specify, by regulation and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(g) PROTECTION OF FINANCIAL INTERESTS OF FEDERAL GOVERNMENT.— In entering into any contract to insure a loan under this section, the Secretary shall take steps to ensure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the historic property securing a loan insured under this section; and

(2) operate or lease the historic property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (h).

(h) CONVEYANCE TO GOVERNMENTAL OR NONGOVERNMENTAL ENTITY OF PROPERTY ACQUIRED BY FORECLOSURE.—

(1) **ATTEMPT TO CONVEY TO ENSURE PROPERTY'S PRESERVATION AND USE.**—In any case in which historic property is obtained pursuant to subsection (g), the Secretary shall attempt to convey the property to any governmental or nongovernmental entity under conditions that will ensure the property's continued preservation and use. If, after a reasonable time, the Secretary, in consultation with the Council, determines that there is no feasible and prudent means to convey the property and to ensure its continued preservation and use, the Secretary may convey the property at the fair market value of its interest in the property to any entity without restriction.

(2) **DISPOSITION OF FUNDS.**—Any funds obtained by the Secretary in connection with the conveyance of any historic property pursuant to paragraph (1) shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(i) **ASSESSMENT OF FEES IN CONNECTION WITH INSURING LOANS.**— The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. The fees shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(j) **TREATMENT OF LOANS AS NON-FEDERAL FUNDS.**—Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned on the use of non-Federal funds by the recipient for payment of any portion of the costs of the project or activity.

(k) **INELIGIBILITY OF DEBT OBLIGATION FOR PURCHASE OR COMMITMENT TO PURCHASE BY, OR SALE OR ISSUANCE TO, FEDERAL FINANCING BANK.**—No debt obligation that is made or committed to be made, or that is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

§ 303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property

The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic property and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

§ 303903. Preservation education and training program

The Secretary, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, shall develop and implement a comprehensive preservation education and training program. The program shall include—

(1) standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(2) preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(3) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and

(4) where appropriate, coordination with the National Center for Preservation Technology and Training of—

(A) distribution of information on preservation technologies;

(B) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(C) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

Subdivision 3—Advisory Council on Historic Preservation

Chapter 3041—Advisory Council on Historic Preservation

Sec.

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§ 304101. Establishment; vacancies

(a) ESTABLISHMENT.—There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation, which shall be composed of the following members:

(1) A Chairman appointed by the President selected from the general public.

(2) The Secretary.

(3) The Architect of the Capitol.

(4) The Secretary of Agriculture and the heads of 7 other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President.

(5) One Governor appointed by the President.

(6) One mayor appointed by the President.

(7) The President of the National Conference of State Historic Preservation Officers.

(8) The Chairman of the National Trust.

(9) Four experts in the field of historic preservation appointed by the President from architecture, history, archeology, and other appropriate disciplines.

(10) Three members from the general public, appointed by the President.

(11) One member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member, appointed by the President.

(b) DESIGNATION OF SUBSTITUTES.—Each member of the Council specified in paragraphs (2) to (5), (7), and (8) of subsection (a) may designate another officer of the department, agency, or organization to serve on the Council instead of the member, except that, in the case of paragraphs (2) and (4), no officer other than an Assistant Secretary or an officer having major department wide or agency-wide responsibilities may be designated.

(c) TERM OF OFFICE.—Each member of the Council appointed under paragraphs (1) and (9) to (11) of subsection (a) shall serve for a term of 4 years from the expiration of the term of the member's predecessor. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of 4 years. An appointed member may not serve more than 2 terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) VACANCIES.—A vacancy in the Council shall not affect its powers, but shall be filled, not later than 60 days after the vacancy commences, in the same manner as the original appointment (and for the balance of the unexpired term).

(e) DESIGNATION OF VICE CHAIRMAN.—The President shall designate a Vice Chairman from the members appointed under paragraph (5), (6), (9), or (10) of subsection (a). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(f) QUORUM.—Twelve members of the Council shall constitute a quorum.

§ 304102. Duties of Council

(a) DUTIES.—The Council shall—

(1) advise the President and Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions

and individuals relating to historic preservation, and advise on the dissemination of information pertaining to those activities;

(2) encourage, in cooperation with the National Trust and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as—

(A) the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments; and

(B) the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to Federal agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this division; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) ANNUAL REPORT.—The Council annually shall submit to the President a comprehensive report of its activities and the results of its studies and shall from time to time submit additional and special reports as it deems advisable. Each report shall propose legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out this division.

§ 304103. Cooperation between Council and instrumentalities of executive branch of Federal Government

The Council may secure directly from any Federal agency information, suggestions, estimates, and statistics for the purpose of this chapter. Each Federal agency may furnish information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

§ 304104. Compensation of members of Council

The members of the Council specified in paragraphs (2), (3), and (4) of section 304101(a) of this title shall serve without additional compensation. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

§ 304105. Administration

(a) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Council who shall be appointed by the Chairman with the concurrence of the Council in the competitive service at a rate within the General

Schedule, in the competitive service at a rate that may exceed the rate prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5, or in the Senior Executive Service under section 3393 of title 5. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

(b) GENERAL COUNSEL AND APPOINTMENT OF OTHER ATTORNEYS.—

(1) GENERAL COUNSEL.—The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council’s legal advisor.

(2) APPOINTMENT OF OTHER ATTORNEYS.—The Executive Director shall appoint other attorneys as may be necessary to—

(A) assist the General Counsel;

(B) represent the Council in court when appropriate, including enforcement of agreements with Federal agencies to which the Council is a party;

(C) assist the Department of Justice in handling litigation concerning the Council in court; and

(D) perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) APPOINTMENT AND COMPENSATION OF OFFICERS AND EMPLOYEES.—The Executive Director of the Council may appoint and fix the compensation of officers and employees in the competitive service who are necessary to perform the functions of the Council at rates not to exceed that prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5. The Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed 5 employees in the competitive service at rates that exceed that prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5 or in the Senior Executive Service under section 3393 of title 5.

(d) APPOINTMENT AND COMPENSATION OF ADDITIONAL PERSONNEL.— The Executive Director may appoint and fix the compensation of such additional personnel as may be necessary to carry out the Council’s duties, without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(e) EXPERT AND CONSULTANT SERVICES.—The Executive Director may procure expert and consultant services in accordance with section 3109 of title 5.

(f) FINANCIAL AND ADMINISTRATIVE SERVICES.—

(1) SERVICES TO BE PROVIDED BY SECRETARY, AGENCY, OR PRIVATE ENTITY.—Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Secretary or, at the discretion of the Council, another agency or private entity that reaches an agreement with the Council, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed on by the Chairman of the Council and the head of the agency or the authorized representative of the private entity that will provide the services.

(2) FEDERAL AGENCY REGULATIONS RELATING TO COLLECTION APPLY.—When a Federal agency affords those services, the regulations of that agency under section 5514(b) of title 5 for the collection of indebtedness of personnel resulting from erroneous payments shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of that agency under sections 1513(d) and 1514 of title 31 for the administrative control of funds shall apply to appropriations of the Council. The Council shall not be required to prescribe those regulations.

(g) FUNDS, PERSONNEL, FACILITIES, AND SERVICES.—

(1) PROVIDED BY FEDERAL AGENCY.—Any Federal agency may provide the Council, with or without reimbursement as may be agreed on by the Chairman and the agency, with such funds, personnel, facilities, and services under its jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that the funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection shall be obligated by the end of the fiscal year following the fiscal year in which the funds are received by the Council.

(2) OBTAINING ADDITIONAL PROPERTY, FACILITIES, AND SERVICES AND RECEIVING DONATIONS OF MONEY.—To the extent of available appropriations, the Council may obtain by purchase, rental, donation, or otherwise additional property, facilities, and services as may be needed to carry out its duties and may receive donations of money for that purpose. The Executive Director may accept, hold, use, expend, and administer the property, facilities, services, and money for the purposes of this division.

(h) RIGHTS, BENEFITS, AND PRIVILEGES OF TRANSFERRED EMPLOYEES.—Any employee in the competitive service of the United States transferred to the Council under section 207 of the National Historic Preservation Act (Public Law 89–665) retains all the rights, benefits, and privileges pertaining to the competitive service held prior to the transfer.

(i) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Council is exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(j) PROVISIONS THAT GOVERN OPERATIONS OF COUNCIL.—Subchapter II of chapter 5 and chapter 7 of title 5 shall govern the operations of the Council.

§ 304106. International Centre for the Study of the Preservation and Restoration of Cultural Property

(a) AUTHORIZATION OF PARTICIPATION.—The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is authorized.

(b) OFFICIAL DELEGATION.—The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation that will participate in the activities of the international Centre for the Study of the Preservation and Restoration of Cultural Property on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to the Secretary of State by the Council.

§ 304107. Transmittal of legislative recommendations, testimony, or comments to any officer or agency of the United States prior to submission to Congress

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the

United States for approval, comments, or review, prior to the submission of the recommendations, testimony, or comments to Congress. When the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of the actions in its legislative recommendations, testimony, or comments on legislation that it transmits to Congress.

§ 304108. Regulations, procedures, and guidelines

(a) IN GENERAL.—The Council may promulgate regulations as it considers necessary to govern the implementation of section 306108 of this title in its entirety.

(b) PARTICIPATION BY LOCAL GOVERNMENTS.—The Council shall by regulation establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 306108 of this title that affect the local governments.

(c) EXEMPTION FOR FEDERAL PROGRAMS OR UNDERTAKINGS.—The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this division when the exemption is determined to be consistent with the purposes of this division, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic property.

§ 304109. Budget submission

(a) TIME AND MANNER OF SUBMISSION.—The Council shall submit its budget annually as a related agency of the Department of the Interior.

(b) TRANSMITTAL OF COPIES TO CONGRESSIONAL COMMITTEES.— Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the Committee on Natural Resources and Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate.

§ 304110. Report by Secretary to Council

To assist the Council in discharging its responsibilities under this division, the Secretary at the request of the Chairman shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

§ 304111. Reimbursements from State and local agencies

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of this division.

§ 304112. Effectiveness of Federal grant and assistance programs

(a) COOPERATIVE AGREEMENTS.—The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of the program in meeting the purposes and policies of this division. The cooperative agreement may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this division or that allow the Council to participate in the selection of recipients, if those provisions are not inconsistent with the grant or assistance program's statutory authorization and purpose.

(b) REVIEW OF GRANT AND ASSISTANCE PROGRAMS.—The Council may—

(1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of the program in meeting the purposes and policies of this division;

(2) make recommendations to the head of any Federal agency that administers the program to further the consistency of the program with the purposes and policies of this division and to improve its effectiveness in carrying out those purposes and policies; and

(3) make recommendations to the President and Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this division, including recommendations with regard to appropriate funding levels.

Subdivision 4—Other Organizations and Programs

Chapter 3051—Historic Light Station Preservation

Sec.

305101. Definitions.

305102. Duties of Secretary in providing a national historic light station program.

305103. Selection of eligible entity and conveyance of historic light stations.

305104. Terms of conveyance.

305105. Description of property.

305106. Historic light station sales.

§ 305101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of General Services.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which a historic light station is located, the local government of the community in which a historic light station is located, a nonprofit corporation, an educational agency, or a community development organization that—

(i) has agreed to comply with the conditions set forth in section 305104 of this title and to have the conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in section 305104 of this title.

(3) FEDERAL AID TO NAVIGATION.—

(A) IN GENERAL.—The term “Federal aid to navigation” means any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(B) INCLUSIONS.—The term “Federal aid to navigation” includes a light, lens, lantern, antenna, sound signal, camera, sensor, piece of electronic navigation equipment, power source, or other piece of equipment associated with a device described in subparagraph (A).

(4) HISTORIC LIGHT STATION.—The term “historic light station” includes the light tower, lighthouse, keeper’s dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated with a historic light station that is a historic property.

§ 305102. Duties of Secretary in providing a national historic light station program

To provide a national historic light station program, the Secretary shall—

- (1) collect and disseminate information concerning historic light stations;
- (2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;
- (3) sponsor or conduct research and study into the history of light stations;
- (4) maintain a listing of historic light stations; and
- (5) assess the effectiveness of the program established by this chapter regarding the conveyance of historic light stations.

§ 305103. Selection of eligible entity and conveyance of historic light stations

(a) PROCESS AND POLICIES.—The Secretary and the Administrator shall maintain a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of the light station by the eligible entity.

(b) APPLICATION REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property to be excess property (as that term is defined in section 102 of title 40); and

(B) forward to the Administrator a single approved application for the conveyance of the historic light station.

(2) CONSULTATION.—When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.

(c) CONVEYANCE OR SALE OF HISTORIC LIGHT STATIONS.—

(1) CONVEYANCE BY ADMINISTRATOR.—Except as provided in paragraph (2), after the Secretary's selection of an eligible entity, the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to a historic light station, subject to the conditions set forth in section 305104 of this title. The conveyance of a historic light station under this chapter shall not be subject to the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105–383, 14 U.S.C. 93 note).

(2) HISTORIC LIGHT STATION LOCATED WITHIN A SYSTEM UNIT OR A REFUGE WITHIN NATIONAL WILDLIFE REFUGE SYSTEM.—

(A) APPROVAL OF SECRETARY REQUIRED.—A historic light station located within the exterior boundaries of a System unit or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(B) CONDITIONS OF CONVEYANCE.—If the Secretary approves the conveyance of a historic light station described in subparagraph (A), the conveyance shall be subject to the conditions set forth in section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(C) CONDITIONS OF SALE.—If the Secretary approves the sale of a historic light station described in subparagraph (A), the sale shall be subject to the conditions set forth in paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(D) COOPERATIVE AGREEMENTS.—The Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities with respect to historic light stations described in subparagraph (A), as provided in this division, to the extent that the cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the System unit or wildlife refuge.

§ 305104. Terms of conveyance

(a) IN GENERAL.—The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, that the Administrator considers necessary to ensure that—

(1) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(2) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;

(3) the eligible entity to which the historic light station is conveyed shall not interfere or allow interference in any manner with any Federal aid to navigation or hinder activities required for the operation and maintenance of any Federal aid to navigation without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(4) (A) the eligible entity to which the historic light station is conveyed shall, at its own cost and expense, use and maintain the historic light station in accordance with this division, the Secretary of the Interior's Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws; and

(B) any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with section 800.5(a)(2)(vii) of title 36, Code of Federal Regulations and the Secretary's Standards for Rehabilitation contained in section 67.7 of title 36, Code of Federal Regulations;

(5) the eligible entity to which the historic light station is conveyed shall make the historic light station available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(6) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part of the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, unless the sale, conveyance, assignment, exchange, or encumbrance is approved by the Secretary;

(7) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activity at the historic light station, at any part of the historic light station, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless the commercial activity is approved by the Secretary; and

(8) the United States shall have the right, at any time, to enter the historic light station without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this section, to the extent that it is not possible to provide advance notice.

(b) MAINTENANCE OF AID TO NAVIGATION.—Any eligible entity to which a historic light station is conveyed shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aid to navigation permitted to the eligible entity under section 83 of title 14.

(c) REVERSION.—In addition to any term or condition established pursuant to this section, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if—

(1) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions that shall be set forth in the eligible entity's application;

(2) the historic light station or any part of the historic light station ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(3) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be maintained in compliance with this division, the Secretary of the Interior's

Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws;

(4) the eligible entity to which the historic light station is conveyed sells, conveys, assigns, exchanges, or encumbers the historic light station, any part of the historic light fixture, or any associated historic artifact, without approval of the Secretary;

(5) the eligible entity to which the historic light station is conveyed conducts any commercial activity at the historic light station, at any part of the historic light station, or in conjunction with any associated historic artifact, without approval of the Secretary; or

(6) at least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part of the historic light station is needed for national security purposes.

(d) LIGHT STATIONS ORIGINALLY CONVEYED UNDER OTHER AUTHORITY.—On receiving notice of an executed or intended conveyance by an owner that received from the Federal Government under authority other than this division a historic light station in which the United States retains a reversionary or other interest and that is conveying it to another person by sale, gift, or any other manner, the Secretary shall review the terms of the executed or proposed conveyance to ensure that any new owner is capable of or is complying with any and all conditions of the original conveyance. The Secretary may require the parties to the conveyance and relevant Federal agencies to provide information as is necessary to complete the review. If the Secretary determines that the new owner has not complied or is unable to comply with those conditions, the Secretary shall immediately advise the Administrator, who shall invoke any reversionary interest or take other action as may be necessary to protect the interests of the United States.

§ 305105. Description of property

(a) IN GENERAL.—The Administrator shall prepare the legal description of any historic light station conveyed under this chapter. The Administrator, in consultation with the Secretary of Homeland Security and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the historic light station at the time of conveyance. Wherever possible, the historical artifacts should be used in interpreting the historic light station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the historic light station, if they meet loan requirements.

(b) ARTIFACTS.—Artifacts associated with, but not located at, a historic light station at the time of conveyance shall remain the property of the United States under the administrative control of the Secretary of Homeland Security.

(c) COVENANTS.—All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(d) SUBMERGED LAND.—No submerged land shall be conveyed under this chapter.

§ 305106. Historic light station sales

(a) IN GENERAL.—

(1) WHEN SALE MAY OCCUR.—If no applicant is approved for the conveyance of a historic light station pursuant to sections 305101 through 305105 of this title, the historic light station shall be offered for sale.

(2) TERMS OF SALE.—Terms of the sales—

(A) shall be developed by the Administrator; and

(B) shall be consistent with the requirements of paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title.

(3) COVENANTS TO BE INCLUDED IN CONVEYANCE DOCUMENTS.— Conveyance documents shall include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

(b) NET SALE PROCEEDS.—

(1) DISPOSITION AND USE OF FUNDS.—Net sale proceeds from the disposal of a historic light station—

(A) located on public domain land shall be transferred to the National Maritime Heritage Grants Program established under chapter 3087 in the Department of the Interior; and

(B) under the administrative control of the Secretary of Homeland Security—

(i) shall be credited to the Coast Guard's Operating Expenses appropriation account; and

(ii) shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Secretary of Homeland Security.

(2) AVAILABILITY OF FUNDS.—The funds referred to in paragraph (1)(B) shall remain available until expended and shall be available in addition to funds available in the Coast Guard's Operating Expense appropriation for that purpose.

Chapter 3053—National Center for Preservation Technology and Training

Sec.

305301. Definitions.

305302. National Center for Preservation Technology and Training.

305303. Preservation Technology and Training Board.

305304. Preservation grants.

305305. General provisions.

305306. Service preservation centers and offices.

§ 305301. Definitions

In this chapter:

(1) BOARD.—The term “Board” means the Preservation Technology and Training Board established pursuant to section 305303 of this title.

(2) CENTER.—The term “Center” means the National Center for Preservation Technology and Training established pursuant to section 305302 of this title.

§ 305302. National Center for Preservation Technology and Training

(a) ESTABLISHMENT.—There is established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

(b) PURPOSES.—The purposes of the Center shall be to—

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of historic property;

(2) develop and facilitate training for Federal, State, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) PROGRAMS.—The purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 305304 of this title.

(d) EXECUTIVE DIRECTOR.—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) ASSISTANCE FROM SECRETARY.—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

§ 305303. Preservation Technology and Training Board

(a) ESTABLISHMENT.—There is established a Preservation Technology and Training Board.

(b) DUTIES.—The Board shall—

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and Congress.

(c) MEMBERSHIP.—The Board shall be comprised of—

(1) the Secretary;

(2) 6 members appointed by the Secretary, who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications, who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

§ 305304. Preservation grants

(a) IN GENERAL.—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution, and skills training in all the related historic preservation fields.

(b) GRANT REQUIREMENTS.—

(1) ALLOCATION.—Grants provided under this section shall be allocated in such a fashion as to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) LIMIT ON AMOUNT A RECIPIENT MAY RECEIVE.—No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) LIMIT ON ADMINISTRATIVE COSTS.—The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) ELIGIBLE APPLICANTS.—Eligible applicants may include—

(1) Federal and non-Federal laboratories;

(2) accredited museums;

(3) universities;

(4) nonprofit organizations;

(5) System units and offices and Cooperative Park Study Units of the System;

(6) State Historic Preservation Offices;

(7) tribal preservation offices; and

(8) Native Hawaiian organizations.

(d) STANDARDS AND METHODS.—Grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

§ 305305. General provisions

(a) ACCEPTANCE OF GRANTS AND TRANSFERS.—The Center may accept—

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

(b) CONTRACTS AND COOPERATIVE AGREEMENTS.—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center’s responsibilities under this chapter.

(c) ADDITIONAL FUNDS.—Funds appropriated for the Center shall be in addition to funds appropriated for Service programs, centers, and offices in existence on October 30, 1992.

§ 305306. Service preservation centers and offices

To improve the use of existing Service resources, the Secretary shall fully utilize and further develop the Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of the centers and offices within the Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

Chapter 3055—National Building Museum

Sec.

305501. Definitions.

305502. Cooperative agreement to operate museum.

305503. Activities and functions.

305504. Matching grants to Committee.

305505. Annual report.

§ 305501. Definitions

In this chapter:

(1) BUILDING ARTS.—The term “building arts” includes all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

(2) COMMITTEE.—The term “Committee” means the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor.

§ 305502. Cooperative agreement to operate museum

To provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building that exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of General Services shall enter into a cooperative agreement with the Committee for the operation of a National Building Museum in the Federal building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. The cooperative agreement shall include provisions that—

- (1) make the site available to the Committee without charge;
- (2) provide, subject to available appropriations, such maintenance, security, information, janitorial, and other services as may be necessary to ensure the preservation and operation of the site; and
- (3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this division.

§ 305503. Activities and functions

The National Building Museum shall—

- (1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;
- (2) foster educational programs relating to the history, practice, and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;
- (3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;
- (4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and
- (5) encourage contributions to the building arts.

§ 305504. Matching grants to Committee

The Secretary shall provide matching grants to the Committee for its programs related to historic preservation. The Committee shall match the grants in such a manner and with such funds and services as shall be satisfactory to the Secretary, except that not more than \$500,000 may be provided to the Committee in any one fiscal year.

§ 305505. Annual report

The Committee shall submit an annual report to the Secretary and the Administrator of General Services concerning its activities under this chapter and shall provide the Secretary and the Administrator of General Services with such other information as the Secretary may consider necessary or advisable.

Subdivision 5—Federal Agency Historic Preservation Responsibilities

Chapter 3061—Program Responsibilities and Authorities

Subchapter I—In General

Sec.

- 306101. Assumption of responsibility for preservation of historic property.
- 306102. Preservation program.
- 306103. Recordation of historic property prior to alteration or demolition.
- 306104. Agency Preservation Officer.
- 306105. Agency programs and projects.
- 306106. Review of plans of transferees of surplus federally owned historic property.
- 306107. Planning and actions to minimize harm to National Historic Landmarks.
- 306108. Effect of undertaking on historic property.
- 306109. Costs of preservation as eligible project costs.
- 306110. Annual preservation awards program.
- 306111. Environmental impact statement.
- 306112. Waiver of provisions in event of natural disaster or imminent threat to national security.
- 306113. Anticipatory demolition.
- 306114. Documentation of decisions respecting undertakings.

Subchapter II—Lease, Exchange, or Management of Historic Property

- 306121. Lease or exchange.
- 306122. Contracts for management of historic property.

Subchapter III—Protection and Preservation of Resources

- 306131. Standards and guidelines.

Subchapter I—In General

§ 306101. Assumption of responsibility for preservation of historic property

(a) IN GENERAL.—

(1) AGENCY HEAD RESPONSIBILITY.—The head of each Federal agency shall assume responsibility for the preservation of historic property that is owned or controlled by the agency.

(2) USE OF AVAILABLE HISTORIC PROPERTY.—Prior to acquiring, constructing, or leasing a building for purposes of carrying out agency responsibilities, a Federal agency shall use, to the maximum extent feasible, historic property available to the agency, in accordance with Executive Order No. 13006 (40 U.S.C. 3306 note).

(3) NECESSARY PRESERVATION.—Each Federal agency shall undertake, consistent with the preservation of historic property, the mission of the agency, and the professional standards established pursuant to subsection (c), any preservation as may be necessary to carry out this chapter.

(b) GUIDELINES FOR FEDERAL AGENCY RESPONSIBILITY FOR AGENCY-OWNED HISTORIC PROPERTY.—In consultation with the Council, the Secretary shall promulgate guidelines for Federal agency responsibilities under this subchapter (except section 306108).

(c) PROFESSIONAL STANDARDS FOR PRESERVATION OF FEDERALLY OWNED OR CONTROLLED HISTORIC PROPERTY.—The Secretary shall establish, in consultation with the Secretary of Agriculture, the Secretary of Defense, the Smithsonian Institution, and the Administrator of General Services, professional standards for the preservation of historic property in Federal ownership or control.

§ 306102. Preservation program

(a) ESTABLISHMENT.—Each Federal agency shall establish (except for programs or undertakings exempted pursuant to section 304108(c) of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register, and protection, of historic property.

(b) REQUIREMENTS.—The program shall ensure that—

(1) historic property under the jurisdiction or control of the agency is identified, evaluated, and nominated to the National Register;

(2) historic property under the jurisdiction or control of the agency is managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 306108 of this title and gives special consideration to the preservation of those values in the case of property designated as having national significance;

(3) the preservation of property not under the jurisdiction or control of the agency but potentially affected by agency actions is given full consideration in planning;

(4) the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and the private sector; and

(5) the agency's procedures for compliance with section 306108 of this title—

(A) are consistent with regulations promulgated by the Council pursuant to section 304108(a) and (b) of this title;

(B) provide a process for the identification and evaluation of historic property for listing on the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on historic property will be considered; and

(c) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

§ 306103. Recordation of historic property prior to alteration or demolition

Each Federal agency shall initiate measures to ensure that where, as a result of Federal action or assistance carried out by the agency, a historic property is to be substantially altered or demolished—

(1) timely steps are taken to make or have made appropriate records; and

(2) the records are deposited, in accordance with section 302107 of this title, in the Library of Congress or with such other appropriate agency as the Secretary may designate, for future use and reference.

§ 306104. Agency Preservation Officer

The head of each Federal agency (except an agency that is exempted under section 304108(c) of this title) shall designate a qualified official as the agency's Preservation Officer who shall be responsible for coordinating the agency's activities under this division. Each Preservation Officer may, to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 306101(c) of this title.

§ 306105. Agency programs and projects

Consistent with the agency's missions and mandates, each Federal agency shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this division and give consideration to programs and projects that will further the purposes of this division.

§ 306106. Review of plans of transferees of surplus federally owned historic property

The Secretary shall review and approve the plans of transferees of surplus federally owned historic property not later than 90 days after receipt of the plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

§ 306107. Planning and actions to minimize harm to National Historic Landmarks

Prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

§ 306108. Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

§ 306109. Costs of preservation as eligible project costs

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

§ 306110. Annual preservation awards program

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

§ 306111. Environmental impact statement

Nothing in this division shall be construed to—

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act.

§ 306112. Waiver of provisions in event of natural disaster or imminent threat to national security

The Secretary shall promulgate regulations under which the requirements of this subchapter (except section 306108) may be waived in whole or in part in the event of a major natural disaster or an imminent threat to national security.

§ 306113. Anticipatory demolition

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of section 306108 of this title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

§ 306114. Documentation of decisions respecting undertakings

With respect to any undertaking subject to section 306108 of this title that adversely affects any historic property for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of the agency shall document any decision made pursuant to section 306108 of this title. The head of the agency may not delegate the responsibility to document a decision pursuant to this section. Where an agreement pursuant to regulations issued by the Council has been executed with respect to an undertaking, the agreement shall govern the undertaking and all of its parts.

Subchapter II—Lease, Exchange, or Management of Historic Property

§ 306121. Lease or exchange

(a) **AUTHORITY TO LEASE OR EXCHANGE.**—Notwithstanding any other provision of law, each Federal agency, after consultation with the Council—

(1) shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes; and

(2) may lease historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

(b) PROCEEDS OF LEASE.—Notwithstanding any other provision of law, the proceeds of a lease under subsection (a) may be retained by the agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other property that is on the National Register that is owned by, or are under the jurisdiction or control of, the agency. Any surplus proceeds from the leases shall be deposited in the Treasury at the end of the 2d fiscal year following the fiscal year in which the proceeds are received.

§ 306122. Contracts for management of historic property

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Council, enter into a contract for the management of the property. The contract shall contain terms and conditions that the head of the agency considers necessary or appropriate to protect the interests of the United States and ensure adequate preservation of the historic property.

Subchapter III—Protection and Preservation of Resources

§ 306131. Standards and guidelines

(a) STANDARDS.—

(1) IN GENERAL.—Each Federal agency that is responsible for the protection of historic property (including archeological property) pursuant to this division or any other law shall ensure that—

(A) all actions taken by employees or contractors of the agency meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of archeology, architecture, conservation, history, landscape architecture, and planning;

(B) agency personnel or contractors responsible for historic property meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of archeology, architecture, conservation, curation, history, landscape architecture, and planning; and

(C) records and other data, including data produced by historical research and archeological surveys and excavations, are permanently maintained in appropriate databases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(2) CONSIDERATIONS.—The standards referred to in paragraph (1)(B) shall consider the particular skills and expertise needed for the preservation of historic property and shall be equivalent requirements for the disciplines involved.

(3) REVISION.—The Office of Management and Budget shall revise qualification standards for the disciplines involved.

(b) GUIDELINES.—To promote the preservation of historic property eligible for listing on the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this division include plans to—

(1) provide information to the owners of historic property (including architectural, curatorial, and archeological property) with demonstrated or likely research significance, about the need for protection of the historic property, and the available means of protection;

(2) encourage owners to preserve historic property intact and in place and offer the owners of historic property information on the tax and grant assistance available for the donation of the historic property or of a preservation easement of the historic property;

(3) encourage the protection of Native American cultural items (within the meaning of section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)) and of property of religious or cultural importance to Indian tribes, Native Hawaiian organizations, or other Native American groups; and

(4) encourage owners that are undertaking archeological excavations to—

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution;

(C) allow access to artifacts for research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under subparagraph (B) or (C) of section 3(a)(2) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(a)(2)(B), (C)), give notice to and consult with the Indian tribe or Native Hawaiian organization.

Subdivision 6—Miscellaneous

Chapter 3071—Miscellaneous

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§ 307101. World Heritage Convention

(a) **AUTHORITY OF SECRETARY.**—In carrying out this section, the Secretary of the Interior may act directly or through an appropriate officer in the Department of the Interior.

(b) **PARTICIPATION BY UNITED STATES.**—The Secretary shall direct and coordinate participation by the United States in the World Heritage Convention in cooperation with the Secretary of State, the Smithsonian Institution, and the Council. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(c) **NOMINATION OF PROPERTY TO WORLD HERITAGE COMMITTEE.**— The Secretary shall periodically nominate property that the Secretary determines is of international significance to the World Heritage Committee on behalf of the United States. No property may be nominated unless it has previously been determined to be of national significance. Each nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any nomination, the Secretary shall notify the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(d) **NOMINATION OF NON-FEDERAL PROPERTY TO WORLD HERITAGE COMMITTEE REQUIRES WRITTEN CONCURRENCE OF OWNER.**—No non-Federal property may be nominated by the Secretary to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in the nomination in writing.

(e) **CONSIDERATION OF UNDERTAKING ON PROPERTY.**—Prior to the approval of any undertaking outside the United States that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

§ 307102. Effective date of regulations

(a) **PUBLICATION IN FEDERAL REGISTER.**—No final regulation of the Secretary shall become effective prior to the expiration of 30 calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) **DISAPPROVAL OF REGULATION BY RESOLUTION OF CONGRESS.**— The regulation shall not become effective if, within 90 calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: “That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of , which regulation was transmitted to Congress on , ” the blank spaces in the resolution being appropriately filled.

(c) **FAILURE OF CONGRESS TO ADOPT RESOLUTION OF DISAPPROVAL OF REGULATION.**—If at the end of 60 calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within the 60 calendar days, a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than 90 calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(d) **SESSIONS OF CONGRESS.**—For purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 60 and 90 calendar days of continuous session of Congress.

(e) **CONGRESSIONAL INACTION OR REJECTION OF RESOLUTION OF DISAPPROVAL NOT DEEMED APPROVAL OF REGULATION.**—Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of the regulation.

§ 307103. Access to information

(a) **AUTHORITY TO WITHHOLD FROM DISCLOSURE.**—The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary, shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may—

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic property; or
- (3) impede the use of a traditional religious site by practitioners.

(b) **ACCESS DETERMINATION.**—When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) **CONSULTATION WITH COUNCIL.**—When information described in subsection (a) has been developed in the course of an agency’s compliance with section 306107 or 306108 of this title, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

§ 307104. Inapplicability of division to White House, Supreme Court building, or United States Capitol

Nothing in this division applies to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

§ 307105. Attorney’s fees and costs to prevailing parties in civil actions

In any civil action brought in any United States district court by any interested person to enforce this division, if the person substantially prevails in the action, the court may award attorney’s fees, expert witness fees, and other costs of participating in the civil action, as the court considers reasonable.

§ 307106. Authorization for expenditure of appropriated funds

Where appropriate, each Federal agency may expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this division, except to the extent that appropriations legislation expressly provides otherwise.

§ 307107. Donations and bequests of money, personal property, and less than fee interests in historic property

(a) **MONEY AND PERSONAL PROPERTY.**—The Secretary may accept donations and bequests of money and personal property for the purposes of this division and shall hold, use, expend, and administer the money and personal property for those purposes.

(b) **LESS THAN FEE INTEREST IN HISTORIC PROPERTY.**—The Secretary may accept gifts or donations of less than fee interests in any historic property where the acceptance of an interest will facilitate the conservation or preservation of the historic property. Nothing in this section or in any provision of this division shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

§ 307108. Privately donated funds

(a) **PROJECTS FOR WHICH FUNDS MAY BE USED.**—In furtherance of the purposes of this division, the Secretary may accept the donation of funds that may be expended by the Secretary for projects to acquire, restore, preserve, or recover data from any property included on the National Register, as long as the project is owned by a State, any unit of local government, or any nonprofit entity.

(b) **CONSIDERATION OF FACTORS RESPECTING EXPENDITURE OF FUNDS.**—

(1) **IN GENERAL.**—In expending the funds, the Secretary shall give due consideration to—

(A) the national significance of the project;

(B) its historical value to the community;

(C) the imminence of its destruction or loss; and

(D) the expressed intentions of the donor.

(2) **FUNDS AVAILABLE WITHOUT REGARD TO MATCHING REQUIREMENTS.**—Funds expended under this subsection shall be made available without regard to the matching requirements established by sections 302901 and 302902(b) of this title, but the recipient of the funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund.

(c) **TRANSFER OF UNOBLIGATED FUNDS.**—The Secretary may transfer unobligated funds previously donated to the Secretary for the purposes of the Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with this division.

Old Section Name	Old Title 16 Legal Cite	Current Title 54 Legal Cite	
Section 1	16 U.S.C. 470(a)	54 U.S.C. 100101 note. It provides the short title: the "National Historic Preservation Act."	
	16 U.S.C. 470(b)	Not repealed but omitted from the text of title 54. It provides findings for the National Historic Preservation Act. It is still valid law and may be cited as: Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515.	
Section 2	16 U.S.C. 470-1	54 U.S.C. 300101	
Section 101	16 U.S.C. 470a(a)(1)(A) (1st sentence)	54 U.S.C. 302101	
	16 U.S.C. 470a(a)(1)(A) (last sentence)	54 U.S.C. 302106	
	16 U.S.C. 470a(a)(1)(B)	54 U.S.C. 302102	
	16 U.S.C. 470a(a)(2)	54 U.S.C. 302103	
	16 U.S.C. 470a(a)(3) through (5)	54 U.S.C. 302104	
	16 U.S.C. 470a(a)(6)	54 U.S.C. 302105	
	16 U.S.C. 470a(a)(7)	54 U.S.C. 302107	
	16 U.S.C. 470a(a)(8)	54 U.S.C. 302108	
	16 U.S.C. 470a(b)(1)	54 U.S.C. 302301	
	16 U.S.C. 470a(b)(2)	54 U.S.C. 302302	
	16 U.S.C. 470a(b)(3)	54 U.S.C. 302303	
	16 U.S.C. 470a(b)(4)	54 U.S.C. 302304	
	16 U.S.C. 470a(b)(5)	Repealed as obsolete. It provided that any State historic preservation program in effect under prior authority of law could be treated as an approved program for purposes of 16 U.S.C. 470a(b) until the earlier of the date on which the Secretary approved a program submitted by the State under 16 U.S.C. 470a(b) or 3 years after December 12, 1992.	
	16 U.S.C. 470a(b)(6)	54 U.S.C. 302304	
	16 U.S.C. 470a(c)(1) (1st sentence)	54 U.S.C. 302502	
	16 U.S.C. 470a(c)(1) (2d, last sentences)	54 U.S.C. 302503	
	16 U.S.C. 470a(c)(2)	54 U.S.C. 302504	
	16 U.S.C. 470a(c)(3)	54 U.S.C. 302505	
	16 U.S.C. 470a(c)(4)	54 U.S.C. 302501	
	16 U.S.C. 470a(d)(1)	54 U.S.C. 302701	
	16 U.S.C. 470a(d)(2)	54 U.S.C. 302702	
	16 U.S.C. 470a(d)(3)	54 U.S.C. 302703	
	16 U.S.C. 470a(d)(4)	54 U.S.C. 302704	
	16 U.S.C. 470a(d)(5)	54 U.S.C. 302705	
	16 U.S.C. 470a(d)(6)	54 U.S.C. 302706	
	16 U.S.C. 470a(e)(1)	54 U.S.C. 302902	
	16 U.S.C. 470a(e)(2)	54 U.S.C. 302903	
	16 U.S.C. 470a(e)(3)(A)	54 U.S.C. 302904	
	16 U.S.C. 470a(e)(3)(B)	54 U.S.C. 302906	
	16 U.S.C. 470a(e)(3)(C)	54 U.S.C. 302904	
	16 U.S.C. 470a(e)(4)	54 U.S.C. 302905	
	16 U.S.C. 470a(e)(5)	54 U.S.C. 302907	
	16 U.S.C. 470a(e)(6)	54 U.S.C. 302908	
	16 U.S.C. 470a(f)	54 U.S.C. 302909	
	16 U.S.C. 470a(g), (h)	54 U.S.C. 306101	
	16 U.S.C. 470a(i)	54 U.S.C. 303902	
	16 U.S.C. 470a(j)	54 U.S.C. 303903	
	Section 102	16 U.S.C. 470b(a) (1st sentence paragraph (1))	54 U.S.C. 302901
		16 U.S.C. 470b(a) (1st sentence paragraphs (2) through (6))	54 U.S.C. 302902
		16 U.S.C. 470b(a) (2d sentence)	54 U.S.C. 302902
		16 U.S.C. 470b(a) (last sentence)	54 U.S.C. 302901
		16 U.S.C. 470b(b)	54 U.S.C. 302902
		16 U.S.C. 470b(c)	Previously repealed.
16 U.S.C. 470b(d) (relating to remaining cost of project)		54 U.S.C. 302902	
16 U.S.C. 470b(d) (relating to availability)	54 U.S.C. 302901		

	16 U.S.C. 470b(e)	54 U.S.C. 302902
Section 103	16 U.S.C. 470c	54 U.S.C. 302902
Section 104	16 U.S.C. 470d	54 U.S.C. 303901
Section 105	16 U.S.C. 470e	54 U.S.C. 302910
Section 106	16 U.S.C. 470f	54 U.S.C. 306108
Section 107	16 U.S.C. 470g	54 U.S.C. 307104
Section 108	16 U.S.C. 470h (1st paragraph)	54 U.S.C. 303101
	16 U.S.C. 470h (last paragraph 1st sentence)	54 U.S.C. 303102
	16 U.S.C. 470h (last paragraph last sentence)	54 U.S.C. 303103
Section 109	16 U.S.C. 470h-1	54 U.S.C. 307108
Section 110	16 U.S.C. 470h-2(a)(1)	54 U.S.C. 306101
	16 U.S.C. 470h-2(a)(2)	54 U.S.C. 306102
	16 U.S.C. 470h-2(b)	54 U.S.C. 306103
	16 U.S.C. 470h-2(c)	54 U.S.C. 306104
	16 U.S.C. 470h-2(d)	54 U.S.C. 306105
	16 U.S.C. 470h-2(e)	54 U.S.C. 306106
	16 U.S.C. 470h-2(f)	54 U.S.C. 306107
	16 U.S.C. 470h-2(g)	54 U.S.C. 306109
	16 U.S.C. 470h-2(h)	54 U.S.C. 306110
	16 U.S.C. 470h-2(i)	54 U.S.C. 306111
	16 U.S.C. 470h-2(j)	54 U.S.C. 306112
	16 U.S.C. 470h-2(k)	54 U.S.C. 306113
Section 111	16 U.S.C. 470h-3(a), (b)	54 U.S.C. 306121
	16 U.S.C. 470h-3(c)	54 U.S.C. 306122
Section 112	16 U.S.C. 470h-4	54 U.S.C. 306131
Section 113 (Repealed)	16 U.S.C. 470h-5	Repealed as obsolete. It provided that the Secretary study the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities and not later than 18 months after October 30, 1992, submit to Congress a report detailing the Secretary's findings and recommendations from the study.
Section 201	16 U.S.C. 470i	54 U.S.C. 304101
Section 202	16 U.S.C. 470j	54 U.S.C. 304102
Section 203	16 U.S.C. 470k	54 U.S.C. 304103
Section 204	16 U.S.C. 470l	54 U.S.C. 304104
Section 205	16 U.S.C. 470m	54 U.S.C. 304105
Section 206	16 U.S.C. 470n	54 U.S.C. 304106
Section 207 (Repealed)	16 U.S.C. 470o	Repealed as obsolete. It provided that personnel, property, records, and unexpended balances of funds be transferred by the Department of the Interior to the Advisory Council on Historic Preservation within 60 days of the effective date of Public Law 94-422, which was approved on September 28, 1976.
Section 208	16 U.S.C. 470p	54 U.S.C. 304105
Section 209	16 U.S.C. 470q	54 U.S.C. 304105
Section 210	16 U.S.C. 470r	54 U.S.C. 304107
Section 211	16 U.S.C. 470s	54 U.S.C. 304108
Section 212	16 U.S.C. 470t(a) (1st sentence)	54 U.S.C. 304109
	16 U.S.C. 470t(a) (last sentence)	Repealed as unnecessary. It authorized to be appropriated amounts necessary to carry out this part.
	16 U.S.C. 470t(b)	54 U.S.C. 304109
Section 213	16 U.S.C. 470u	54 U.S.C. 304110
Section 214	16 U.S.C. 470v	54 U.S.C. 304108
Section 215	16 U.S.C. 470v-1	54 U.S.C. 304111
Section 216	16 U.S.C. 470v-2	54 U.S.C. 304112
Section 301	16 U.S.C. 470w(1)	54 U.S.C. 300301
	16 U.S.C. 470w(2)	54 U.S.C. 300317
	16 U.S.C. 470w(3)	54 U.S.C. 300310

	16 U.S.C. 470w(4)	54 U.S.C. 300309
	16 U.S.C. 470w(5)	54 U.S.C. 300308
	16 U.S.C. 470w(6)	54 U.S.C. 300311
	16 U.S.C. 470w(7)	54 U.S.C. 300320
	16 U.S.C. 470w(8)	54 U.S.C. 300315
	16 U.S.C. 470w(9)	54 U.S.C. 300304
	16 U.S.C. 470w(10)	54 U.S.C. 300305
	16 U.S.C. 470w(11)	54 U.S.C. 300316
	16 U.S.C. 470w(12)	54 U.S.C. 300318
	16 U.S.C. 470w(13)	54 U.S.C. 300307
	16 U.S.C. 470w(14)	54 U.S.C. 300319
	16 U.S.C. 470w(15)	54 U.S.C. 300302
	16 U.S.C. 470w(16)	54 U.S.C. 300303
	16 U.S.C. 470w(17)	54 U.S.C. 300313
	16 U.S.C. 470w(18)	54 U.S.C. 300314
Section 302	16 U.S.C. 470w-1	54 U.S.C. 307106
Section 303	16 U.S.C. 470w-2	54 U.S.C. 307107
Section 304	16 U.S.C. 470w-3	54 U.S.C. 307103
Section 305	16 U.S.C. 470w-4	54 U.S.C. 307105
Section 306	16 U.S.C. 470w-5(a) (1st sentence)	54 U.S.C. 305502
	16 U.S.C. 470w-5(a) (last sentence)	54 U.S.C. 305503
	16 U.S.C. 470w-5(b)	54 U.S.C. 305502
	16 U.S.C. 470w-5(c)	54 U.S.C. 305504
	16 U.S.C. 470w-5(d)	Repealed as obsolete. It provided for the renovation of the site on which the National Museum for the Building Arts is located.
	16 U.S.C. 470w-5(e)	54 U.S.C. 305505
	16 U.S.C. 470w-5(f)	54 U.S.C. 305501
Section 307	16 U.S.C. 470w-6	54 U.S.C. 307102
Section 308	16 U.S.C. 470w-7(a)	54 U.S.C. 305102
	16 U.S.C. 470w-7(b)	54 U.S.C. 305103
	16 U.S.C. 470w-7(c)	54 U.S.C. 305104
	16 U.S.C. 470w-7(d)	54 U.S.C. 305105
	16 U.S.C. 470w-7(e)	54 U.S.C. 305101
Section 309	16 U.S.C. 470w-8	54 U.S.C. 305106
Section 401	16 U.S.C. 470x	Not repealed but omitted from the text of title 54. It provides the following findings regarding the National Center for Preservation Technology and Training provisions: "The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial." It may be cited as Pub. L. No. 102-175, title XL, § 4022, 106 Stat. 4765 (1992).
Section 402	16 U.S.C. 470x-1	54 U.S.C. 305301
Section 403	16 U.S.C. 470x-2	54 U.S.C. 305302
Section 404	16 U.S.C. 470x-3	54 U.S.C. 305303
Section 405	16 U.S.C. 470x-4	54 U.S.C. 305304
Section 406	16 U.S.C. 470x-5	54 U.S.C. 305305
Section 407	16 U.S.C. 470x-6	54 U.S.C. 305306

Section 401*	16 U.S.C. 470a-1	54 U.S.C. 307101 (a) through (d). * = These are legislative provisions that were enacted to codify requirements of the World Heritage Convention, and were included among the National Historic Preservation Act Amendments of 1980. However, they were not technically part of the National Historic Preservation Act. Their "Section 401" and "Section 402" numbering in the first column refers to their section numbers under the public law that enacted the 1980 amendments, rather than their numbering for the National Historic Preservation Act itself. However, their "old section" names are included since, particularly in the case of "Section 402," below, those are section names that have been popularly used by practitioners.
Section 402*	16 U.S.C. 470a-2	54 U.S.C. 307101 (e). See "*" notes, above. This is the section that imposes requirements similar to "Section 106" regarding projects outside the United States.