



# Board of Supervisors Memorandum

January 20, 2015

## Abandonment Plats to Re-plat All or Portions of Star Valley Blocks 4, 7 and 8

### I. Background

Discussion regarding Star Valley and the developer's failure to meet the original rezoning requirements for offsite transportation improvements and the developer's failure to comply with the terms of the assurance agreements for the plats has been on the Board of Supervisors Agenda for a number of meetings.

It is appropriate the Board of Supervisors have public information regarding this matter and the reason the County has insisted that developers be responsible for offsite transportation improvements. In addition, some concerns have been raised regarding trail maintenance, as well as responsiveness to homeowner concerns.

The information in this memorandum addresses the various issues raised regarding Star Valley.

### II. Offsite Transportation Improvements to Support Safe, Convenient Access to Star Valley

The developer claims there is no requirement for offsite improvements; and if there was, such improvements should have been paid from transportation impact fees collected from the Star Valley Development Area. Below is a chronology of facts and citations from project documents that clearly refute this claim. All of the citations, references and dates are contained in materials on file with the County. Upon request, these will be provided to you.

#### **DOCUMENTATION REQUIRING STAR VALLEY SPECIFIC PLAN DEVELOPMENT TO PROVIDE OFFSITE TRANSPORTATION IMPROVEMENTS NOT REIMBURSABLE FROM TRANSPORTATION IMPACT FEES**

Numerous County documents tie the Star Valley Specific Plan to offsite transportation improvements as a condition of Specific Plan approval and the rezoning conditions that accompany the Specific Plan. These rezoning conditions are recorded in Ordinance 1987-212 in Book 8235, pages 863

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through 869. Specific conditions in the ordinance related to transportation improvements are described in Condition 11. For this analysis, sections of Condition 11 are restated below.

11A – *“An access control policy shall be established for the principle streets...the number of vehicular access points along major streets shall be limited... Median breaks and the local collector streets shall be spaced at intervals sufficiently far enough to maintain the through traffic characteristics of these roadways.”* (Emphasis added)

11B – *“All roadway improvements shall be constructed to the ultimate design per the approved transportation system implementation plan all development related internal transportation improvements for the specific land shall be provided by the developer.”* (Emphasis added)

11D – *“A transportation improvement financing plan and transportation system implementation plan for the specific planned area shall be required before any subdivision plat is approved.”* (Emphasis added) The implementation plan shall address the provision of major routes within the plan area, the provision of capacity and route continuity adjacent to the plan and the areas of responsibility of the County, the primary developer and any subsequent developer. (Emphasis added)

Condition A above clearly indicates major control of access along major streets, including Valencia Road adjacent to the property, and that the ultimate roadway improvement would be controlled by medians with breaks in the medians at intervals sufficient to maintain through traffic. Condition B indicates the developer would be required to construct the ultimate design per the approved transportation system implementation plan with no other funding sources from

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the public. Condition D simply stated the timing for when a transportation improvement financing plan had to be developed, submitted and approved by Pima County.

The Specific Plan further discusses the need to extend Camino Verde to Valencia Road. Specifically, Page 77, recorded in Book 8235, Page 983 states:

*The Star Valley Circulation Plan is designed "...to provide a connection for the Star Valley community to the metropolitan area arterial street system..."*

and

*The primary street system includes "...Camino Verde, which is also a proposed north-south route to connect Los Reales to Valencia Road."*  
(Emphasis added)

The document, in Book 8235, Page 984, describes Camino Verde as a Type I street defined as:

*"Type I streets are the major arterial streets serving the project. They are four-lane, divided thoroughfares with a landscaped median. Parking is not permitted on Type I streets. The standard cross-section for any Type I street is shown as Exhibit 22."* (Emphasis added)

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Camino Verde is a Type I street and shown in the Specific Plan connecting to Valencia Road. The plan contemplated clearly the connection of Camino Verde to Valencia as a major road.

The Specific Plan further addresses the responsibility for construction of Type I streets on Page 115, recorded in Book 8235, Page 1027, as:

*“The primary developer will be responsible for 24 feet of asphalt paving, a 20-foot landscaped median, and landscaping at the edge of the road.”*  
(Emphasis added);

and

*“The secondary developer(s) will be responsible for an additional 24 feet of paving...the outside curb...and sidewalks...”*

The Transportation Improvement Financing Plan required as Condition 11D was finally submitted in **February 2002** as part of the Traffic Impact Analysis for the Master Block Plat, 15 years after approval of the Specific Plan document. During this intervening time, the County adopted transportation impact fees in 1997 to offset the cost of providing new transportation capacity infrastructure to offset growth impacts. The site access section of the report on Page 26 states:

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*"Extension of Camino Verde, south of Valencia Road into the site, should be completed early in the development."*

Additionally, the conclusions and recommendations section of the report, beginning on Page 26, indicates:

*Conclusions and Recommendations*

*1. The Development is expected to generate some 48,000 daily trips at build-out. It is predicted that 40,000 trips will be external to the development site. (Emphasis added)*

*2. Valencia Road, Camino Verde, and Ajo Highway will be the primary arterials that serve the Star Valley Development, as well as other future developments in the surrounding area. In order to provide sufficient roadway capacity and ensure proper access, the following improvements will need to occur.*

*a) Widen Valencia Road, from Camino Verde to the CAP canal, to a 4-lane cross section. Install a traffic signal at Camino Verde/Valencia Road. Traffic signals may also be required at Wade Road/Valencia Road and at Viviana Road/Valencia Road, depending upon traffic distribution to the site.*

*b) Widen Ajo Way to 4-lanes from Camino Verde to Kinney Road.*

*c) Widen Camino Verde to a 4-lane divided cross section from Valencia Road to Ajo Highway. Install a traffic signal at Camino Verde/Ajo Way.*

(Emphasis added)

Section 8.1 on Page 27 of the report indicates a total cost of \$27 million for offsite transportation improvements necessary to support the traffic demand generated from the Star Valley development. The cost of these offsite improvements today would be approximately \$40.5 million based on the Construction Cost Index inflator between 2002 and 2014. This is substantially more than any proposed or collected transportation impact fees:

### **8.1 Improvement Costs**

*Planning level cost estimates for the recommended roadway improvements external to the development site are provided in Exhibit 24. The costs represent improvements required to support traffic demand generated by the Star Valley development at buildout and by other developments that may occur in the area.*

**Exhibit 24. Roadway Improvement Costs.**

	Roadway	Section	Description	Length	Cost (\$ millions)
1	Valencia Road	Camino Verde to CAP Crossing	Widen to 4 lanes	1.0 mi	5.0
2	Camino Verde	Valencia Road to Ajo Way	Widen to 4 lanes	1.8 mi	9.0
		<u>Development Boundary to Valencia Road</u>	Construct 4 lanes	0.5 mi	2.5
3	Ajo Highway	Camino Verde to Kinney Road	Widen to 4 lanes	1.5 mi	7.0
4	Viviana Road	Development Boundary to Valencia Road	Construct 4 lanes	0.5 mi	2.5
5	Yedra Road	Vahalla to Development Boundary	Construct 2 lane roadway	0.5 mi	1.0

(Emphasis added)

The report further recognizes on Page 27:

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*"Construction of the sections of Camino Verde and Viviana Road to provide connections with roads and access to the site will be required as part of the development." (Emphasis added)*

These are the offsite extensions of Camino Verde and Viviana Road from the north side of the Star Valley Development to Valencia Road and were recognized as a developer financial obligation.

The **February 2002** Traffic Impact Analysis was approved in **July 2002**; however, the Transportation Improvement Financing Plan for Star Valley was not approved by the County as stated in the **July 8, 2002** letter to the project manager of MMLA signed by Mr. Jonathan Crowe. The letter states in Paragraph 1:

*"What remains to be settled is a responsibility for funding the offsite roadway improvements necessary for this project." (Emphasis added)*

The letter continues in Paragraph 2:

*"Transportation staff recommends the developer pay for and construct those immediate offsite improvements needed to mitigate the traffic impacts of this development...these improvements include Viviana Road and Camino Verde connections to Valencia Road..." (Emphasis added)*

The third paragraph of the letter states:

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*"We discussed using development impact fees to help fund all offsite transportation except Viviana Road and Camino Verde connections to Valencia Road. Transportation staff views these road connections as project related and not appropriately funded with impact fees."*  
(Emphasis added)

On **August 15, 2002**, Mr. Joseph Cesare stated in a facsimile message to Deputy County Administrator John Bernal:

*"By fax message on August 9, 2002 we requested that you approve our traffic report and cause the block plat to be recorded for the above caption: to date we have not had a response and need to know your decision."*

In response, Mr. Bernal asked the Department of Transportation to respond. On **August 28, 2002**, in a letter directed to Mr. Cesare, Deputy Transportation Director Benjamin H. Goff stated that his interpretation of Condition 11-D indicates:

*"Transportation staff interprets this transportation condition to require participation by the property developers in any needed roadway improvements that are or will be necessary to accommodate traffic impacts associated with the proposed development. The needed roadway improvements are to offset impacts to existing public roadways and provide access to the developing properties." (Emphasis added)*

He further states on Page 2:



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*"These noted offsite roadway improvements are anticipated to cost approximately \$27 million. This cost represents how much money is needed to construct the off-site roadway improvements required to support the traffic demand generated by the Star Valley development..."*  
(Emphasis added)

He also states:

*"Developer participation in the construction and/or financing of any needed safety and/or capacity improvements for off-site roadways to address development traffic impacts to existing public roadways has routinely been required by the Department of Transportation as a condition of development approval."* (Emphasis added)

Finally, on Page 3, Mr. Goff states:

*"The Department of Transportation cannot approve a Transportation Improvement Financing Plan and System Implementation Plan for the Specific Plan without a commitment to participate in all needed improvements. Further the Department of Transportation cannot support the notion that the Star Valley Specific Plan was approved by the Board of Supervisors with the understanding that rezoning condition 11-D implied that the sole transportation obligation of the Star Valley development was construct only onsite subdivision roadways and only one access road to serve a development of 4,300 residential units."*  
(Emphasis added)

Mr. Goff offers an administrative remedy to Mr. Cesare when he states:

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*"In lieu of an agreement, staff recommends the Star Valley developer request through Development Services Department a Board of Supervisors hearing in order to obtain the Board's interpretation of transportation condition 11-D." (Emphasis added)*

Correspondence from Mr. Goff dated **September 30, 2002** to the Principal of MMLA, Thomas C. Lodge, further states on Page 1:

*"Camino Verde (#7). Camino Verde will be constructed as a two-lane roadway from the development plan boundary north to Valencia Road in the years 2005-2010" (Emphasis added)*

and

*"Camino Verde/Valencia Road intersection (#8) this intersection will be signalized as warranted, between the years 2005 and 2010. Pima County and Star Valley will share in the funding of this improvement." (Emphasis added)*

Mr. Lodge responds on **October 2, 2002** in a letter to Mr. Goff. Mr. Goff annotates and sends back to Mr. Lodge on **October 7, 2002**. In Items 3 and 4, Mr. Lodge inserted the language:

*"This project would be eligible for development impact fee credit."*

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Mr. Goff deletes this language as a strikeout. In addition, on Page 2, there are a number of attempts to have offsite improvements paid by impact fees. Mr. Goff also annotates these with strikeouts.

Mr. Cesare was certainly aware of the interactive correspondence; as on **October 17, 2002**, he sent Supervisor Sharon Bronson a facsimile that states:

*"As you know, we have attempted to reasonably work out some conditions with the Transportation Department which we believe are not applicable to our Specific Plan Ordinance."*

and

*"This letter is simply written as a courtesy to advise you of a forth coming legal action since no reasonable remedy has been offered in order to resolve the impasse."*

On **October 21, 2002**, I issued a memorandum to Deputy County Administrator John Bernal instructing him to initiate a Board of Supervisors action to reconsider the plat approval based on noncompliance with specific plan rezoning conditions.

On **October 28, 2002**, Mr. Goff, in a letter signed by Richard G. Harrington, restates on Page 1, Item 3:

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*"Camino Verde will be constructed as a two-lane roadway from the development plan boundary north to Valencia Road in the years 2005-2010"* (Emphasis added)

and restates in Item 4 the sharing of funding in the signalization of Camino Verde and Valencia Road. On Page 2, Mr. Goff's letter states:

*"Items 3, 8 and 9 are outside of the Specific Plan boundary (offsite improvements). These improvements are the responsibility of the master developer of the Star Valley Specific Plan. PCDOT has worked diligently with your firm, other consultants and Mr. Cesare to assure that the Star Valley Transportation Financing Plan adheres to the conditions of approval."* (Emphasis added)

He further states:

*"Condition 11D of the rezoning explicitly applies to roadways adjacent to, as well as within, the plan area...You have suggested that these and other improvements enumerated above would be eligible for development impact fee credits should Pima County extend the Impact Fee Ordinance to encompass the Specific Plan area. PCDOT will recommend that the impact fees be assessed in this area; however, their use will be directed to significant regional roadways, such as Valencia Road."* (Emphasis added)

Mr. Lodge responds on **October 30, 2002** to Mr. Goff, stating and accepting the terms and conditions as originally required by the Department of Transportation

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for the Transportation Improvement Financing Plan but then qualifies it on Page

3:

*"By its acceptance of the County's changes to the Financing Plan, USH/SVA Star Valley does not waive any constitutional or statutory grounds it may have to challenge the requirement of off-site improvements as a condition of plat approval, or its ability to seek the inclusion of the off-site improvements as projects to be funded by future development fees adopted by Pima County."*

Clearly, it was and is the responsibility of the developer to provide significant offsite transportation improvements; particularly those improvements now being constructed by the County on behalf of the developer extending Camino Verde from the north side of Star Valley to Valencia Road. The County will expect full repayment, with interest accruing from the time the County has expended funds to the date the payment is received. The principal costs for the Camino Verde extension are now estimated to be \$1,501,811.

The developer is also responsible to reimburse the County for one-half of the cost of the permanent traffic signal at Valencia Road. This cost is \$147,676.50. In total, at least \$1,649,487, plus interest, must be paid for offsite infrastructure installed by the County on behalf of the developer of Star Valley. These funds are due at the completion of the Camino Verde project. Full payment will be due for both of these cost elements, and interest on any funds expended by the County must be paid by the developer until the full amount has been repaid to Pima County.

Furthermore, there are other offsite transportation improvements referenced in the Specific Plan as conditions of approval of the Transportation Improvement Financing Plan. These requirements will remain in full force and effect, and no variation of these requirements will be permitted or be negotiated.

The developer has claimed that development impact fees should be used to pay for the extension of Camino Verde to Valencia Road. As can be seen, there is ample documentation to clearly demonstrate this was a developer obligation. The development impact fees first adopted by the County in 1997 were not extended to the Star Valley area until the Avra Valley Benefit Area was adopted in 2003 – after the 2002 Traffic Impact Analysis and Transportation Improvement Financing Plan for Star Valley.

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The County also stated in 2002 that development impact fees would be reserved for Valencia Road. The County has allocated to the now ongoing construction of Valencia Road, Wade Road to Mark Road, \$6,472,868 in impact fees. This allocation is more than the \$5,559,131 in impact fees collected for Star Valley since 2003. It should be noted that \$1,501,811 is being advanced using County impact fees on behalf of the developer; since the need to make these improvements was critical to the safety of Star Valley residents, and the developer refused to honor his 2002 obligation for these improvements. As stated previously, the County expects full repayment, with interest, of these funds to be used for remaining improvements of Valencia Road from Ajo Way to Wade Road.

### III. Trail System Maintenance

The trail system and its development is an integral component of the approved Star Valley Specific Plan and, as such, the developer was to construct the trail system.

#### **DOCUMENTATION REQUIRING STAR VALLEY SPECIFIC PLAN DEVELOPMENT TO PROVIDE AND MAINTAIN TRAIL IMPROVEMENTS**

Numerous County documents tie the Star Valley Specific Plan to trail improvements as a condition of Specific Plan approval and the rezoning conditions that accompany the Specific Plan. The rezoning conditions are recorded in Ordinance 1987-212 in Book 8235, pages 863 through 869. Specific conditions in the ordinance related to required paths and trails are Condition 11.C and 12.E.

*11.C – “Establishment of design criteria to include right-of-way widths, typical cross-sections, design speeds, utility locations, maximum design roadway slopes, access control, bike paths and pedestrian way or sidewalks shall be subject to approval by the Pima County Department of Transportation and Flood Control District.” (Emphasis Added)*

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*12.E – “Trails within the 100-year floodplain shall not be maintained by Pima County.” (Emphasis added) “Trails within access easements are acceptable and can be incorporated into a mitigation plan.” (Emphasis Added)*

From the above requirements, Conditions 11C and 12E clearly indicate trails would be part of the project and that trails within the 100-year floodplain would not be maintained by Pima County. Additionally, Page 1 of the Specific Plan, recorded in Book 8235, Page 880, specifically states,

*“Upon adoption by the Pima County Board of Supervisors, the Specific Plan will become the zoning ordinance for the site. The Star Valley Specific Plan specifies land use and established development regulations for the site.” (Emphasis added).*

This provision clearly establishes that the development regulations for the land and its use are contained within the Specific Plan. The Specific Plan discusses recreation and open space beginning on Page 1. Specifically, the Star Valley Summary statement indicates,

*“A comprehensive recreation and open space facilities plan is an integral component of the community plan.” (Emphasis Added)*

On Page 9 of the document, in Book 8235, Page 891, recreation facilities and trails are reflected in the project goals. Specific statements include:

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*“...the act of setting aside land in its natural condition, is not an integrated component of the master plan. Instead, open space will be created by integrating the comprehensive drainage system into an open space system with additional recreation facilities.” (Emphasis Added)*

and

*“...a comprehensive system composed of three drainage corridors which will serve as open space areas and linear recreation facilities. Within these multi-use drainage and recreation corridors will be drainage channels to convey surface water across the site, pedestrian and bicycle trails which will provide linkages between residential areas and elementary schools/parks.” (Emphasis Added)*

The document in Book 8235, Page 902 and Page 903, cites community benefits of the project, including:

*“The pedestrian/bike path system and neighborhood parks will provide much needed recreation facilities for the area.”*

The Specific Development Plan portion of the document begins on Page 62, recorded in Book 8235, Page 965, and states in Section A., Purpose and Intent:

*“The purpose of this section of the Specific Plan document is to provide for the various elements of the Specific Plan. These elements include the Land Use Concept Plan, Circulation Concept Plan, Drainage Concept Plan, Utilities Concept Plan, Recreation/Open Space Concept Plan and Environmental Resources Conservation Plan.” (Emphasis Added)*



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Section B., Land Use Concept Plan, Recreation/Schools, on Page 67, indicates,

*"The parks are located to provide for both vehicular and bicycle/pedestrian access by situating them adjacent the linear drainage areas."* (Emphasis Added)

and

*"The parks and school site are situated adjacent to the pedestrian and bike path system which circulates through the entire Star Valley area."* (Emphasis Added)

Trails are specifically referenced within the Drainage Concept Plan on Page 70 of the document, in Book 8235, Page 974, as:

*"The three main channels are designed with a multi-use concept (see Exhibit 19, Drainageway Cross-Section)."* (Emphasis Added)

and

*"The terraces will also provide linear park amenities (i.e., bike paths, trail systems), which lessens the visual impact of the main drainageways."* (Emphasis Added)

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In addition, Section F., Recreation Concept Plan, beginning on Page 84, provides specific details for the pedestrian/bike paths and specifies what improvements would be dedicated to the County as follows:

*"The Recreation Concept Plan is designed to provide for both active and passive recreation needs, provide visual relief and provide a pedestrian/bicycle link throughout the community (see Exhibit 25)."*  
(Emphasis Added)

and

*"The developer will dedicate the park sites to the public with the master plat."* (Emphasis Added)

Page 86 of the document further states:

*"The pedestrian/bicycle path system will traverse the site adjacent to the flood control system. The path system will provide a pedestrian/bicycle link to the entire community. This system will include approximately 5.6 miles of paths. Builders of planning areas will be encouraged to provide safe and convenient access to this system."* (Emphasis Added)

and

*"In addition to the planned recreation facilities, secondary developers have the option of providing recreation facilities within their developments."* (Emphasis Added)

The document, in G. Environmental Resources Conservation Concept, Section 2.

Vegetation, on Page 88, states:

*"Significant species of mesquite found on the site shall be boxed using available site-boxing technology and stored for later use within the development. They may be used in landscaping the linear pedestrian/bicycle path along the major drainage areas or used in the public park sites as shown on the plan." (Emphasis Added)*

The responsibilities for implementing the requirements of the Specific Plan, including the pedestrian/bike paths enumerated above, are delineated in the Implementation Program section of the plan beginning on Page 112, recorded in Book 8235, Page 1023. Specifically, Section A. Purpose and Intent states,

*"The purpose of this section is to identify the phasing for development of the project and the responsible parties for implementation of the urban service facilities required to implement the Star Valley Specific Plan. This includes implementation of the street system, surface drainage system, sewer system, water system and parks and recreation facilities." (Emphasis Added)*

Section C., General Implementation Responsibilities, on Page 113, indicates:

*"Implementation of the Star Valley Specific Plan shall be the responsibility of the primary developer and the several secondary builder/developers, except as noted. The primary developer shall be responsible for Master Block Platting, engineering and implementation of the spine infrastructure systems. The spine infrastructure systems*

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*are defined as those systems which are necessary to provide for development of the individual planning areas. These include the three primary drainageways and their associated retention/detention basins..." (Emphasis Added)*

As set forth above, the primary drainageways included the multiuse concept, which contained the pedestrian/bike path adjacent to the drainageways (see Exhibit 19, Drainageway Cross-Section and Exhibit 25, Recreation Concept Plan), all of which were required of the primary developer by the Specific Plan.

With the initial submission of the Tentative Master Block Plat for Star Valley Blocks 1 through 30 staff comments reflected the pedestrian/bike requirements of the Specific Plan. Specifically, review comments in a November 28, 2000 letter from a Senior Planner to the developer's representative at McGovern, MacVittie, Lodge and Associates (MMLA) stated,

*"Show the bicycle/pedestrian path system as approved in the Specific Plan in the cross section."*

This comment was responded to in the June 19, 2001 letter from the MMLA representative, which accompanied the second submittal of the Tentative Plat. This comment letter specifically stated,

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*"The bicycle/pedestrian pathways are now shown in the cross sections."*

Review of the revised Tentative Plat resulted in further staff comment regarding the required pedestrian/bike paths. The following comment was included in the letter from a Senior Planner on July 11, 2001:

*"Show the bicycle/pedestrian path system as approved in the Specific Plan in the cross sections. All the cross sections are labeled as drainageways with no indication as to which includes a bicycle/pedestrian path way."*

This comment was responded to by the developer's representative in a letter dated September 5, 2001, by indicating:

*"Channel sections have been revised to show multi-use Bike and Pedestrian use."*

In a letter dated February 13, 2002, Pima County Natural Resources Parks and Recreation staff summarized the agreements of a meeting on February 12, 2002 with the MMLA representative on behalf of the developer. The letter specifically states,

*"The developer will construct paths along both sides of the projects network of drainage channels to provide for off-street bicycle and pedestrian circulation between neighborhoods and throughout the site."*

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This statement is consistent with the requirements for pedestrian and bicycle paths as approved in the Specific Plan.

During approximately the same timeframe, I sent a letter to the developer's representative dated January 11, 2002 expressing an interest in:

*"...assuring that the Star Valley project has sufficient trails, pathways and recreational facilities within the approved development to serve the community that will be constructed within Star Valley."*

The Final Master Block Plat for Star Valley was approved by the Board of Supervisors on July 2, 2002; however, the Final Plat was held from recordation due to unresolved issues regarding transportation infrastructure obligations and the design and maintenance of the drainage channels and trails. In correspondence to Deputy County Administrator, John Bernal on October 21, 2002, I noted difficulties related to transportation infrastructure contributions and noted:

*"If reasonable accommodation and agreement cannot be made regarding these specific plan requirements, I would request that the Star Valley block plat be placed back on the Board's agenda for reconsideration based on non-compliance with the specific plan conditions."*

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In addition, in a September 30, 2002 memorandum to Deputy County Administrator Bernal regarding the Star Valley park facilities, I indicated,

*"In any event, I do not believe that Pima County should be responsible for the operation and maintenance costs of said basins, nor any trail system within the development. Furthermore, the trail width of 10 feet would appear to be marginal at best."*

The Drainage Improvement Plans for Star Valley Blocks 1 through 32, P1200-184 were approved in January 2003. The drainage channel details (Page 32 and 33) only depict the location of the multiuse bike and pedestrian path relative to the drainage channel. The approved plans do not contain any paving or construction details for the path, and detail "T" for the typical bank channel treatment explicitly states,

*"VARIES 10' – 15' MULTI-USE BIKE AND PEDESTRIAN EARTHEN PATH".*

General Grading Note #5 on Page 1 states,

*"THIS PLAN IS TO BE USED FOR GRADING CONSTRUCTION ONLY. CONTRACTOR SHALL USE OTHER SPECIFIC IMPROVEMENT PLANS FOR IMPROVEMENTS OTHER THAN GRADING."*

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On December 10, 2003, I sent a letter to Mr. Joseph Cesare confirming the conditions for Pima County's acceptance of the paths for maintenance as follows:

*"Upon completion of the Star Valley development, Pima County will accept the trails system, including the constructed multi-use paths. Our preference is to have the paths constructed with durable materials, which are essentially equivalent to asphaltic concrete as a wearing surface with a structural support base of aggregate base material. To the extent that these trails are not constructed to this standard, repair and replacement will not be an obligation of Pima County, but others."*

A revision to the Drainage Improvement Plans for Star Valley Blocks 1 through 30, P1200-184, was approved in December 2003. Each of the referenced notes and details from the January 2003 improvement plan approval remained on the revised set of plans. Revision 3 on the plan introduced the concept of a paved trail; however, the plan view detail on Page 33A specifically states,

*"FUTURE PATH SURFACING BY OTHERS",*

and no additional pavement construction details were included; further emphasizing that construction of a paved path was not included in the approved revised drainage plans. To date, no plans for construction of a paved path have been approved by Pima County. Likewise, design criteria for the bike paths and



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pedestrian ways were never approved by the Pima County Department of Transportation and Regional Flood Control District as required by Rezoning Condition 11.C of the approved Specific Plan.

During 2004, efforts proceeded related to the design of park improvements required by the Specific Plan and to resolve issues related to drainage channel design, construction and maintenance responsibilities. A Flood Control Maintenance Agreement was approved on December 7, 2004, which established the requirements for maintenance and acceptance of the drainage channels. Included as Exhibit E to the agreement is a typical channel cross section showing maintenance of the constructed channel (primary flow regime) to be performed by the Regional Flood Control District, with the multiuse bike and pedestrian path outside of the channel.

In November 2004, Natural Resources Parks and Recreation staff identified a wide range of problems associated with the paved path system, including damage, quality of paving and compaction issues. Over the next 18 months, County staff attempted to resolve issues with the master developer related to construction of the Basin 4 Park, including the acceptance and maintenance responsibilities for the park and trail system.

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On July 20, 2006, in response to correspondence from the developer regarding acceptance of improvements, Deputy County Administrator John Bernal stated via memorandum to me that,

*"The originally contemplated park and trail system concept is not being specifically adhered to by the master developer and, in fact continue to be modified."*

and

*"There is a question as to the specific performance standards, including design standards to be employed in the completion of various drainage and trail improvements."*

On August 1, 2006, the Board accepted the dedication of common area associated with Star Valley Basin Park 4 based on compliance with the approved design plans. This information was communicated to Mr. Joseph Cesare by letter from me dated August 15, 2006. The letter also restated the timeframe for Pima County to assume responsibility for maintenance of the draining channels following the agreed upon 24-month establishment period. The letter also informed Mr. Cesare that,

*"There is no agreement to separately accept the trails developed in the drainage channels."*

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In an August 17, 2006 letter to Mr. Joseph Cesare, the Deputy County Administrator Bernal outlined steps for consideration of anticipated future requests for acceptance of drainage channels for maintenance.

Over a year later, the developer requested that Pima County assume maintenance of the drainage channels in a letter dated October 29, 2007. In a memorandum dated November 16, 2007, the Regional Flood Control District Director advised Deputy County Administrator Bernal that certain basin improvements had not been completed per the approved plan and that landscaping and paved sections of the channel were constructed without permits or agreement. This information was communicated to the developer in a letter from Deputy County Administrator Bernal dated November 27, 2007.

Subsequently, between May 2008 and September 2008, communication occurred between Deputy County Administrator Bernal and Ms. Keri Silvyn, attorney with Lewis and Roca, on behalf of the developer. On September 11, 2008, Mr. Bernal advised Ms. Silvyn via letter that,

*"The trails do not meet standard specifications and therefore will not be maintained by the County given the anticipated continuous public fund investment."*

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In a May 1, 2009, letter from the Deputy County Administrator, the developer was advised that Pima County was accepting drainage improvements but not the trails. The letter specifically stated,

*"The trails that have been built within the drainage channels, whether within the primary or secondary flow regime, are specifically excluded from this acceptance...and the County shall not by this acceptance of the drainage improvements be deemed to have in any way accepted maintenance of or responsibility for those trails."*

Mr. Cesare signed an acceptance of the stated terms and conditions on May 6, 2009.

From a review of the chronology of the trail system maintenance, it is fairly clear the trails were a key element and requirement of the Specific Plan and were intended to provide a network of recreational amenities for the homeowners within Star Valley. It is also clear that had these features been constructed to a County standard, the County would have maintained them. However, actions were taken by the developer to preclude such maintenance. For example, the developer's construction of a paved pathway within the floodplain or in drainage areas subject to frequent flooding and inundation.

In addition, numerous requests were made by the County for actual plans and specifications for the trail improvements. No plans were ever produced or approved by the County for a public trails system.

Finally, trails were not constructed under County supervision. It is certainly possible the trails could be retrofitted, i.e., removed from the floodplain and plans and proposed construction quality control assurances be provided by the developer. However, at this time, no effort has been undertaken by the developer to do so; hence, the trails system constructed to date in Star Valley will not be maintained by Pima County.

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#### IV. Homeowners' Concerns Regarding Star Valley Developer

Star Valley now has 1,371 residences based on permit data. The residents have become increasingly active and concerned about their community; its amenities and safe and convenient access to their development. They have expressed strong concerns regarding the responsiveness of the HOA Board of Directors, which now consists of only Joseph and Jeff Cesare. The homeowners have raised concerns over a number of issues regarding trail maintenance, access, transportation improvements, landscaping maintenance and other issues. They have increasingly turned to County staff and the County Supervisor that represents the area for information and answers to their inquiries. In fact, the homeowners have been repeatedly urged by the HOA management firm to contact the County. From the April 3, 2014 meeting:

*"This is your remedy. After a while, the Board of Supervisors will be tired of hearing about Star Valley, and they will do something."*

Below are summaries of some of the interactions between Star Valley homeowners and the County; directly, or through meetings called by interested homeowners within the Star Valley development, or at HOA meetings held by representatives of the developer or HOA Board of Directors. Some of the information listed below was offered by various Star Valley homeowners.

#### **DOCUMENTATION ON PROPERTY OWNERS' CONCERNS REGARDING STAR VALLEY AND COMMUNICATION WITH THE DEVELOPER**

Property owners have been voicing concern about the condition of the trails, roads, traffic and other matters since at least 2011. Several homeowners provided details of the meetings and frustrations that have led up to current day status.

***September 5, 2011 Citizen Letter to Supervisor Sharon Bronson***

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The letter requests a stoplight at Wade and Valencia due to the building amount of traffic. Supervisor Bronson responded that the Department of Transportation would study the stoplight and road conditions in the area.

***March 8, 2012 HOA meeting***

At the meeting at Ryan Field, the Homeowners Association (HOA) held their annual meeting. The only voting members of the Board of Directors are Mr. Joseph Cesare and his son, Mr. Jeff Cesare, who give their proxy to the management company, Platinum Management. Per the Conditions, Covenants and Restrictions (CCR)s, the developer turns over control to the homeowners after a certain amount of lots/blocks are sold and developed. At that meeting, homeowners asked about a second point of access to Star Valley along Camino Verde and a signal at Wade and Valencia. They were instructed by Ms. Kathleen Buske of Platinum Management to contact the Pima County Board of Supervisors for the signal and the Department of Transportation about the street. She stated that impact fees were collected for this purpose and that a petition signed by residents would help. Regarding the trail system, residents complained about the conditions and urged cleanup. Ms. Buske stated,

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*"The County is responsible for these trails. You do have standing to resolve these problems. All I will say is Sharon Bronson is up for reelection."*

***April 13, 2012 HOA Letter to Pima County Department of Transportation***

***Regarding Road Conditions***

The HOA sent a letter requesting the use of impact fees to fix the roads in the subdivision. The Department of Transportation responded that impact fees are not available for that purpose. A photograph of a sign near the entrance of Star Valley along Wade Road that appeared at the time is shown below.



***September 24, 2012 Complaint Letters to Supervisor Bronson and Pima County***

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Per the letter,

*"homeowners petitioned Platinum Management, Inc., the Star Valley management team to intervene for them to get a second point of egress from this housing development."*

At the March 2012 meeting, homeowners were advised to write the County. Several safety concerns were mentioned, including recent flooding, unsafe turns etc. The Sheriff's Department also received letters.

***September 26, 2012 Response from Supervisor Bronson and Pima County***

Supervisor Bronson responded by stating that the Sheriff would monitor the intersection at Wade and Valencia and the Department of Transportation would proceed with a traffic signal. Even though the developer is responsible for the signal, Department of Transportation indicated it would construct the signal and seek reimbursement from the developer. Supervisor Bronson also reported several calls to her office requesting construction of Camino Verde, and she responded that the developer was to construct that road.

Supervisor Bronson updated the residents on the Valencia Road widening.



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***November 29, 2012 Letter from DOT to the Developer***

Priscilla Cornelio, Director of the Department of Transportation, wrote a letter requesting reimbursement for half of the traffic signal at Wade and Valencia Road.

A temporary light was installed due to the upcoming Valencia Road improvement.

***February, 2013 Petitions***

In February 2013, homeowners began an initiative to ask Star Valley homeowners to sign two petitions:

1. that they be given a second road to use for getting in and out of Star Valley, and
2. to request a Special Meeting with the Board of Directors of Star Valley.

***March 7, 2013 HOA Meeting***

At the annual HOA meeting, homeowners discussed the issues in the development, including trails and Camino Verde. Platinum Management reported the developer had no further obligations to install Pima County improvements that are not already in place.

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Near the end of March 2013, homeowners met to express their concerns and discuss follow-up actions, including attending a County Board of Supervisors meeting.

***April 9, 2013 Board of Supervisors Meeting***

Star Valley residents attended the April 9, 2013 Pima County Supervisors meeting. During the meeting, the homeowners presented each Supervisor and the County Administrator with a packet detailing many of the problems in Star Valley.

***May 4, 2013 Homeowners Meeting with Pima County and Supervisor Bronson***

Supervisor Bronson scheduled a meeting for May 4 2013 and invited, by mail, every Star Valley homeowner. County Administrator Chuck Huckelberry attended the meeting, as did many of Supervisor Bronson's staff. Approximately 300 Star Valley residents attended the meeting. They were informed about Valencia Road and were advised Camino Verde would be pursued for construction. The developer would have to build it or pay for it.

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The other topic was the impending construction and opening of a charter school on Wade Road that would further impact traffic in and out of the development.

**May 21, 2013 Pima County Department of Transportation Request to Developer**

The Department of Transportation's letter discusses financing for Camino Verde and the signal and requests payment.

***June 12, 2013 Follow-up Letter from Supervisor Bronson to the Homeowners***

Supervisor Bronson received petition copies for the second point of access. In the follow-up letter, the issues were captured: the Pending developer agreement, reimbursement mechanisms, and that Camino Verde would be designed and constructed by Pima County. Trails were also discussed, and it was reiterated that it is the developer/HOA responsibility to resolve maintenance issues, since Pima County has not accepted the trail for maintenance.

***June 21, 2013 Pima County Development Services Department Request to the Developer***

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The Development Services Department's letter requests a financing agreement for reimbursement for the light and Camino Verde. It also states that the flags and fence at the entrance are on State land and Department of Transportation right of way. It further stated that neighbors are angry at the HOA and feel that promises made during sales of the homes are not being kept.

***July 31, 2013 Pima County Department of Transportation Letter to Mr. Joseph Cesare Attorney's Regarding the Traffic Signal***

The letter returns payment for the temporary light and requests payment for the permanent light that will be installed with the Valencia Road property.

***September 11, 2013 Pima County Department of Transportation Letter to Mr. Cesare's Attorney Regarding the Traffic Signal and Camino Verde***

The letter outlines the requirements of the Star Valley Specific Plan, rezoning, traffic studies and the agreement in place to build and finance the infrastructure based on the October 30, 2002 approvals.

***October 25, 2013 Pima County Department of Transportation Sends Developer the Impact Fees and Summary of Projects***

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Pima County staff Ben Goff sent a letter to Mr. G.T. Alley with the developer outlining all of the Star Valley fees collected and the projects to which these fees are allocated surrounding Star Valley, including Valencia Road.

***Neighbors Pass Petitions for Road***

Star Valley residents continued to pass petitions and obtained approximately 525 signatures for the second road and 475 signatures requesting a meeting with the HOA Board members (Messrs. Joe and Jeff Cesare). The Cesares were mailed the original copy of the petitions via certified mail return receipt requested. The request was for a special meeting to be held before October 1 2013.

***October 1, 2013 Neighbors Picket the Developers Office and Platinum Management Offices***

When the letter was ignored, residents scheduled a picket of the Platinum Management/Developer's offices to be held on October 1 2013. KVOA Channel 4 news covered the event. The reporter indicated he went into the offices of Platinum Management and the Cesares to interview someone. The reporter was told no one was available.

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***January 8, 2014 Pima County Meeting with Developer to Discuss Sale to LGI***

***Homes of Block 4***

This meeting discussed the remaining improvements needed, including assurances from LGI or other developers that purchased blocks. The improvements, including payment for signal light and construction of Camino Verde, were to be included.

A memorandum was issued on January 10, 2014 to the County Administrator and was shared with Mr. Joseph Cesare summarizing the conditions and options.

***January 17, 2014 Pima County Development Services Department Letter to Developer***

This letter summarized the discussed needed improvements, requirements per the traffic impact study, an impact fee breakout, and the expired assurance agreements. The letter also identified options to ensure compliance, including re-plat, holding of permits and lots, amending the specific plan, and other options.

***February 3, 2014 Supervisor Bronson Update to Neighbors***

Supervisor Bronson reported that talks with the developer had occurred regarding the remaining infrastructure at Star Valley and that Pima County remained hopeful that resolution and agreement would result.

***April 3, 2014 HOA meeting***

The 2014 annual HOA meeting was held at the new charter school on Wade Road. Minutes and recordings of the meeting were kept by a resident who shared the notes with Pima County representatives and Supervisor Bronson's office. Ms. Buske of Platinum Management responded to homeowner comments by stating that she consulted with the developers, and they will not be paying any money to Pima County; that impact fees cover that, and no negotiations for an agreement were occurring. She also indicated all promised amenities had been built. The trails were not built as an association amenity and were constructed upon request by Pima County. Pima County should maintain them.

Ms. Buske and Ms. Tanis Duncan then urged the homeowners to get 10 homeowners each week to speak to the Board of Supervisors until the Board is tired of hearing about Star Valley and takes the trails and builds the road.

***April 4, 2014 Numerous Neighbors contact Pima County***

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Neighbors report comments from the HOA meeting and ask for facts.

***April 9, 2014 Pima County Development Services Department Letter Responds to Developer and Management Firm***

This letter from Development Services Director Carla Blackwell responded to comments from the HOA meeting, including the facts regarding trail maintenance, the road improvements and the overall the neglect of the duties of the developer. The letter requested that the issues be addressed quickly with Pima County, and the letter was emailed copied to two neighbors. One neighbor sent it to several others by email. There was no mass mailing or posting.

***May 20, 2014 Pima County Development Services Department Letter to the Developer, USH/SVA Star Valley, LLC and US Home (Lennar)***

The letter notified the partnership of the improvements needed, the required reimbursements, and the fact that the plat assurance agreements were in default because they had gone beyond the four-year timeframe to install improvements for the blocks. It requested immediate attention or the County would proceed with a re-platting of Blocks 4, 7, and 8 per the Assurance Agreement.



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***June 3, 2014 Board of Supervisors Request Staff Report on Star Valley Status and Re-plat Process***

***July 1, 2014 Board of Supervisors Directs Staff to Notice the Intent to Re-plat***

***July 10, 2014 Pima County Development Services Issues Letter to USH/SVA Star Valley, LLC Regarding Notice of Intent to Re-plat***

As can be seen in reviewing these summaries, the HOA Board of Directors representative, Platinum Management, continued to restate misinformation regarding Camino Verde improvements and traffic signals being paid for with impact fees. At the May 4, 2013 meeting attended by County representatives and over 300 residents, the County restated the developer's obligation to construct Camino Verde and that the County would pursue construction of the roadway and seek reimbursement from the developer. It is for this reason the Camino Verde extension was added to the development impact fee roadway eligible benefit area. Such allowed the administrative expenditure of impact fees to construct Camino Verde considering 1) the full understanding the funds would be returned to the County, since the extension of Camino Verde was a developer obligation; and 2) that the returned impact fees would be spent on Valencia Road.

At the HOA meeting of April 3, 2014, the Platinum Management representative stated she had consulted with the developers and they would not be paying any money to Pima County for Camino Verde improvements. She again misstated that impact fees would cover the cost and that no negotiations were occurring for an agreement between the County and developer.

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V. Recommendation

The original recommendation for this item was to proceed with the re-platting of Blocks 4, 7 and 8 within Star Valley. These are the blocks with no supporting infrastructure. This action is now the subject of one of the lawsuits filed by Mr. Joseph Cesare and USH/SVA Star Valley, LLC against the County. Given the County will not release any building permits for any lots within these blocks because the master developer has failed to comply with the assurance agreements for these blocks, re-platting can be deferred until after the present litigation has been resolved.

It should be noted the County has not withheld building permits on other blocks within Star Valley that have adequate infrastructure. In fact, in 2014, 62 permits were released by the County where lots have supporting infrastructure. We will continue to issue these permits based on the fact the County is advancing the Camino Verde improvement. If the courts make determinations favorable to the County, given the failure of the developer to comply with the conditions of the approval of the Specific Plan, we will then recommend the re-plat of Blocks 4, 7 and 8 and reversion of the Specific Plan zoning to the original zoning of Rural Homestead "RH."

Hence, no action is now necessary; and I recommend the proposed re-platting of Star Valley be removed from the Agenda.

Respectfully submitted,



C.H. Huckelberry  
County Administrator

CHH/mjk – January 16, 2015

c: John Bernal, Deputy County Administrator for Public Works  
Carmine DeBonis, Jr., Director, Development Services  
Carla Blackwell, Deputy Director, Development Services  
Lesley Lukach, Deputy County Attorney