

**RESOLUTION OF THE BOARD OF COMMISSIONERS,
SAN MIGUEL COUNTY, COLORADO,
APPROVING A 1041 ENVIRONMENTAL HAZARD REVIEW, HISTORIC AND
ARCHAEOLOGICAL RESOURCE AREA REVIEW, AND WETLAND SPECIAL USE PERMIT
FOR IDARADO MINING COMPANY AND IDARADO LEGACY, LLC**

Resolution 2003-30C

WHEREAS, the Board of Commissioners of San Miguel County, Colorado, ("BOCC"), pursuant to Resolution #2003-23, and the San Miguel County Land Use Code ("LUC"), considered the application of Idarado Mining Company and Idarado Legacy, LLC (collectively "Idarado") for a 1041 Environmental Hazard Review, Historic and Archaeological Resource Area Review, and a Wetland Special Use Permit, collectively referred to herein as the "1041 and Wetland Applications," along with relevant documentary evidence and testimony from Idarado, its consultants, and the public, at a duly noticed public hearing held in Telluride, CO, on August 27, 2003; and

WHEREAS, Idarado Mining Company and Idarado Legacy, LLC (collectively "Idarado") recorded its plan in the public records of San Miguel County for the development of sixty-one lots, each consisting of at least thirty-five acres of land ("Idarado Thirty-Five Acre Plan"), intended for single-family residential development as depicted on the Tract Map filed by Idarado pursuant to Section 30-28-101(10)(c)(I), C.R.S., consisting of thirty-seven lots on a portion of property owned by Idarado commonly referred to as Liberty Bell, Pandora and Bridal Veil ("Valley Lots"), three lots on the Kentucky Placer ("Kentucky Placer Lots") and twenty-one lots on mining claims situated in the high country ("High Country Lots"); and

WHEREAS, the BOCC has reviewed Idarado's application for a Subdivision Exemption Plat and Cluster Development Plan as an alternative to Idarado developing under a thirty-five acre plan and the BOCC has approved the Subdivision Exemption Plat and Cluster Development Plan application, creating thirty-seven lots whose building areas are configured in the same manner as the Valley Lots under the Idarado Thirty-Five Acre Plan; and

WHEREAS, Idarado submitted its 1041 and Wetland Applications which were reviewed by the County pursuant to the Land Use Code, in particular, LUC Sections 5-4 and 5-22; and

WHEREAS, Art Mears of Arthur I. Mears, P.E., Inc., has evaluated the Valley Lots and prepared certain letters dated respectively July 17, 2003, August 11, 2003 and August 21, 2003 (collectively, the "Mears Report") for Idarado's 1041 Environmental Hazard Review for geohazard conditions and the Mears Report identified those portions of the Valley Lots that could be affected by geohazard conditions and concluded that these impacts can be adequately mitigated using techniques identified in the Mears Report; and

WHEREAS, the plans, studies and reports concerning 1041 Environmental Hazard Review for Floodplain hazard areas and Historic and archaeological resource areas that Idarado has submitted, demonstrate that development in and about the floodplains and wetlands areas are being properly managed; and

WHEREAS, John Redman, P.E., Montgomery Watson Mining Group (MWH), states that the location of the proposed new access bridge is being constructed outside of the floodplain and above flood flow levels and certifies that each abutment and all portions of the bridge will be located above the 100-year floodplain of the San Miguel River and that bridge is above the 100-year flood stage; and

WHEREAS, the San Miguel County Planning Commission considered the 1041 and Wetland Applications at a duly noticed special public meeting held in Telluride, CO, on August 25, 2003, at which, by a vote of 4-1, it recommended approval of the 1041 and Wetland Applications to the BOCC, subject to the following comments:

1. That a plat note is added to the Final Plat that references the geohazard requirements and references the complete requirements in the CC&R's (Declarations).
2. Applicant to investigate the possibility of providing breaks in the rockfall fences for wildlife access above Liberty Bell and Bridle Veil lots.
3. To add a deed-restriction to the individual lots regarding the potential geohazard conditions and reference to the CC&R's.

And further subject to the following terms and conditions:

Conditions of Approval – 1041 Review

Geohazard Conditions

1. Idarado shall install the rockfall mitigation fencing/barrier indicated by the Art Mears reports for Lots L-6 through L-9 and for Lots BV-1 through BV-4 prior to the release of a building permit to construct a residence on Lots L-6 through L-9, Lots BV-1 through BV-4 or Lots P-12 through P-15, P-23 and P-24. The proposed rockfall mitigation fencing/barrier is to be located along the northern side of Lots L-6 through L-9 and for Lots BV-1 through BV-4, as approximately shown on the site plan. Prior to installation of these proposed rockfall mitigation fencing/barrier, Idarado shall submit design and construction plans, prepared by a qualified engineer, to the County and the County Engineer for administrative review and approval. These two rockfall mitigation fencing/barriers will be owned and maintained by the HOA. Suitable easements to enable access for installation, maintenance, repair and replacement of these two rockfall mitigation fencing/barriers shall be secured on the community map for the project. The HOA shall include reserve accounts in the association budget to provide for long-term repair and replacement of these two rockfall mitigation fencing/barriers. Idarado shall investigate and implement designs that include a break in each of the two rockfall mitigation fencing/barriers to enable wildlife migration corridors, if technically feasible and capable of achieving necessary rockfall mitigation.
2. Additional criteria for geohazard mitigation has been recommended by Art Mears to be incorporated into the design of each structure on a lot exposed to potential geohazard conditions. Only a qualified professional engineer shall prepare site development and house design plans elements that are required to achieve geohazard requirements. The geohazard criteria and applicable review standards shall be included in the Idarado CC&R'S and shall be reviewed and approved by the County prior to the approval of the Subdivision Exemption Plat. The final Idarado CC&R'S shall substantially reflect the draft geohazard criteria and applicable review standards provided to the County.
3. Idarado shall provide a disclosure statement concerning the geohazard conditions and special requirements for geotechnical engineering for development and construction to each purchaser of a lot potentially affected by geohazard conditions prior to the sale of the lot. This disclosure shall be noted on the record plat, the Idarado CC&R'S and a recorded deed restriction, cross-referencing this disclosure.

4. Development shall occur only within the established building envelopes as shown on the Subdivision Exemption Plat and Cluster Development Plan, except for the construction or installation of driveways, utilities and landscaping which may occur outside the building envelop. Idarado may modify building envelopes, subject to review and approval by the Planning Department as an administrative review. The Planning Department shall approve a building envelope modification, unless it determines that the modified building envelop:
 - a. Will cross "hard building lines" shown on the Site Plan and Subdivision Exemption Plat and Cluster Development Plan;
 - b. Will subject development on the Property to increased geohazard conditions for which mitigation is not available and which geohazard conditions are in excess of conditions anticipated for the existing building envelop locations; or
 - c. Result in unacceptable spacing between wells or OWS/Sewer Facilities established in the approval of the Subdivision Exemption Plat and Cluster Development Plan, unless approved by the County.
5. Prior to recordation of the Subdivision Exemption Plat and Cluster Development Plan, Idarado to submit final engineering plans for the Owl Creek Bank Stabilization Plan for the sketch plan dated August 20, 2003. The stabilization of the Owl Creek embankments shall be completed prior to the issuance of a building permit to construct on L-1 and L-2. An updated debris flow analysis shall be completed as part of the review of a development permit for construction on L-1 and L-2.
6. Each Valley Lot shall be required to meet any applicable sediment and erosion control measures at the time of development contained in any County or State adopted regulations.

Steep Slopes

1. Where development is contemplated on portions of a lot with slopes of 30% or greater, prior to site disturbance, a site and structure specific geotechnical engineering plan and slope stability analysis, including a site-specific soil and foundation investigation, must be prepared by a qualified engineer and submitted to the County Engineer for review and approval prior to issuance of a Development Permit for Single-family residence. The analysis should include an evaluation of building pads, driveways and septic systems.

Wetland Buffer Review – Bridge

1. Idarado shall protect the adjacent areas during construction from disturbance, erosion, and sediments being introduced into the San Miguel River. All shrubs will be relocated to an undisturbed area adjacent to the bridge. Weed mitigation will be performed as required by San Miguel County Weed Ordinance. The disturbed area shall be revegetated with native species as approved by the County Environmental Health Director.
2. The bridge shall be located to avoid the 100-year floodplain, to avoid steep slopes and riverbanks and to provide needed vehicle and equipment access. A certification by a registered Colorado Engineer shall be provided to show the bridge and abutments are being constructed outside and one foot above the 100-year flood elevation and to show that the bottom elevation of the lowest member (chord) of the bridge shall be a minimum of one foot above the 100-year base flood elevation.

3. A professional engineer licensed in the state of Colorado shall complete the bridge design.
4. Bridge abutments shall have scour protection (rip-rap) up to the bottom of the chord elevation.
5. Further wetland mitigation conditions will be considered prior to construction upon receipt and approval of the bridge plans.

Wetland Buffer – General Considerations

1. The proposed infrastructure development requires compliance with the wetland area protection engineering measures detailed in the Idarado Application.
2. All onsite waster water treatment systems (OWS) shall be located outside of the 100-foot wetland buffer zone, unless approved by the County.
3. Development proposed within the wetland buffer zone as established on the site plan may occur, provided that prior to any site disturbance within the wetland buffer zone, the owner has applied for and obtained a wetland buffer permit with the County as provided for herein. The wetland buffer permit shall be reviewed administratively by the County Planning Director and shall be issued upon a finding by the Planning Director that during construction good management and protection practices will be utilized to protect and avoid disturbances to the wetland associated with the wetland buffer zone. The Planning Department shall require the use of silt fences and straw bales to protect the affected wetland streambeds (Royer Gulch and Owl Creek) and the San Miguel River. No wetland vegetation will be affected by the construction activities. All disturbed areas will be revegetated with native species approved by the County Environmental Health Department. Nothing herein shall preclude or restrict development within the wetland buffer zone, except that no portion of an OWS shall be located within the wetland buffer zone without County approval.

Historic Structures

1. Idarado will complete either HABS or HAER documentation of the Pandora Mill, as it currently exists, prior to its demolition. The review shall be conducted in conjunction with an agency selected by Idarado.
2. Idarado agrees to construct the Interpretative Trail (as defined in the Application) by November 30, 2004, unless delayed by events beyond its control. The Interpretative Trail will be ten feet wide and its surface material will be crusher fines or similar appropriate material. Idarado will endeavor to locate the Interpretative Trail along the existing railroad alignment south of Colorado Avenue, where construction is feasible and when locating the Interpretative Trail along that alignment will not interfere with the use and development of homes on adjacent Valley Lots, as determined by Idarado. Idarado will coordinate the Interpretative Trail location with the San Miguel County Planning Department and the County Open Space and Recreational Coordinator at the time of construction, and such location will minimize the removal of trees. Any wetland buffer permits for the Interpretative Trail shall be considered administratively by the Planning Department. Once completed, the County or its designee will be responsible for maintaining and repairing the Interpretative Trail. Idarado will be responsible for the maintenance of any interpretative features. The trail existing along the northern Pandora internal road established by the easement agreement with the County will be replaced by the newly located Interpretative Trail, and upon completion of the new Interpretative Trail, an amendment to the existing easement shall be recorded showing the new location. The old roadbed within which the existing

trail is located will be re-graded. Idarado will designate an area for an alternative trail alignment, which will serve as an interim trail until the new Interpretative Trail is installed.

3. Idarado commits to the following elements for the Pandora Mill Building:
 - a. To the extent that public safety and environmental considerations allow, Idarado will leave in place the concrete foundation and concrete walls of the building and, if feasible from an engineering perspective, Idarado will leave in place up to four structural features (i.e. steel frame structural supports) that will provide a representation of the scale of the building. Idarado in its sole discretion shall determine what elements can and will be preserved.
 - b. Idarado shall design and install self-guiding, low to non-maintenance, interpretative signage and displays near the Pandora Mill and along the Interpretative Trail, in consultation with the Telluride Historic Society and the County Historic Planner.

WHEREAS, based upon competent evidence and testimony received at the August 27, 2003 public hearing on the Applications, the BOCC does hereby find and determine as follows:

1. Idarado seeks approval of an application for 1041 Environmental Hazard Review for Floodplain hazard areas, Geologic hazard areas and Historic and archaeological resource areas for its thirty-seven lots on a portion of the Idarado Property commonly referred to as Liberty Bell, Pandora and Bridal Veil ("Valley Lots").
2. Idarado also seeks approval of a permit to allow construction of a bridge to enable access to portions of the Idarado Property subject to the Remedial Action Plan, which requires a permit authorizing Development in Wetland Areas.
3. The Mears Report and other plans, studies and reports concerning Idarado's 1041 Environmental Hazard Review for Floodplain hazard areas, Geologic hazard areas and Historic and archaeological resource areas demonstrate that each Valley Lot will be adequately mitigated from potential geologic hazard conditions and that development in and about the floodplains and wetlands areas are being properly managed.
4. Idarado has presented evidence and testimony concerning the rationale and need to demolish the Pandora Mill, Bridal Veil Cottages and Liberty Bell Cottages, in order to protect the public health and safety for which appropriate mitigation or other remedial measures are not reasonably available, which evidence and testimony is satisfactory to the BOCC.
5. Idarado has committed to preparing plans concerning the historic interpretation of portion of the valley, that are an acceptable substitute to the preservation of the structures comprising the Pandora Mill, Bridal Veil Cottages, and Liberty Bell Cottages.
7. The proposed new access bridge is being constructed outside of the floodplains and above flood flow levels.

WHEREAS, based upon the Findings set forth hereinabove, the BOCC finds and concludes that the 1041 and Wetland Applications meet all applicable provisions of the County LUC and determines that the public health, safety, and welfare would be served from its approval of this Application.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS: In accordance with Land Use Code ("LUC") Sections 5-4 and 5-22, the BOCC hereby unanimously approves the 1041 and Wetland

text/Idarado.CLUSTER RESO'S/Wetland and 1041

Applications submitted by the Idarado Mining Company and Idarado Legacy, LLC seeking approval of Idarado's 1041 Environmental Hazard Review for Floodplain hazard areas, Geologic hazard areas and Historic and Archaeological Resource Areas and for approval of a special use permit to allow Development in Wetland Areas, subject to Idarado's compliance with the following terms and conditions to the BOCC's reasonable satisfaction:

1. **Geohazard Conditions**

- 1.1. Idarado shall install the rockfall mitigation fencing/barrier indicated by the Art Mears reports. One rockfall mitigation fencing/barrier to protect Lots L-6 through L-9 shall be constructed prior to the release of any building permit to construct a residence on Lots L-6 through L-9 ("Liberty Bell Rockfall Fence"). The second rockfall mitigation fencing/barrier to protect Lots BV-1 through BV-4 and Lots P-12 through P-15, P-23 and P-24 shall be constructed prior to the release of any building permit to construct a residence on Lots BV-1 through BV-4 and Lots P-12 through P-15, P-23 and P-24 ("Bridal Veil Rockfall Fence"). The Liberty Bell Rockfall Fence is to be located along the northern side of Lots L-6 through L-9 and the Bridal Veil Rockfall Fence is to be located along the northern side of Lots BV-1 through BV-4, as approximately shown on the site plan. Prior to installation the Liberty Bell Rockfall Fence and the Bridal Veil Rockfall Fence, Idarado shall submit design and construction plans, prepared by a qualified engineer, to the County and the County Engineer for administrative review and approval. The Liberty Bell Rockfall Fence and the Bridal Veil Rockfall Fence will be owned and maintained by the HOA. Suitable easements to enable access for installation, maintenance, repair and replacement of the Liberty Bell Rockfall Fence and the Bridal Veil Rockfall Fence shall be secured on the community map for the project. The HOA shall include reserve accounts in the association budget to provide for long-term repair and replacement of the Liberty Bell Rockfall Fence and the Bridal Veil Rockfall Fence. To the extent possible, Idarado shall investigate and implement designs that include a break in the Liberty Bell Rockfall Fence and the Bridal Veil Rockfall Fence to enable wildlife migration corridors, if technically feasible and capable of achieving necessary rockfall mitigation. Prior to the sale of any of Lots L-6 through L-9 Idarado shall increase the security under the SIA to cover the cost of installing the Liberty Bell Rockfall Fence. Prior to the sale of any of Lots BV-1 through BV-4 and Lots P-12 through P-15, P-23 and P-24 Idarado shall increase the security under the SIA to cover the cost of installing the Bridal Veil Rockfall Fence. The cost estimate for constructing the Liberty Bell and Bridal Veil Rockfall Fences shall be prepared by a qualified Colorado registered professional engineer. Such cost estimate shall be subject to review and approval by the County Engineer prior to the execution of the SIA. For purposes of preparing engineered plans and specifications for required 1041 mitigations, a qualified engineer shall be a Colorado registered professional engineer with appropriate expertise in the relevant areas of engineering specialization.
- 1.2. Additional criteria for geohazard mitigation has been recommended by Art Mears to be incorporated into the design of each structure on a lot exposed to potential geohazard conditions. Only a qualified professional engineer shall prepare site development and house design plans elements that are required to achieve geohazard requirements. The geohazard criteria and applicable review standards shall be included in the Idarado CC&R's and shall be reviewed and approved by the County prior to the approval of the Subdivision Exemption Plat. Where development is proposed on portions of a lot within a designated Geohazard area, prior to site disturbance, a site and structure specific geotechnical engineering plan must be prepared by a qualified engineer in compliance with criteria established in the Mears Report for geohazard mitigation and submitted to

the County Engineer for review and approval prior to issuance of a Development Permit for any Single Family Residence or Accessory Structure to be located on the lot. The final Idarado CC&R'S shall substantially reflect the draft geohazard criteria and applicable review standards provided to the County.

- 1.3. Idarado shall provide a disclosure statement concerning the geohazard conditions and special requirements for geotechnical engineering for development and construction to each purchaser of a lot potentially affected by geohazard conditions prior to the sale of the lot. This disclosure shall be noted on the record plat, the Idarado CC&R'S and on a recorded deed restriction, cross-referencing this disclosure.
- 1.4. Development shall occur only within the established building envelopes as shown on the Subdivision Exemption Plat and Cluster Development Plan, except for the construction or installation of driveways, utilities and landscaping which may occur outside the building envelop. Idarado may modify building envelopes, subject to review and approval by the Planning Department as an administrative review. The Planning Department may approve a building envelope modification, unless it determines that the modified building envelop:
 - a. Will cross "hard building lines" shown on the Site Plan and Subdivision Exemption Plat and Cluster Development Plan;
 - b. Will subject development on the Property to increased geohazard conditions for which mitigation is not available and which geohazard conditions are in excess of conditions anticipated for the existing building envelop locations;
 - c. Result in unacceptable spacing between wells or OWS/Sewer Facilities established in the approval of the Subdivision Exemption Plat and Cluster Development Plan, unless approved by the County; and
 - d. Result in construction in a delineated wetland (this does not include a wetland buffer area).
- 1.5. Prior to recordation of the Subdivision Exemption Plat and Cluster Development Plan or development on L-1 and L-2, Idarado to submit final engineering plans for the Owl Creek Bank Stabilization Plan for the sketch plan dated August 20, 2003. The stabilization of the Owl Creek embankments shall be completed prior to the issuance of a building permit to construct on L-1 and L-2. An updated debris flow analysis shall be completed by Idarado or the owner and submitted to the County as part of the County's review of a development permit for construction on Lots L-1 and L-2.
- 1.6. Each Valley Lot shall be required to meet any applicable sediment and erosion control measures at the time of development contained in any County or State adopted regulations.

2. **Steep Slopes**

- 2.1. Where development is contemplated on portions of a lot with slopes of 30% or greater, prior to site disturbance, a site and structure specific geotechnical engineering plan and slope stability analysis, including a site-specific soil and foundation investigation, must be prepared by a qualified engineer and submitted to the County Engineer for review and

approval prior to issuance of a Development Permit for Single-family residence. The analysis should include an evaluation of building pads, driveways and septic systems.

3. **Wetland Buffer Review – Bridge**

- 3.1. Idarado shall protect the adjacent areas during construction from disturbance, erosion, and sediments being introduced into the San Miguel River. All shrubs will be relocated to an undisturbed area adjacent to the bridge. Weed mitigation will be performed as required by applicable San Miguel County laws and regulations concerning weeds. The disturbed area shall be revegetated with native species as approved by the County Environmental Health Director.
- 3.2. The bridge shall be located to avoid the 100-year floodplain, to avoid steep slopes and riverbanks and to provide needed vehicle and equipment access. A certification by a registered Colorado Engineer shall be provided to show the bridge and abutments are being constructed outside and one foot above the 100-year flood elevation and to show that the bottom elevation of the lowest member (chord) of the bridge shall be a minimum of one foot above the 100-year base flood elevation.
- 3.3. A professional engineer licensed in the state of Colorado shall complete the bridge design.
- 3.4. Bridge abutments shall have scour protection (rip-rap) up to the bottom of the chord elevation.
- 3.5. Further wetland mitigation conditions will be considered prior to construction upon receipt and approval of the bridge plans.

4. **Wetland Buffer – General Considerations**

- 4.1. The proposed infrastructure development requires compliance with the wetland area protection engineering measures detailed in the Idarado Application.
- 4.2. All onsite waster water treatment systems (OWS) shall be located outside to 100-foot wetland buffer zone, unless approved by the County.
- 4.3. Development may occur on a portion of a Valley Lot located within a wetland buffer zone as established on the site plan, provided that prior to any site disturbance within the wetland buffer zone, the owner has applied for and received a wetland buffer permit with the County. The wetland buffer permit shall be reviewed administratively by the County Planning Director and shall be issued upon a finding by the Planning Director that during construction good management and protection practices will be utilized to protect and avoid disturbances to the wetland associated with the wetland buffer zone. The Planning Department shall require the use of silt fences and straw bales to protect the affected wetland streambeds (Royer Gulch and Owl Creek) and the San Miguel River. No wetland vegetation will be affected by the construction activities. All disturbed areas will be revegetated with native species approved by the County Environmental Health Department. No portion of an OWS shall be located within the wetland buffer zone without County approval.

5.0 All representations included in the 1041 and Wetland Applications documentation, as amended, and the following verbal representations which were made by Idarado at the BOCC August 27, 2003 public hearing on the 1041 and Wetland Applications, to the extent that such verbal representations relate to the 1041 and Wetland Applications:

- A. No snowmelt systems shall be allowed on driveways on the Valley Lots;
- B. The Employee Housing Parcel shall be remediated utilizing Preliminary Remediation Goal (PRG) standards for compliance, with lead as the principal indicator; and
- C. Alarms shall be included with each of the OWS, indicating that the OWS primary treatment is not operating within required specifications.

shall be conditions of approval, except to the extent that any such representations are inconsistent or in conflict with the terms and conditions of approval set forth in this resolution, in which case the specific terms and conditions set forth in this Resolution shall control.

6.0 This resolution constitutes the final decision of the BOCC regarding its approval of the 1041 and Wetland Applications, for purposes of Rule 106(a)(4), C.R.C.P.

7.0 The BOCC shall also have the legal right, but not the obligation, to enforce any condition of approval that is also required to be included in Idarado's CCRs, which relate to the 1041 and Wetland Applications and are specified in **Attachment "I"**, "County Enforceable Restrictions," by means of an equitable servitude granted to the BOCC by Idarado.

DONE AND APPROVED by the Board of Commissioners, San Miguel County, Colorado, on September 19, 2003.

**SAN MIGUEL COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS**

By: Elaine R. Fischer
Elaine R.C. Fischer, Chair

Vote:	Elaine R.C. Fischer	<input checked="" type="radio"/> Aye	Nay	Abstain	Absent
	Vern Ebert	<input checked="" type="radio"/> Aye	Nay	Abstain	Absent
	Art Goodtimes	<input checked="" type="radio"/> Aye	Nay	Abstain	Absent

ATTEST:
By: Marie A. Thomas
Chief Deputy Clerk



ATTACHMENT I
COUNTY ENFORCEABLE RESTRICTIONS

In its Application, Idarado agreed to draft language that will be substantially included in the Idarado CC&R'S. The following sections, which were referred to as "County Enforceable Restrictions" in the Application, indicate the language that will be included in the Idarado CC&R'S. Prior to recordation of the Subdivision Exemption Plat and Cluster Development Plan, Idarado will present a draft of the Idarado CC&R'S for review and approval by County staff. County staff will verify that the following sections are substantially included in the Idarado CC&R'S. The Idarado CC&R'S will be recorded with the Subdivision Exemption Plat and Cluster Development Plan.

Procedural and Technical Provisions

The Association will enforce each County Enforceable Restriction, but the County will also have authority to monitor and enforce compliance with these provisions. The Idarado CC&R'S will provide for this right of enforcement by the County and include language sufficient to enable the County to undertake such enforcement as or in the way of an equitable servitude. The Idarado CC&R'S will also provide that the provisions of the documents, which relate to the County Enforceable Restrictions, may not be modified, amended or terminated without the consent of the County.

Provisions Concerning OWS

The Idarado CC&R'S shall provide for each of the following:

1. **Applicability.** Each Valley Lot will be served by an OWS and must adhere to the requirements of the County Plan Approvals and the Idarado CC&R'S relating to the design, location, installation and operation of an OWS.
2. **Design Criteria.** The owner of a lot will be required to construct an OWS in strict accordance with the OWS Design Criteria prepared by Idarado and Buckhorn Geotech, and reviewed and approved by the County, a copy of which is attached hereto and incorporated herein by reference.
3. **Review and Approval by the Design Review Board.** A qualified registered engineer, retained by an owner of a lot, must design and engineer each OWS. The design must conform to the OWS Design Criteria. Each site-specific OWS design plan shall be submitted to the Association Design Review Board. The Design Review Board shall refer the application to its designated, qualified engineer (Association OWS Engineer) for review for compliance with the OWS Design Criteria. An Owner may retain the Association OWS Engineer to prepare its OWS design plan. The Association OWS Engineer shall review the plan and make comments to the Design Review Board. The Design Review Board shall advise the owner, in writing of any changes required to the site-specific OWS design plan and the owner shall modify the OWS design plan in accordance with the direction of the Design Review Board, if any.
4. **Review and Approval by the County.** An owner shall submit the OWS design plan, which has been approved by the Design Review Board with the County for review and approval prior to issuance of a development permit and building permit for development on a lot. The County shall consider all applicable state and County reviewing criteria applied to all projects in San Miguel County and the approved OWS Design Criteria when reviewing the OWS. In the event of a conflict between an OWS design plan as approved by the Design Review Board and as approved by the County, the County requirements shall prevail.

5. **Installation of an OWS.** An owner shall only install an OWS that has been approved by the Design Review Board and the County, and for which County ISDS and Development Permits have been issued. In all respects, the OWS shall conform to the OWS design plan approved by the Design Review Board and the County. An owner shall notify the Association when the OWS is being installed to enable the Association OWS Engineer to periodically monitor installation for compliance with the approved OWS design plan and the Community Governing Documents.
6. **Location of the OWS.** At the time a house design is developed, the engineer shall determine the required OWS disposal field necessary to support the proposed development and shall size the OWS disposal field accordingly. If the design of the home necessitates the enlargement and/or relocation of the OWS disposal field, the septic field shall be enlarged and/or relocated, provided that the location of an OWS disposal field, without the approval of the County, shall not be located closer than: (a) 100 feet from any an existing or proposed well; (b) 25 feet from the location of an existing or proposed OWS; (c) 50 feet from any riparian area or waterway; or (d) 10 feet of a lot line (without the consent of the adjacent lot owner and the County approval of a variance). An OWS shall not be located within a wetland buffer, riparian area or beyond the location of a "hard building line" established in the Project Plan Approvals without the approval of the County. The location of the OWS shall be surveyed by the owner of the lot to insure compliance with the approved OWS design plan and the Community Governing Documents.
7. **Management and Maintenance of an OWS.** To insure that all required maintenance is timely and properly completed, all owners of a lot will, by covenant and easement, be required to have their individual OWS inspected, maintained and monitored under a master operations contract with a manufacturer approved OWS maintenance provider pursuant to a maintenance protocol established by the Association OWS Engineer and managed by the Association, including provision for an alarm system on each OWS primary treatment component. The Association will establish easements in the Community Governing Documents across each lot to enable Association access to each OWS. The Association will impose and collect assessments to fund the required inspections, maintenance and monitoring of the completed OWS.

Provisions Concerning Geohazard Mitigation

The Idarado CC&R'S shall provide for each of the following:

1. **Applicability.** Each Valley Lot that has been identified in the Idarado Application - Subdivision Exemption Plat and Cluster Development Plan and the accompanying 1041 Geohazard Map as being potentially exposed to geohazard conditions must adhere to the requirements of the County Plan Approvals and the Idarado CC&R'S relating to geohazard mitigation.
2. **Design Criteria.** The owner of a lot will be required to construct geohazard mitigation in strict accordance with the Geohazard Mitigation Design Criteria prepared by Idarado and Arthur I. Mears, P.E., Inc., a copy of which is attached hereto and incorporated herein by reference, or other qualified professional engineer (Association Engineer), and reviewed and approved by the County.
 - 2.1. **General Conditions.** The following general considerations shall be considered when designing a home that is located within particular geohazard areas as delineated on the Idarado Application - Subdivision Exemption Plat and Cluster Development Plan and the accompanying 1041 Geohazard Map:
 - 2.1.1. **Avalanche Review Standards.** Each home design and home construction on a Valley Lot that has been identified in an avalanche geohazard area on the Idarado

Subdivision Exemption Plat and Cluster Development Plan and 1041 Geohazard Map shall comply with following review criteria and standards as may be necessary:

- a. Each site and structure must be protected by structural avalanche defenses designed by a certified engineer to withstand avalanche damage, utilizing the specific design criteria established by the Association Engineer and approved by the County Engineer.
- b. Each site and structure must be restricted to the most protected areas and located as far away as possible from the base of steep slopes and ravines.
- c. Clear-cutting or other large-scale removal of vegetation on a lot is prohibited.
- d. Extractive operations in high hazard, or historic avalanche areas during winter are prohibited, unless an adequate program of avalanche control and defense measures exists to the satisfaction of the Association Engineer, the Design Review Board and the County.
- e. Utility lines or pipes crossing historic avalanche areas will be buried, and surface pipes and poles or towers for suspended transmission lines in historic or high or moderate hazard avalanche will be protected by utilizing avalanche diversion methods or structures.
- f. Warning signs will be placed along commonly traveled winter roads and trails that cross major avalanche paths.
- g. Property owners who develop in avalanche areas or obtain driveway access via avalanche areas will bear the costs of any avalanche control measures.
- h. An underground facility, such as water reservoirs or for temporary buildings used only in non-avalanche season, may occur provided that the Association Engineer, the Design Review Board and the County approve the design and location of the structure and that it must either be adequately protected or removed during the winter.
- i. Design of homes shall reinforce the uphill-facing building walls, doors, and windows. The structural engineer will address the strengths and horizontal load distributions, sizes of reinforced structures, and impact factors to be utilized. These parameters will be specified and available for the structural engineer after final building positions and orientations are known.

- 2.1.2. **Rockfall Review Standards.** The Association shall install a principal rockfall fence for those lots indicated in the Idarado Application - Subdivision Exemption Plat and Cluster Development Plan. This rockfall fence shall be maintained, repaired and replaced by the Association. Suitable reserves will be established for the cost of these undertakings. Should addition rockfall mitigation be required to be undertaken on a Valley Lot that has been identified in a rockfall geohazard area on the Idarado Subdivision Exemption Plat and Cluster Development Plan

and 1041 Geohazard Map as determined by the Association Engineer, the Design Review Board and/or the County, then home designs and home construction shall comply applicable County regulations and with the following standards to be addressed by a qualified engineer (who may be the Association Engineer), at the homeowner's expense:

- a. Site-specific uphill wall reinforcement for affected buildings may be required to absorb the energy of any rocks not completely stopped by other rockfall mitigation.
- b. These special building walls might consist of any deformable structure (gabions, planter boxes, etc.). Heights of these structures will depend on site-specific design.

2.1.3. **Debris Flow Review Standards.** Home designs and home construction on a Valley Lot that has been identified in a debris flow geohazard area on the Idarado Subdivision Exemption Plat and Cluster Development Plan and 1041 Geohazard Map shall comply with the following standards to be addressed and designed by a qualified engineer (who may be the Association Engineer):

- a. Each site and structure must be protected by channelizing, damming or diverting potential mud or debris flows utilizing engineering structures.
- b. A disturbance will be prohibited in the drainage basin above a fan unless an evaluation of the effect on runoff and stability of the fan shows that disturbance is acceptable.
- c. House designs shall integrate the use of stem walls and possibly lower walls, reinforced for static debris flow depositional loads and impact of small rocks.

3. **Review and Approval by the Design Review Board.** A qualified registered engineer, retained by an owner of a lot, must design and engineer each home design requiring a geohazard mitigation plan. The design must conform to the Geohazard Design Criteria. Each site-specific geohazard mitigation plan shall be submitted to the Association Design Review Board. The Design Review Board shall refer the application to its designated, qualified engineer (Association Engineer) for review for compliance with the Geohazard Design Criteria. An Owner may retain the Association Engineer to prepare its Geohazard mitigation plan. The Association Engineer shall review the plan and make comments to the Design Review Board. The Design Review Board shall advise the owner, in writing of any changes required to the site-specific Geohazard mitigation plan and the owner shall modify the Geohazard mitigation plan in accordance with the direction of the Design Review Board, if any. Under no circumstances shall a geohazard mitigation plan result in new or increased geohazard conditions occurring on another Valley Lot.
4. **Review and Approval by the County.** An owner shall submit the Geohazard mitigation plan, which has been approved by the Design Review Board with the County for review and approval prior to issuance of a development permit and building permit for development on a lot. The County shall consider all applicable state and County reviewing criteria applied to all projects in San Miguel County and the approved Geohazard Design Criteria when reviewing the Geohazard mitigation plan. In the event of a conflict between a Geohazard mitigation plan as approved by the Design Review Board and as approved by the County, the County requirements shall prevail.

5. **Installation of Site Specific Geohazard Mitigation.** An owner shall install all elements of the approved Geohazard mitigation plan, without deviation or variation unless approved by the Design Review Board and the County. An owner shall notify the Association when the elements of the approved Geohazard mitigation plan are being installed to enable the Association Engineer to periodically monitor installation for compliance with the approved Geohazard mitigation plan and the Community Governing Documents.
6. **Management and Maintenance of Site Specific Geohazard Mitigation.** Each owner of a lot shall be obligated to inspect, maintain, repair and replace the elements of the approved Geohazard mitigation plan.

Provisions Concerning Building Envelopes. The Idarado CC&R'S shall provide for each of the following:

1. Development shall occur only within the established building envelopes as shown on the Idarado Subdivision Exemption Plat and Cluster Development Plan and Community Map, except for the construction or installation of driveways, utilities and landscaping which may occur outside the building envelop.
2. An owner may submit a request to the Board of Directors to modify building envelopes. The Board may approve or deny a request based upon its consideration of the following factors:
 - a. The revised building envelope will not cross "hard building lines" shown on the Idarado Subdivision Exemption Plat and Cluster Development Plan and Community Map;
 - b. The revised building envelope will not subject development on the property or the adjacent properties to increased geohazard conditions, in excess of conditions anticipated for the existing building envelop locations, for which mitigation is not available;
 - c. The revised building envelope will not result in unacceptable spacing between wells or OWS/Sewer Facilities established in the approved Idarado Subdivision Exemption Plat and Cluster Development Plan; and
 - d. Other considerations.
4. If a request to modify a building envelope is approved by the Board of Directors, the owner of the lot shall thereafter apply for and obtain review and approval by the San Miguel County Planning Department of the requested modification, which shall be evaluated as an administrative review. The Planning Department shall approve a building envelope modification, unless it determines that the modified building envelop:
 - a. Will cross "hard building lines" shown on the Plat;
 - b. Will subject development on the Property or the adjacent properties to increased geohazard conditions, in excess of conditions anticipated for the existing building envelop locations, for which mitigation is not available; and
 - c. Result in unacceptable spacing between wells or OWS/Sewer Facilities established in the approval of this Application.