

STATE OF NEW MEXICO
COUNTY OF LINCOLN
TWELFTH JUDICIAL DISTRICT COURT

FILED
12th JUDICIAL DISTRICT COURT
Lincoln County
11/10/2021 3:38 PM
AUDREY HUKARI
CLERK OF THE COURT
Gloria Lamay

No. D-1226-CV-2021-00241

DALE A. ANTILLA, NANCY ANTILLA, DAVID BALLARD, DIANE BALLARD, MICHAEL L. BROWN, PATRICIA M. BROWN, LYNN E. BUDD, MICHAEL L. BUDD, JAMES C. BURNETT, JERI L. BURNETT, CRAIG W. CATHEY, SUE E.CATTERTON, AINSLEY CHITWOOD, WALTER CHITWOOD, BENNETT R. DAVIS, EVANGELINE M. DAVIS, DEBRA J. L. FALCON, CHRIS FARRINGTON, GALEN FARRINGTON, NANCY E. FEGELY, RALPH E. FEGELY, KEVIN FLEHARTY, NANCY D. FLEHARTY, AMY L. GOODE, LOUIS F. GOODE, CHARLES E. GORDON, GREGG R. GRIFFIN, LAVONNE L. GRIFFIN, ELLEN C. HIGHTOWER, STEVEN G. HIGHTOWER, PENELOPE S. HORTON, WILLIAM F. HORTON, JR., JUDY K. JUSTUS, RORY LACY, DENISE LAYTON, ROBERT LAYTON, MILDRED A. MASTIN, RICHARD D. MASTIN, LAWRENCE R. MATHER, CAROLINE MCCOY, JOHN D. MCCOY, DEBORAH MILLER, MICHAEL MILLER, IVAN R. MILLER, NINA C. POANESSA, BRENDA RESTIVO, GARY RESTIVO, DAVID L. ROE, JAZMIN S. ROE, GARY SAWYER, FARANZA SEDILLO, PAUL SEDILLO, BARBARA R. SEVERANCE, MARK T. SEVERANCE, EVERETT SKINNER, VIVIAN SKINNER, RANDALL L. SMITH, DARREL D. STIERWALT, DIORLY J. STEIRWALT, ANN STOUT, ROGER STOUT, KAREN A. SYZDEK, LEROY VIGIL, J. DALTON TARWATER, DOUGLAS E. THOMPSON, VIRGINIA M. THOMPSON, DAVID E. WEBB, DON R. WEEMS, KATHLEEN WEEMS, ROBERT WHITTEMORE, AND BARBARA J. YOUNT,

Plaintiffs,

v.

ROPER CONSTRUCTION, INC.,

Defendant.

Sugg, John P.

**COMPLAINT FOR ANTICIPATORY PRIVATE NUISANCE,
DAMAGES, AND DECLARATORY AND INJUNCTIVE RELIEF**

For their Complaint against Defendant Roper Construction, Inc. (“Roper”), Plaintiffs state the following:

I. NATURE OF THE CASE

1. This action is brought by Plaintiffs, individually, to vindicate Plaintiffs’ interests in the quiet use and enjoyment of their land, by requesting a declaration from this Court that the construction and operation of a large, industrial concrete batch plant (“the plant”) proposed by Roper Construction, Inc. (“Roper” or “Defendant”) along NM Highway 220 and proximate to Plaintiffs’ residences in Alto, New Mexico, constitutes an impermissible private nuisance. This action also seeks an order enjoining the proposed construction of the concrete batch plant so that the nuisance can be prevented and abated.

2. The proposed plant would constitute an intentional and unreasonable invasion of Plaintiffs’ quiet enjoyment of their properties and is wholly unsuited to the scenic, rural setting in the Alto area. Inevitable air pollution, water pollution, light pollution, and noise pollution, both from the plant and heavy truck traffic, beginning at 3:00 a.m. for much of the year, would substantially impair the area’s natural beauty and pristine conditions which enticed Plaintiffs to purchase lots and reside in the area. The pollution would also interfere with each Plaintiffs’ property uses, which are particularly compatible with the local environment, including agriculture, wildlife habitat, star gazing, and nature viewing. Additionally, fugitive dust emissions from the proposed concrete batch plant would severely harm Plaintiffs with existing respiratory conditions, and the proposed concrete batch plant would also significantly devalue Plaintiffs’ property and the resulting property tax base of the community. Plaintiffs residing near NM 220 will also be severely

harmful by the disruption caused by early morning truck traffic and the extensive hours of plant operation.

II. PARTIES, JURISDICTION, AND VENUE

3. Plaintiffs Dale and Nancy Antilla, husband and wife, are the owners of 135 Coyote Mesa Trail, Alto, New Mexico, a 5.24-acre residential property. Mr. and Mrs. Antilla purchased the property in July 2002.

4. Plaintiffs David and Diane Ballard, husband and wife, are the owners of 126 San Mateo Drive, Alto, New Mexico, a 5-acre residential property. Mr. and Mrs. Ballard purchased the property in April 2019.

5. Plaintiffs Michael and Patricia Brown, husband and wife, are the owners of 116 Bull Elk Court, Alto, New Mexico, a 2-acre residential property. Mr. and Mrs. Brown purchased the property in 1993.

6. Plaintiffs Michael and Lynn Budd, husband and wife, are the owners of 152 Sun Valley Road, Alto, New Mexico, a 0.64-acre residential property. Mr. and Mrs. Budd purchased the property on September 19, 2019.

7. Plaintiffs James and Jerri Lynne Burnett, husband and wife, are the owners of 340 Santiago Circle, Alto, New Mexico, a 10-acre residential property. Mr. and Mrs. Burnett purchased the property in August 2017.

8. Plaintiffs Craig Cathey and Barbara Yount, husband and wife, are the owners of 147 Legacy Lane, Alto, New Mexico, a 2.817-acre residential property. Mr. Cathey and Ms. Yount purchased the property in July 2013.

9. Plaintiffs David Webb and Sue Catterton, husband and wife, are the owners of 173 Sonterra Drive, Alto, New Mexico, a 5-acre residential property. Mr. Webb and Ms. Catterton acquired the property in September 2017.

10. Plaintiffs Walter and Ainsley Chitwood, husband and wife, are the owners of 146 Antler Drive, Alto, New Mexico, a 2-acre residential property. Mr. and Mrs. Chitwood purchased the property in July 2019.

11. Plaintiffs Bennett Ray and Evangeline Davis, husband and wife, are the owners of 146 Altamira Drive, Alto, New Mexico, a 5-acre residential property. Mr. and Mrs. Davis purchased the property in 2008.

12. Plaintiff Debra J. L. Falcon is the owner of Ranches of Sonterra lots nos. 219 and 291, totaling 10-acres of residential property. Ms. Falcon purchased the property in the 1990s.

13. Plaintiffs Galen and Chris Farrington, husband and wife, are the owners of 168 State Highway 220, Alto, New Mexico, a 2.5-acre residential property. Mr. and Mrs. Farrington purchased the property in 2016.

14. Plaintiffs Ralph and Nancy Fegely, husband and wife, are the owners of 148 Chama Canyon, Alto, New Mexico, an 18-acre residential property. Mr. and Mrs. Fegely purchased the property in December 2019.

15. Plaintiffs Kevin and Nancy Fleharty, husband and wife, are the owners of 121 Box Canyon Trail, Alto, New Mexico, a 43.5-acre residential property. Mr. and Mrs. Fleharty purchased the property in 1998.

16. Plaintiffs Louis and Amy Goode, husband and wife, are the owners of 190 Placitas Drive, Alto, New Mexico, a 10-acre residential property. Mr. and Mrs. Goode purchased the property in 2019.

17. Plaintiff Charles Gordon is the owner of 144 San Mateo Drive, Alto, New Mexico, a 10-acre residential property. Mr. Gordon purchased the property in 1996.

18. Plaintiffs Gregg and Lavonne Griffin, husband and wife, are the owners of 131 and 135 Legacy Lane, Alto, New Mexico, a 5-acre residential property. Mr. and Mrs. Griffen purchased the property in 2011.

19. Plaintiffs Steven and Ellen Hightower, husband and wife, are the owners of 137 Gray Fox Lane, Alto, New Mexico, an 11-acre residential property. Mr. and Mrs. Hightower purchased the property in 1996.

20. Plaintiffs William and Penelope Horton, husband and wife, are the owners of 114 Legacy Lane, Alto, New Mexico, a 2-acre residential property. Mr. and Mrs. Horton purchased the property in 2007.

21. Plaintiff Judy Kay Justus is the owner of 174 Placitas Drive, Alto, New Mexico, a 5.167-acre residential property. Ms. Justus purchased the property in December 2016.

22. Plaintiff Rory Lacy is the owner of 143 Legacy Lane, Alto, New Mexico, a 7-acre residential property. Mr. Lacy purchased the residential tract in 2016 and purchased additional tracts in 2017 and 2021.

23. Plaintiffs Robert and Denise Layton, husband and wife, are the owners of 164 Santiago Circle, Alto, New Mexico. Mr. and Mrs. Layton purchased the property in September 2018.

24. Plaintiffs Richard and Mildred Mastin, husband and wife, are the owners of 113 Bela Cena, Alto, New Mexico, a 5-acre residential property. Mr. and Ms. Mastin purchased the property in 1995.

25. Plaintiff Lawrence R. Mather is the owner of 130 Winterhawk Heights Drive, Alto, New Mexico, a 5-acre residential property. Mr. Mather purchased the property in November 2005.

26. Plaintiffs John D. and Caroline McCoy, husband and wife, are the owners of 199 Linda Vista Lane, Alto, New Mexico, a 10-acre residential property. Mr. and Mrs. McCoy purchased their home in 2015.

27. Plaintiffs Michael and Deborah Miller, husband and wife, are the owners of 207 Racoon Court, Alto, New Mexico, a 1.3-acre residential property. Mr. and Mrs. Miller purchased the property in 2003.

28. Plaintiff Ivan Rex Miller is the owner of 100 Eagle Ridge Road, Alto, New Mexico, a 2-acre residential property. Mr. Miller purchased the property in January 2011.

29. Plaintiff Nina C. Poanessa is the owner of 208 Sonterra Drive, Alto, New Mexico, a 12-acre residential property. Ms. Poanessa purchased her first lot in 2007 and an additional lot in 2012.

30. Plaintiffs Gary and Brenda Restivo, husband and wife, are the owners of 153 San Mateo Drive, Alto, New Mexico, a 11.6-acre residential property. Mr. and Mrs. Restivo purchased the property in 2006.

31. Plaintiffs David Lance Roe and Jazmin S. Roe, husband and wife, are the owners of 212 Sam Bass Court, Alto, New Mexico, a 3.75-acre residential property. Mr. and Mrs. Roe purchased the property in July 1998.

32. Plaintiff Gary Sawyer is the owner of 151 Corvo Crista, Alto, New Mexico, a 10-acre residential property. Mr. Sawyer purchased the property in 1995.

33. Plaintiffs Paul and Farzana Sedillo, husband and wife, are the owners of 87 Sandesta Drive, Alto, New Mexico, a 6.6-acre residential property. Mr. and Mrs. Sedillo purchased the property in December 2020.

34. Plaintiffs Mark T. and Barbara R. Severance, husband and wife, are the owners of 136 Santiago Circle, Alto, New Mexico, a 10-acre residential property. Mr. and Mrs. Severance purchased the property in September 2016.

35. Plaintiffs Everett and Vivian Skinner, husband and wife, are the owners of 123 Coyote Mesa Trail, Alto, New Mexico, a 7.3416-acre residential property. Mr. and Mrs. Skinner purchased the property in August 1988.

36. Plaintiff Randall Smith is the owner of 113 La Cueva, Alto, New Mexico, a 5-acre residential property. The property was purchased by his wife, Holly Elliot, in 2017.

37. Plaintiffs Darrel D. and Diorly J. Stierwalt, husband and wife, are the owners of 137 and 149 Zorro Lane, Alto, New Mexico, a combined ten acres of residential property. Mr. and Mrs. Stierwalt purchased the first lot in 2000 and the second in 2014.

38. Plaintiffs Roger and Ann Stout, husband and wife, are the owners of 115 La Cueva Court, Alto, New Mexico, a 5-acre residential property. Mr. and Mrs. Stout purchased the property in August 2020.

39. Plaintiffs Leroy Vigil and Karen Ann Syzdek are the owners of 172 Santiago Circle, Alto, New Mexico, a 17.5-acre residential property. Mr. Vigil and Ms. Syzdek purchased the property in August 2017.

40. Plaintiff J. Dalton Tarwater, Ph.D. is the owner of 114 Winter Park Road, Alto, New Mexico, a 1.5-acre residential property. Dr. Tarwater purchased the property in April 1999.

41. Plaintiff Douglas E. Thompson and Virginia M. Thompson, husband and wife, are the owners of 196 State Highway 220, a 5-acre residential property. The Thompsons purchased the property in August 2000.

42. Plaintiffs Don R. and Kathleen Weems, husband and wife, are the owners of 116 Legacy Lane, Alto, New Mexico, a 2.1-acre residential property. Mr. and Mrs. Weems purchased the property in February 2020.

43. Plaintiff Robert Whittemore is the owner of 133 Pecos Court, Alto, New Mexico, a 5-acre residential property. Mr. Whittemore purchased the property in July 1997.

44. Defendant Roper is a New Mexico corporation with its principal place of business located at 113 Coyote Mesa, Alto, New Mexico.

45. This Court has jurisdiction pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA 1978, Section 44-6-2 (Declaratory Judgment Act).

46. Venue is proper in this Court pursuant to NMSA 1978, Sections 38-3-1(A), (B), (D)(1).

III. CHARACTER OF THE LOCALITY

47. Plaintiffs reside in and around Alto, New Mexico, an unincorporated area in Lincoln County, located approximately six (6) miles north of Ruidoso, New Mexico. The area is between the Sierra Blanca Mountains to the west, pictured below, and the Capitan Mountains to the east, also pictured below. The Alto area shown below also includes parts of the Lincoln National Forest and the Fort Stanton Snowy River Cave National Conservation Area.



48. Roper has proposed to construct an industrial concrete batch plant in Alto near the intersection of NM State Highway 220 and NM Highway 48. The proposed location of the concrete batch plant is in a rural and virtually exclusive residential community. The photograph below depicts the view from Plaintiffs Mr. and Mrs. Restivos' residence, in the direction of the proposed location of the concrete batch plant, and demonstrates the natural, rural, and residential character of the area.



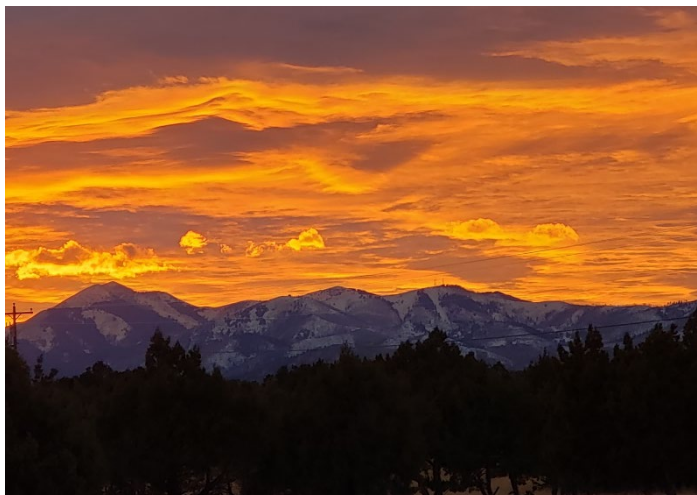
49. The residential neighborhoods surrounding the proposed concrete batch plant are scenic, quiet, and peaceful, enjoying unimpeded views the White Mountain Wilderness Area, including Sierra Blanca Peak, southern New Mexico's highest peak. The residents of the area enjoy experiencing nature free from the noise, light pollution and air pollution of larger towns and cities that often include industrial plants, such as the concrete batch plant proposed by Roper. Many of the area's residents are retirees and chose the area to live during their retirement due to the long-term health benefits afforded by the area's pristine air and alpine environment.



50. NM 220, where Roper has proposed to locate the industrial concrete batch plant, has been designated by the United States Department of Transportation Federal Highway Administration as a National Scenic Byway, which recognizes and seeks to preserve the natural and scenic qualities of the area.

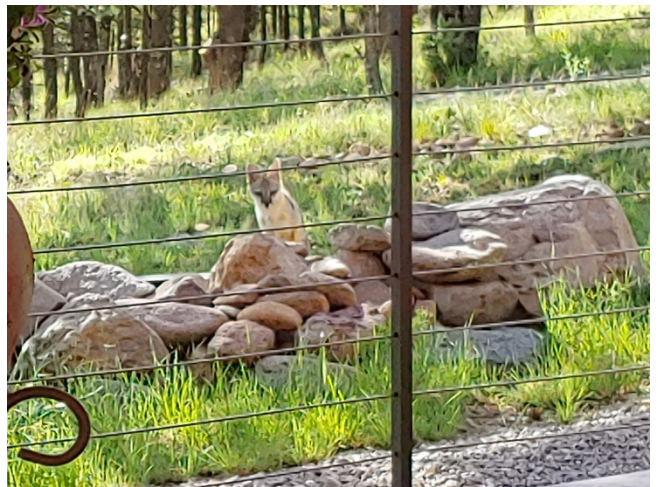


51. The pristine quality of the air provides for incomparable views of the surrounding beauty of the area, including the Sierra Blanca mountains, shown below, and local water ways, such as Little Creek, also shown below.



52. Currently, there is minimal, if any, traffic noise, including traffic noise generated by large trucks, in the area of Plaintiffs' residences on or near NM 220 and NM 48. There are no industrial enterprises, heavy or light, located in the area, resulting in the absence of any industrial noise or light pollution in the area.

53. The lack of noise pollution allows Plaintiffs to enjoy observing myriad wildlife on their property, including wild horses, elk, wild turkeys, hummingbirds, fox and deer.





54. Because the area is rural and predominantly residential, there is no discernable light pollution and Plaintiffs are able to enjoy unfettered views of the night sky. In fact, this area is well-known for its dark skies and pristine nighttime viewing conditions. Plaintiff Charles E. Gordon is an amateur astronomer and has captured stunning photographs of celestial objects as a result of the clear air and absence of light pollution in this area.



55. Recognizing the natural quality and pristine character of this rural and residential area, the deed covenants of many of the lots adjacent to the proposed site of the concrete batch plant contain covenants of quiet enjoyment, with specific restrictions against any use which, by its nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining lot owners.

56. Notably, the warranty deed that conveyed the lot where Roper proposes to construct and operate the concrete batch plant also contains the very same covenant of quiet enjoyment and prohibits any activity that would be considered a nuisance to adjoining lot owners. *See* Exhibit A, Deed for site of proposed concrete batch plant.

57. Moreover, the disclosure statement from at least one (1) neighborhood subdivision surrounding the proposed site of the Roper concrete batch plant, found at Record # 8109 of the Lincoln County records, specifically noted, as an enticement for potential purchasers, that there were “no activities or conditions adjacent to or nearby the Subdivision, such as feedlots, *cement plants*, or the like, which would subject the Subdivision land to any unusual conditions affecting its use or occupancy.” *See* Exhibit B, Disclosure Statement (emphasis added).

58. The proposed location of Roper’s concrete batch plant would be contrary to both Roper’s deed covenants and to the representations in the disclosure statement, found at Record # 8109, assuring prospective buyers purchasing residential property that a concrete batch plant would not be located in this area.

59. The construction and operation of an industrial concrete batch plant will create materially adverse and detrimental conditions that are markedly divergent from the character of the area as described above.

60. The Board of County Commissioners of Lincoln County, New Mexico, has recognized the inevitable deleterious effects from the potential construction of Roper’s concrete batch plant and passed Resolution No. 2021-24, concluding that Roper’s proposed concrete batch plant could be considered a public nuisance to the surrounding property owners. The Resolution specifically found that the existence of such a plant would “likely result in visual and environmental blight, and unhealthy, unsafe and devaluing conditions.” *See* Exhibit C, Lincoln

County Board of Commissioners Resolution. One participant at the Commission meeting cautioned that construction of the concrete batch plant would require a re-assessment of property values in the community, likely resulting in a deteriorating property tax base to provide public services.

IV. DESCRIPTION OF CONCRETE BATCH PLANT OPERATIONS

61. Roper intends to construct and operate a concrete batch plant approximately 0.35 miles east of the intersection of NM 48 and NM 220 in Lincoln County. The Plaintiffs' residences are located in the area surrounding the proposed concrete batch plant. *See Exhibit D, Google Earth map depicting locations of Plaintiffs' residences.*

62. Roper currently operates a substantially similar concrete batch plant in Carrizozo, New Mexico. As shown below, this concrete batch plant includes substantial industrial components covering a large footprint, including significant volumes of aggregate materials scattered across the premises.



63. Additionally, at Roper’s existing plant in Carrizozo, shown below, concrete rubble and other debris are strewn haphazardly across the site, with no safeguards in place to prevent fugitive emissions from these materials and without any authorized permit for this on-site solid waste disposal. There is no basis to expect that the proposed Alto concrete batch plant would have dissimilar characteristics.



64. The industrial components of a concrete batch plant, as exemplified by Roper’s existing plant in Carrizozo, do not conform to the natural character of the Alto area as described above and as further amplified in this complaint.

65. The Application for an Air Quality Permit submitted by Roper to the New Mexico Environment Department (“NMED”) reveals that Roper’s proposed concrete batch plant will be a source of Hazardous Air Pollutants (“HAPs”). *See* Exhibit E, Roper Application, Section 1, p. 4.

66. Roper claims that the proposed concrete batch plant will only be a “minor” source, i.e., emitting less than 10 tons per year (“TPY”) of any single HAP and less than 25 TPY of all HAPs, only by virtue of Roper’s proposed intent to implement certain controls designed to reduce HAP emissions. *See* Exhibit E, Roper Application, Section 1, p. 4; *id.*, Table 2-C, p. 1; *id.*, Table 2-D, p. 1; *id.*, Table 2-E, p. 1 (showing a purported reduction in emissions from the estimated emissions with pollution controls). However, the only pollution controls proposed by Roper to limit the fugitive dust emissions at the proposed concrete batch plant are water sprayers at the exit

of the aggregate/sand feed hopper. *See* Exhibit E, Table 2-C, p.1 (showing the majority of emission control equipment as “additional moisture content.”).

67. Without an adequate water supply to implement the pollution controls and Roper’s on-going commitment to implement the controls on a constant basis, the proposed concrete batch plant would emit over 520 TPY of PM (particulate matter), 263 TPY of PM 10 (particulate matter with a diameter of 10 micrometers or less), and 68 TPY of PM 2.5 (particulate matter with a diameter of 1.5 micrometers or less). *See* Exhibit E, Roper Application, Table 2-D, p. 1. As a result, the proposed concrete batch plant would be a “major” source of HAP, defined as a source that has the potential to emit more than 10 TPY of one or more HAPs or more than 25 TPY of all HAPs.

68. Roper has not calculated the water consumption necessary to implement the pollution controls proposed for the concrete plant; however, in order to produce the large volumes of concrete estimated by Roper (500,625 cubic yards per year based on 267 days of continuous operations), Roper’s own submittals to NMED acknowledge that the concrete batch plant would consume at least 15,600,000 gallons of water, or 48 acre-feet, on an annual basis. Roper does not have a water right sufficient to supply such a massive quantity of water, and Roper has presented no analysis of the additional emissions resulting from the vast number of trucks that would be required to transport such a large quantity of water to the concrete batch plant location. Upon information and belief, the consumption of such a large quantity of water would require virtually constant truck deliveries on NM 220, beginning from 3:00 a.m. and continuing until 9:00 p.m., 267 days per year.

69. Roper has not proposed any mitigation measures to prevent the inevitable runoff from the purported control measures and resulting pollution of surrounding water sources,

including Little Creek, Rio Bonito, and groundwater. The quality of groundwater is of heightened importance as the majority of Plaintiffs rely upon groundwater for their water consumption needs, through neighborhood water wells or private water wells on their individual properties.

70. In the event Roper seeks to deliver water by trucks to the proposed concrete batch plant to implement the water spray control measures, such a proposal would exacerbate truck traffic on NM 220, in addition to the traffic from trucks necessary to transport concrete, and increase the noise emanating from both the proposed concrete batch plant site and from the highway itself.

71. Even with the purported controls to contain air pollution, Roper estimates that the proposed concrete batch plant will emit approximately 8 tons of PM per year, almost 6 tons of PM10 per year, and approximately 2 tons of PM 2.5 per year. *See* Exhibit E, Public Notice Placard, Section 9, p. 6. These dust emissions will undoubtedly become fugitive and migrate to nearby properties. The fugitive dust would be particularly difficult to control after it solidifies with the application of moisture.

72. Fugitive dust emissions will also occur when required routine maintenance is performed on the silo filters.

73. Roper intends to operate the concrete batch plant from 3:00 a.m. until 9:00 p.m. for the months of May, June, July and August; from 4:00 a.m. until 8:00 p.m. for the months of April, and September; from 5:00 a.m. until 7:00 p.m. for the months of March and October; and, from 7 a.m. until 6 p.m. for the months of January, February, November and December. *See* Exhibit E, Section 3, Table 3-1, p.2. These extensive operations will result in significant and unreasonable noise levels, including noise from the aggregate materials (sand, cement, and rock) being loaded

into metal aggregate storage bins. Substantial noise will also be generated by the transportation of the aggregates by conveyor belt from bins into large metal silos.

74. The operation of the concrete batch plant at 3:00 a.m. until 9:00 p.m. will cause significant heavy truck traffic and traffic noise emanating from the plant and from the highway itself during times when, at present, there is virtually no traffic noise from NM 220. The trucks delivering aggregate materials are typically 80,000-pound diesel trucks. The trucks delivering water are also typically 80,000-pound diesel trucks. Cement mixer trucks are typically 50,000-pound diesel trucks.

75. Additionally, operation of the proposed concrete batch plant will significantly increase the light pollution in this rural, residential area, with light pollution emanating from the proposed plant operations and from the increased truck traffic beginning at 3:00 a.m. and continuing until 9:00 p.m. for several months a year.

V. FACTS COMMON TO ALL PLAINTIFFS

76. The construction and operation of the proposed concrete batch plant will cause significant fugitive dust emissions and other HAP emissions that will migrate and settle onto the Plaintiffs' property and unreasonably interfere with each Plaintiff's quiet enjoyment and use of their residential, rural property. The release of crystalline silica dust, a hazardous air pollutant emission of the concrete manufacturing process and a known carcinogen that may lead to serious health problems, would exacerbate the pre-existing respiratory conditions of many Plaintiffs and is antithetical to the main reason most Plaintiffs chose to live in the area, i.e., maintenance of long-term health.

77. The pollution controls advocated by Roper will not be sufficient to prevent pervasive and uncontrolled air pollution emanating from the plant to the areas surrounding the

plant and will severely negatively impact each Plaintiff's ability to enjoy the clean air, the unimpeded views of the natural surroundings, and the flora and fauna of the area.

78. The construction and operation of the proposed concrete batch plant, for up to 18 hours a day, will create substantial noise pollution and unnatural vibrations that will unreasonably interfere with each Plaintiff's quiet enjoyment and use of their property.

79. The construction and operation of the proposed concrete batch plant will cause light pollution that will unreasonably interfere with each Plaintiff's ability to enjoy the clear night skies.

80. The construction and operation of the proposed concrete batch plant will result in unreasonable heavy truck traffic on NM 220, including cement hauling and mixing trucks, aggregate hauling trucks, and water delivery trucks.

81. The heavy truck traffic will cause unreasonable noise pollution and constitute a health and safety hazard negatively impacting each Plaintiff's reasonable ingress and egress to their property.

82. The proposed concrete batch plant is a visual blight and is aesthetically out of character for the residential and rural locality.

83. Runoff from the plant creates a likelihood of pollution of surface and groundwater in the area.

84. The construction and operation of the proposed concrete batch plant will cause Plaintiffs' property values to decrease by radically changing the residential and rural character of the area, causing a degradation of the public roadways for ingress and egress to the residential areas surrounding the proposed plant, and negatively affecting the quiet nature of the residential and rural areas and the clear natural views in the area. These attributes formed a significant basis

for Plaintiffs to purchase residential property in this area, without trepidation of interference by an improperly-located concrete batch plant or other similar industrial activity.

VI. INDIVIDUAL PLAINTIFFS' USE AND ENJOYMENT OF PROPERTY

85. Plaintiffs Craig W. Cathey, Barbara J. Yount, Chris Farrington, Galen Farrington, Gregg Griffin, Lavonne Griffin, Ellen C. Hightower, Steven G. Hightower, Rory Lacy, Don R. Weems, and Kathleen Weems all reside less than 0.5 mile from the proposed concrete batch plant, with the Weems living approximately 450 yards from the proposed site. *See e.g.*, Exhibit F, approximate areas where all Plaintiffs reside.

86. Plaintiffs Dale Antilla, Nancy Antilla, David Ballard, Diane Ballard, Michael L. Brown, Patricia M. Brown, Lynn E. Budd, Michael L. Budd, Amy L. Goode, Louis F. Goode, Charles E. Gordon, Penelope S. Horton, William F. Horton Jr., Judy Kay Justus, Caroline McCoy, John D. McCoy, Ivan Rex Miller, Nina C. Poanessa, Brenda Restivo, Gary Restivo, Gary Sawyer, Everett Skinner, Vivian Skinner, Randall L. Smith, Darrel D. Stierwalt, Diorly J. Stierwalt, Ann Stout, Roger Stout, J. Dalton Tarwater, Douglas E. Thompson and Virginia M. Thompson all reside between 0.5 miles and two (2) miles of the proposed concrete batch plant. *See Exhibit F.*

87. Plaintiffs James C. Burnett, Jeri Lynne Burnett, Sue E. Catterton, David Webb, Ainsley Chitwood, Walter Chitwood, Bennett Ray Davis, Evangeline M. Davis, Debra J.L. Falcon, Nancy E. Fegely, Ralph E. Fegely, Kevin Fleharty, Nancy D. Fleharty, Denise Layton, Robert Layton, Mildred A. Mastin, Richard D. Mastin, Lawrence R. Mather, David L. Roe, Jazmin S. Roe, Faranza Sedillo, Paul Sedillo, Barbara R. Severance, Mark T. Severance, Karen A. Syzdek, Leroy Vigil, and Robert Whittemore all reside between two (2) miles and six (6) miles of the proposed concrete batch plant. *See Exhibit F.*

88. Plaintiffs Dale and Nancy Antilla have owned their property in Alto, New Mexico for nearly twenty years. Although Mr. and Mrs. Antilla have lived throughout the American west, in California and other parts of New Mexico, Alto is their favorite location. The proposed concrete batch plant will disturb Mr. and Mrs. Antilla's peaceful property, create harmful dust that will impact Mrs. Antilla's asthma, produce disruptive light and noise, and destroy local roadways, thereby negatively impacting ingress and egress to their property.

89. Plaintiffs David and Diane Ballard reside in Alto with Mrs. Ballard's eighty-three-year-old mother and the couple's horses. Mrs. Ballard's mother suffers from bronchial inflammation, a condition that will be adversely affected by the fugitive dust emissions from the proposed batch plant. Moreover, Mr. and Mrs. Ballards' horses are quartered on their property and the food and water sources for their horses will be adversely affected by the fugitive dust emissions from the proposed plant.

90. The proposed concrete plant will destroy the peace and quiet in Alto, the clear skies at night, and the pristine air quality that Plaintiffs Lynn and Michael Budd currently enjoy on their property.

91. Plaintiffs James and Jerri Lynne Burnett are New Mexico natives, who vacationed in the Alto area as children and retired to the area four years ago. The proposed concrete plant will disturb their enjoyment of their land and community in multiple ways, including disturbances from air, noise and light pollution. The concrete plant will also dissuade the Burnetts' relatives from visiting their land. Mrs. Burnett's sister currently visits her regularly and has Chronic Obstructive Pulmonary Disease ("COPD"), a condition that requires clear air, free from the fugitive dust emissions that will emanate from the proposed concrete batch plant onto the Burnetts' land.

92. Plaintiffs Craig Cathey and Barbara Yount moved from Dallas, Texas to Alto for the clean air and scenic beauty. The proposed plant will unreasonably and substantially impair Mr. Cathey and Ms. Yount's ability to enjoy the clean air and scenic beauty of their land, shown below. Further, the proposed concrete batch plant operations will create traffic issues that will negatively impact their ingress and egress from their property. The proposed concrete batch plant operations will also aggravate Mr. Cathey's chronic allergic condition.



93. Plaintiffs David Webb and Sue Catterton were ranchers in Texas before moving to the Alto area in 2005 and eventually settling on the land shown below. Mr. Webb and Ms. Catterton enjoy the wildlife that come to visit their property; the noise and lights from the plant will likely cause the deer, elk, wild turkeys, and rabbits, currently seen on a daily basis, to vacate their property.



94. Plaintiffs Bennett Ray and Evangeline Davis moved to Alto from Washington D.C. after Mr. Davis retired. Mr. Davis was a federal employee for many years. Mr. and Mrs. Davis came to Alto to enjoy an entirely different life: the high altitude, peace and quiet, abundant wildlife, clear skies, and clean air – all of which will be disrupted by the proposed concrete batch plant.

95. Plaintiffs Galen and Chris Farrington have been residents of Lincoln County since 1973. Mr. and Mrs. Farrington inspected various properties for five years before selecting their current property in Alto – their dream home. Mr. Farrington credits the couple’s good health to this property; the Farringtons have access to the outdoors for daily exercise. Mr. Farrington is an avid cyclist and rides his bicycle every day. Mrs. Farrington enjoys playing pickleball with friends. Light and noise from the plant will adversely affect their current lifestyle, including their ability to exercise outdoors.

96. Plaintiffs Ralph and Nancy Fegely resided in Florida and Nevada before moving to Alto for the peace and quiet and scenic natural environment; the proposed concrete batch plant will negatively impact that environment. Mr. and Mrs. Fegely’s enjoyment of their property will be negatively impacted by proposed plant operations, including their use of two additional lots they purchased in the summer of 2021.

97. Plaintiffs Kevin and Nancy Fleharty have lived in the Alto area for nearly their entire lives. Mr. and Mrs. Fleharty moved to the area in 1974. Mr. and Mrs. Fleharty have raised two generations of children in the area, and the disturbance caused by the proposed concrete plant is not in character with their natural, residential environment, as shown below, in which they have raised their family. Several horses, a donkey, five dogs, and a rafter of wild turkeys reside on their property. The proposed concrete batch plant will negatively impact the environment, the health of their animals, the roadways in Alto which constitute ingress and egress to their property, and the clarity of the night sky.



98. Plaintiffs Louis and Amy Goode moved to Alto from Dallas, Texas when Mr. Goode retired from his position as a defense contractor. The couple moved to the area specifically for a quiet and pristine environment, both of which will be negatively impacted by the proposed concrete batch plant.

99. Plaintiff Charles Gordon moved to Alto from Erie, Colorado in 2012, after retiring. Mr. Gordon owns his own observatory and studies astronomy, as shown below. The light emitted

from the plant and the traffic associated with the concrete batch plant operations will make the observatory on his property unusable in the manner he currently enjoys.



100. Plaintiffs Gregg and Lavonne Griffin are attracted to the climate in Alto because Mr. Griffin has chronic issues with his lungs and is susceptible to pneumonia. Given their proximity to the proposed concrete plant site, the fugitive dust emissions from the plant will negatively impact his health.

101. Plaintiffs Steven and Ellen Hightowers' eleven acres of land consist of a greenhouse, a sizeable vegetable garden, a barn with livestock, and multiple orchards, including an apple orchard that has been on the property for over a century, as shown below. Mr. and Mrs. Hightower grow fresh produce which they often sell at local farmers markets. Fugitive dust emissions from the proposed concrete batch plant, located less than 0.6 miles away, will negatively impact the orchard and the produce the Hightowers enjoy growing on their land.



102. Plaintiffs William and Penelope Horton enjoy the natural beauty around their property, shown below, and maintain its natural character for the abundant wildlife. Prior to living in Alto, Mr. and Mrs. Horton lived in Colorado Springs, Colorado. The couple visited the Alto area on vacation and decided to move to the area. They enjoy the peace and quiet, as well as easy access to hiking trails. Dust-free, clean air is important to the Hortons and one of the primary reasons they chose this area for their residence. When they moved to Alto from Colorado Springs, Mrs. Horton was diagnosed with Reactive Airway Disease. At one point, this condition required her to use an inhaler, but her condition has improved as a result of the clear air surrounding their land. Any dust emitted from the proposed concrete plant will negatively impact Mrs. Horton's health issues because of her proximity to the proposed site, demonstrated by the second picture

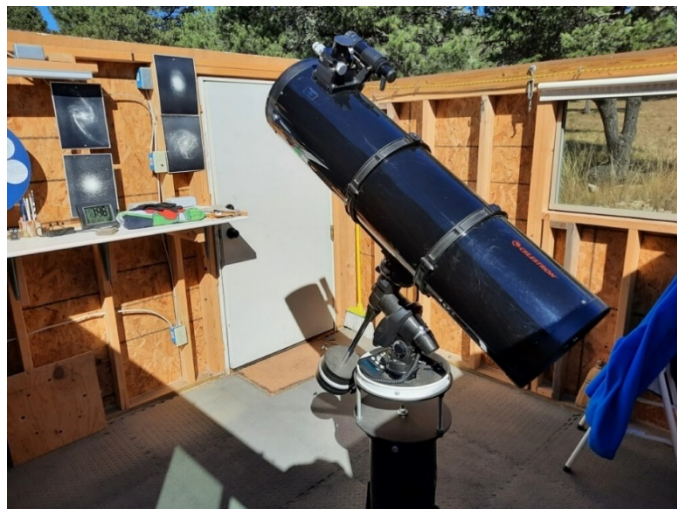
below, showing the proposed location of the plant directly across the street from the Hortons' property.



103. Plaintiff Rory Lacy typically resides at his property in Alto for half of the year. Mr. Lacy intends on retiring permanently to Alto in March 2022. Mr. Lacy has chosen to retire in Alto because of its scenic beauty, proximity to the mountains, and the abundant wildlife. The property is one hundred yards from the boundary of the proposed site, and Mr. Lacy's peaceful enjoyment of his home will be severely compromised and diminished by the noise, light, and dust emanating from the concrete batch plant.

104. Plaintiff Richard Mastin is the Vice President of the Ranches of Sonterra Property Owners Association. Mr. Mastin and his wife, Mildred, enjoy the peaceful, quiet area and are dismayed that a concrete batch plant is proposed in Alto, which would necessarily destroy their peaceful and quiet environment. Mr. Mastin enjoys astronomy and built an observatory on the property, shown below, with an investment of thousands of dollars. The dust and light pollution

from the plant and the trucks will make his observatory unusable in the manner to which he is accustomed.



105. Plaintiff Lawrence Mather retired, with his wife, from New Jersey to Alto. Mr. Mather installed a thirty-thousand-dollar rainwater collection system on his house at the time they purchased the property. The fugitive dust from the plant will be captured by the rainwater collection system, rendering his home's main water supply either unusable or likely requiring additional filtration.

106. Plaintiffs John and Caroline McCoy raise performance horses on their property. Mr. and Mrs. McCoy have invested their time and money into making their property an ideal place for their horses, shown below. Mr. and Mrs. McCoy are in their eighties and purchased their property because it is in a quiet, clean, and remote area. Mr. McCoy anticipates that dust from the plant will negatively impact his COPD. Mr. and Mrs. McCoy are apprehensive about how they will protect their horses, which are stabled on the property, from the fugitive dust and noise pollution.



107. Hiking enthusiasts, Plaintiffs Michael and Deborah Miller, moved to Alto to be close to the local hiking trails and to enjoy the night skies. Prior to living in Alto, they lived in metropolitan areas in Texas, Ohio, and Colorado. The Millers enjoy living in Alto because of its clean air, scenic beauty, and the proximity to the White Mountain Wilderness area and the Fort Stanton-Snowy River Cave National Conservation Area. The dust, light and noise emanating from the proposed concrete batch plant will adversely affect the night sky, their favorite hiking trails, including hiking on their land, and the peace and quiet of their home and land.

108. Plaintiff Ivan Rex Miller escapes to his second home in Alto from the heat of summer in Texas. Mr. Miller enjoys the climate and fresh air of his Alto home and the local golf courses. Mr. Miller's home will be disturbed by dust and noise emanating from the proposed concrete plant. The increased heavy truck traffic will also negatively impact Mr. Miller's ingress and egress to his home.

109. Plaintiffs Gary and Brenda Restivo moved from New Jersey to Alto more than ten years ago. Mr. and Mrs. Restivo enjoy being visited by the local wildlife, shown below, and spending time enjoying nature and with the friends they have made in the area. Based on their experience living in the area, Mr. and Mrs. Restivo anticipate windy conditions transporting fugitive dust and noise from the proposed concrete batch plant to their property. Mr. and Mrs. Restivo's property, shown below on the right, looks down on the proposed concrete batch plant site.



110. Plaintiffs Mark T. and Barbara Severance moved to Alto from Houston, Texas in 2018 to retire. Mr. and Mrs. Severance are enthusiastic about their property, shown below, and the scenic beauty of Alto. Mr. and Mrs. Severance enjoy gardening, viewing wildlife on their property (also pictured below), and stargazing. The noise, light, and dust from the proposed concrete batch plant will disturb their environment and negatively affect their recreational activities. Moreover, Barbara Severance is a recent breast cancer survivor who attributes her current good health to the clean air quality and pristine environment of the Alto Area.



111. Plaintiffs Everett Skinner and Vivian Skinner enjoy the clean air, pleasant weather, and abundant wildlife in Alto and are concerned that the proposed concrete plant will produce disruptive noise and negatively impact their health.

112. Plaintiff Randall Smith has a second home in Alto to enjoy the scenic beauty of the area. The proposed concrete batch plant will produce disruptive noise and light, negatively impacting Mr. Smith's enjoyment of the scenic beauty and his ability to relax on his own land. Mr. Smith's health will be further negatively affected by the dust emissions emanating from the plant due to his chronic heart disease.

113. Plaintiffs Leroy Vigil and Karen Ann Syzdek moved to Alto from El Paso to live in a scenic and remote area, with clean air. Mr. Vigil and Ms. Syzdek enjoy the mild climate, the wildlife, the forest, living close to a hospital, and the amenities in Ruidoso. Mr. Vigil has occupational lung disease and cardiac issues, and his health will be negatively impacted by fugitive dust emissions from the proposed concrete batch plant. Emissions from increased heavy truck traffic will also exacerbate the negative impacts to Mr. Vigil's health.

114. Plaintiff J. Dalton Tarwater, Ph.D. has a second home in Alto. Dr. Tarwater spends part of the year in Lubbock, Texas and part of the year in Alto. He enjoys the clean air and the

peace and quiet in Alto. The noise, light, and dust from the proposed concrete batch plant will unreasonably disturb Dr. Tarwater's peaceful home. The pollution and the eventual degradation of local roads caused by the plant will also negatively impact Dr. Tarwater's property value.

115. Plaintiffs Don R. and Kathleen Weems enjoy the peace and quiet in Alto, the minimal traffic, and the seclusion of their property, shown below. Their health will be negatively impacted as a result of breathing fugitive emissions dust from the proposed concrete batch plant. Further, the light from the proposed concrete batch plant will make it more difficult for them to enjoy the night sky, and noise generated by the plant will disturb the Weems' quiet enjoyment of their property.



COUNT I

Anticipatory Private Nuisance – Declaratory Judgment (NMSA 1978, § 44-6-2)

116. Plaintiffs incorporate the allegations in paragraphs 1 through 115 the same as if fully set forth.

117. An actual controversy exists concerning whether Roper's proposed construction and operation of the plant would substantially harm and invade Plaintiffs' interests in the enjoyment of their respective properties. Accordingly, this Court has jurisdiction under NMSA 1978, Section 44-6-2 to declare that the proposed construction of the concrete batch plant

constitutes an anticipatory private nuisance with respect to each Plaintiff individually, and all Plaintiffs in the aggregate.

118. Defendant's proposed construction and operation of the concrete batch plant is intentional and will constitute an invasion of Plaintiffs' property interests through substantial air, noise, light and water pollution. This invasion will directly impair Plaintiffs' use and enjoyment of their respective properties, including, but not limited to, the following:

- A. Substantial aesthetic harm due to the construction of a concrete batch plant in a rural, residential locality;
- B. Substantial air pollution due to dust emissions from the plant;
- C. Substantial noise pollution due to the regular industrial operations of the plant;
- D. Substantial light pollution due to the regular operation of the plant;
- E. Potential surface water and groundwater pollution due to inevitable runoff from the plant; and
- F. Heavy truck traffic in the immediately surrounding neighborhood, beginning as early as 3:00 a.m., thereby creating further noise, air, and light pollution.

119. Defendant's intentional invasion of Plaintiffs' property interests will interfere with Plaintiffs' quiet use and enjoyment, particularly pre-existing uses that are well-suited to the locality, including the following:

- A. Quiet enjoyment in a residential locality;
- B. Quiet enjoyment in a rural locality;
- C. Quiet enjoyment for Plaintiffs with breathing conditions affected by dust;
- D. Wildlife and nature viewing;

- E. Astronomy and stargazing; and
- F. Agriculture/raising of livestock.

120. Defendant's proposed construction and operation of the batch plant is unreasonable under at least eleven separate analyses, set forth in paragraphs 121 – 131 below, the establishment of any one of which is legally sufficient to declare the proposed concrete batch plant an anticipatory private nuisance.

121. Defendant's anticipated intentional invasion of Plaintiffs' interests in the use and enjoyment of their respective and collective properties is unreasonable because the gravity of the harm outweighs the utility of Defendant's proposed conduct.

122. Defendant's anticipated intentional invasion of Plaintiffs' interests in the use and enjoyment of their respective and collective properties is unreasonable because it would be practicable for Defendant to avoid the harm in whole by constructing and operating the proposed plant at another site located in Lincoln County, New Mexico.

123. The inevitable results of Defendant's proposed construction of the concrete plant, including inevitable decreased property values, increased air pollution, increased noise pollution, increased light pollution, increased heavy truck traffic during late night and early morning hours, and increased surface water and groundwater pollution, all constitute an unreasonable invasion of each Plaintiff's right of quiet enjoyment of their property in a predominantly residential locality.

124. The decreased property values, increased air pollution, increased noise pollution, increased light pollution, increased heavy truck traffic during late night and early morning hours, and increased surface water and groundwater pollution constitute an unreasonable invasion of each Plaintiff's right of quiet enjoyment of their property in a rural locality.

125. For those Plaintiffs who suffer from medical conditions adversely affected by fugitive dust, the increase in air pollution will be an unreasonable invasion of those Plaintiffs' interests because the harm is significant and greater than an ordinary person should reasonably be required to bear without compensation.

126. Further, Defendant's proposed construction and operation of the plant is unreasonable because the locality is particularly well-suited for individuals whose medical conditions improve with clean air and the locality is particularly unsuited for a concrete batch plant.

127. For those Plaintiffs who are engaged in agricultural activities on their properties, the anticipated air and water pollution created by Defendant's proposed construction and operation of the concrete batch plant is unreasonable because the harm is significant and greater than an ordinary person should be required to bear without compensation.

128. Further, Defendant's proposed construction and operation of the plant is unreasonable because the locality is particularly well-suited for agriculture and Defendant's proposed plant is particularly unsuited for the character of the locality.

129. For those Plaintiffs who live close enough to Highway 220 to encounter, hear and observe truck traffic, Defendant's proposal to increase truck traffic, including operations beginning at 3:00 a.m., will constitute an unreasonable invasion of those Plaintiffs' interests because the harm is significant and greater than an ordinary person should reasonably be required to bear without compensation.

130. For those Plaintiffs who engage in the wildlife and nature viewing on their property, Defendant's proposed construction and operation of the concrete batch plant is unreasonable

because the locality is particularly well-suited for that purpose and Defendant's proposed concrete batch plant is particularly unsuited for the characteristics of the locality.

131. For those Plaintiffs who use their property for star gazing and astronomy, Defendant's proposed construction and operation of the concrete batch plant is unreasonable because the locality is particularly well-suited for that purpose and Defendant's proposed plant will interfere with that activity.

132. For the reasons set forth in paragraphs 121 – 131 above, each of which sets forth an independent basis establishing an anticipatory nuisance, Defendant's proposed construction and operation of the concrete batch plant will constitute a nuisance in fact as a result of the substantial and objectively unreasonable invasion of Plaintiffs' interests in the quiet use and enjoyment of their respective properties.

WHEREFORE, Plaintiffs request judgment on Count I as follows:

A. A declaration that the construction and operation of Defendant's proposed concrete batch plant at Highway 220, approximately 0.35 miles east of the intersection with Highway 48, in Alto, New Mexico, constitutes an anticipatory private nuisance with respect to Plaintiffs' individual and collective property interests;

B. An award of damages in the event Defendant proceeds with any aspect of the construction of the proposed concrete batch plant, in an amount sufficient to compensate each Plaintiff for diminution in value of their property, together with all other general and special damages sustained; and

C. For costs and such other relief as the Court deems proper.

COUNT II
Preliminary and Permanent Injunctive Relief

133. Plaintiffs incorporate the allegations contained in paragraphs 1 through 132 the same as if fully set forth.

134. Each Plaintiff will suffer irreparable injury to their interests in the use and enjoyment of their property without injunctive relief because the proposed industrial plant would fundamentally alter the scenic, residential and rural nature of the locality and deprive Plaintiffs of the quiet use and enjoyment of their respective, unique real properties.

135. The threatened injury to Plaintiffs outweighs any potential harm to Roper, who may construct and operate a concrete batch plant at a different, suitable location in Lincoln County.

136. The issuance of an injunction would vindicate public rights and would not be adverse to the public interest; on the contrary, the public interest would be served by preserving the character of the locality, as set forth above and as recognized in the Lincoln County Board of Commissioners' Resolution, by protecting Plaintiffs' pre-existing uses which are well-suited to the locality.

137. Each Plaintiff has a substantial likelihood of success on the merits of their claims for private nuisance and declaratory relief because Roper's intentional construction and operation of a concrete batch plant at the proposed site will result in multiple and repeated invasions of Plaintiffs' quiet use and enjoyment of their respective properties due to the harm to the aesthetic scenery, the air pollution, the noise pollution, the light pollution, and the heavy truck traffic caused by the operation of the proposed concrete batch plant.

138. Each Plaintiff, individually, is entitled to preliminary and permanent injunctive relief preventing the construction of the concrete batch plant as an anticipatory nuisance.

WHEREFORE, Plaintiffs request judgment on Count II as follows:

A. After hearing, issuance of a preliminary injunction pursuant to Rule 1-066(A) NMRA enjoining Defendant from constructing and operating the concrete batch plant at the proposed location;

B. After trial, issuance of a permanent injunction containing the same terms as the preliminary injunction; and

C. Costs and such further relief as the Court deems proper.

Respectfully submitted,

HINKLE SHANOR LLP

/s/ Thomas M. Hnasko

Thomas M. Hnasko

Julie A. Sakura

Dioscoro A. Blanco

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Santa Fe, NM 87504

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dblanc@hinklelawfirm.com

Attorneys for Plaintiffs



LINCOLN COUNTY-NM
WHITNEY WHITTAKER, CLERK
202101707
Book 2021 Page 1707
1 of 1
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Alliance Abstract and Title, LLC
21-0056LG

WARRANTY DEED

Tomel Holdings, LLC, a Delaware Limited Liability Company, for consideration paid, grants to Roper Investments, LLC, a New Mexico Limited Liability Company, whose address is P.O. Box 995, Alto, NM 88312, the following described real estate in Lincoln County, New Mexico:

REED TRACT 4A-1, within the NW/4 NE/4 of Section 27, Township 10 South, Range 13 East, N.M.P.M., Lincoln County, New Mexico, as shown by the Boundary Survey Replat of Tract 3 and Tract 4A, filed in the office of the County Clerk of Lincoln County, New Mexico, June 25, 2018, in Book C-K, Page 268;

AND

Tract 4B, located in the NW/4 NE/4 of Section 27, Township 10 South, Range 13 East, N.M.P.M., Lincoln County, New Mexico, as shown by the Boundary Survey Replat and Grant of Easement in Tract 3 and Tract 4 filed in the office of the County Clerk of Lincoln County, New Mexico, December 31, 2014, in Book C-J, Page 1062;

TOGETHER WITH all improvements thereon;

Subject to taxes and all other assessments, for the current and subsequent years, reservations in patents and all easements, right-of-ways, and restrictive covenants, if any.

with warranty covenants.

Witness our hands and seals this 9 day of MARCH, 2021.

By: Tommy Wilson
Tommy Wilson, Managing Member

ACKNOWLEDGMENT

STATE OF ~~NEW MEXICO~~ FLORIDA
COUNTY OF ~~LINCOLN~~ COLLIER } ss.

This instrument was acknowledged before me this 9 day of MARCH, 2021, by Tommy Wilson, Managing Member of Tomel Holdings, LLC, a Delaware Limited Liability Company, on behalf of said company.

Pamela D. Pettit
Notary Public

My Commission expires:

8-27-24

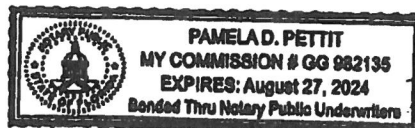


EXHIBIT A

SV FILE 140258-175



WHITNEY WHITTAKER, CLERK
201904624
Book 2019 Page 4624
1 of 3
8/30/2019 4:00:43 PM
eRecorded

This Correction Special Warranty Deed is being re-recorded to correct an incorrect legal description and in correction of, substitution for and in lieu of that certain Special Warranty Deed filed of record in the Lincoln County Records on July 18, 2019 in Book 2019 at Page 3746 (2 pages).

CORRECTION SPECIAL WARRANTY DEED

FRANK REED and ELLEN BRAMBLETT, husband and wife, as joint tenants, for consideration paid, grant to ROBERT F. REED and ELLEN E. BRAMBLETT, Trustees of the FRANK REED AND ELLEN BRAMBLETT TRUST under Trust Agreement dated July 9, 2019, as may be amended, whose address is 108 Walkabout Loop, Ruidoso, New Mexico 88345, and any successor trustee, the following described real estate in Lincoln County, New Mexico, together with all improvements thereon and all easements appurtenant thereto:

Tract 1, being a tract of land within the NW/4NE/4, lying North of NM 220, Section 27, Township 10 South Range 13 East, N.M.P.M., Lincoln County, New Mexico, as shown by the Boundary Survey Replat Family Claim of Exemption Plat filed for record in the Office of the County Clerk of Lincoln County, New Mexico, May 23, 2012, in Cabinet J, Slide No. 739;

and

REED TRACT 4A-1, within the NW/4 NE/4 of Section 27, Township 10 South, Range 13 East, N.M.P.M., Lincoln County, New Mexico, as shown by the Boundary Survey Replat of Tract 3 and Tract 4A, filed in the office of the County Clerk of Lincoln County, New Mexico, June 25, 2018, in Book C-K, page 266;

and

Tract 4B, within the NW/4 NE/4 of Section 27, Township 10 South, Range 13 East, N.M.P.M., Lincoln County, New Mexico, as shown by the Boundary Survey Replat and Grant of Easement in Tract 3 and Tract 4, filed in the office of the County Clerk of Lincoln County, New Mexico, December 31, 2014, in Book C-J, page 1062;

SUBJECT TO all restrictions, reservations, easements and rights-of-way of record;

AND FURTHER SUBJECT TO the following LIMITATIONS AND RESTRICTIONS:

1. **GENERAL RESTRICTIONS:** All of the property shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Declaration and following limitations and restrictions:
2. **USES:** The property may be used for any legal purpose, save and except the following which shall not be allowed:
 - a. Salvage, scrap metal, or "junk" operations of any kind;
 - b. Swine, poultry, or other livestock operations which deal in the commercial feeding, raising or slaughter of animals;
 - c. Sexually oriented businesses;
 - d. And other use which, by its nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners.
3. **IMPROVEMENTS:** All improvements to the property shall be done in a professional and workmanlike manner and any residence on the property shall be constructed on site from the ground up;

with special warranty covenants.

EXECUTED this 30th day of August, 2019.


FRANK REED


ELLEN BRAMBLETT

8/30/2019 4:00:43 PM

STATE OF NEW MEXICO)
COUNTY OF LINCOLN) ss.

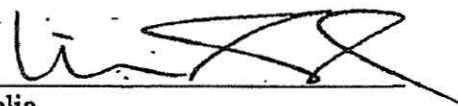
This instrument was acknowledged before me on the 30th day of August, 2019 by **FRANK REED** and **ELLEN BRAMBLETT**, husband and wife, as joint tenants.

My Commission Expires:

6/12/2023

After recording, Return to:
Mark W. Taylor & Associates, P.C.
P.O. Box 898
Roswell, NM 88202-0898

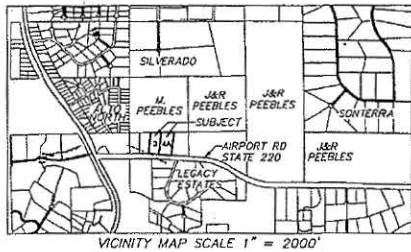
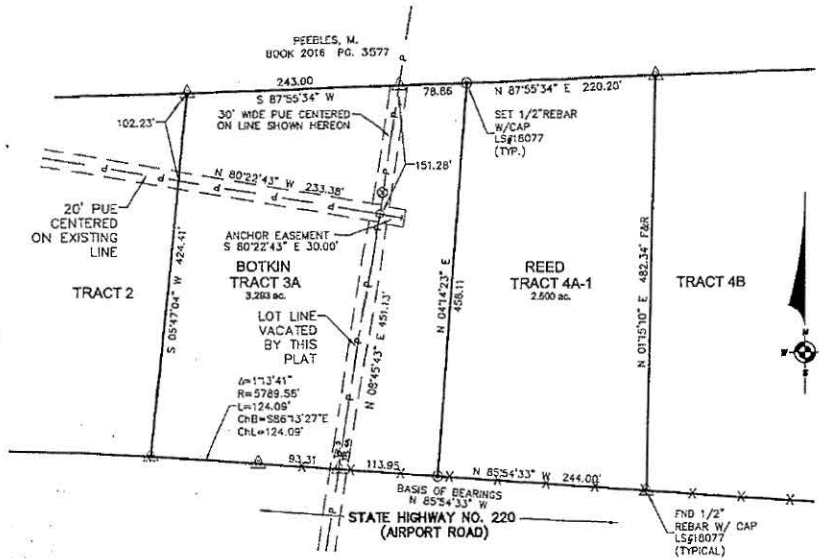



Notary Public
OFFICIAL SEAL
Mike Seelbach

NOTARY PUBLIC State of New Mexico
My Commission Expires 6/12/2023

W:\Reed, Frank & Bramblett, Ellen.4576\Deed, Lincoln, Tract 1 & 4, Sec 27, T10S, R13E, CORRECTION, Final.wpd

BOUNDARY SURVEY REPLAT
TRACT 3 AND TRACT 4A,
WITHIN THE NW/4 NE/4 OF SECTION 27,
TOWNSHIP 10 SOUTH, RANGE 13 EAST, N.M.P.M.,
LINCOLN COUNTY, NEW MEXICO



FLOOD CERTIFICATE:
 THESE TRACTS ARE LOCATED OUT OF A SPECIAL FLOOD HAZARD AREA, AS SHOWN ON THE LINCOLN COUNTY FEMA FLOOD MAPS DATED NOVEMBER 16, 2011.

APPROVAL BY UTILITY COMPANIES: NOTE: AN EASEMENT IS RESERVED FOR ALL OVERHEAD/UNDERGROUND PUBLIC UTILITIES ON THE LANDS PLATTED HEREON. THIS EASEMENT INCLUDES THE RIGHT OF INGRESS AND EGRESS ACROSS THE OWNER'S PROPERTY CONTAINING THE EASEMENT FOR REPAIR OR REPLACEMENT OF UTILITIES OR APPURTENANCES THERE TO.

		<u>5/13/18</u>
TDS	M&M	DATE
		<u>5/15/18</u>
Go Nelson	OPT	DATE
		<u>5/15/18</u>
JANE WADSELL	STAGS SUPERVISOR	DATE
		<u>5/15/2018</u>
M&N	ZIA	DATE

APPROVAL BY LIEN HOLDER OF TRACT 3
 LIEN HOLDER: Marla Romero
 NAME AND TITLE: MARLA ROMERO, AYP
 DATE: 5-17-2018

PUE = PUBLIC UTILITY EASEMENT

D.T. COLLINS & ASSOCIATES P.C.
 SURVEYING, MAPPING
 1042 MECHEM DR. 575-258-5272
 RUIDOSO, LINCOLN COUNTY, NEW MEXICO

SCALE: 1"=100'
 DATE: 05-03-18
 DRAWN BY: EEC
 CHECKED BY: EEC
 JOB NO.: 18-528
 SHEET 1 OF 1

SURVEYOR'S CERTIFICATE

I, ERIC E. COLLINS, NEW MEXICO PROFESSIONAL SURVEYOR NUMBER 18077, DO HEREBY CERTIFY THAT THIS BOUNDARY SURVEY REPLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION, THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT THIS IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

ERIC E. COLLINS, N.M.P.S. NO. 18077

AFFIDAVIT

STATE OF NEW MEXICO) SS
 COUNTY OF LINCOLN) SS

KNOW ALL MEN BY THESE PRESENTS THAT FRANK REED, A SINGLE MAN AND ELLEN BRAMBLETT, A SINGLE WOMAN, AS JOINT TENANTS, ARE THE RECORD OWNERS AND PROPRIETORS OF TRACT 3A WITHIN THE NW/4 NE/4, SECTION 27, TOWNSHIP 10 SOUTH, RANGE 13 EAST, N.M.P.M., LINCOLN COUNTY, NEW MEXICO, AS SHOWN BY THE BOUNDARY SURVEY REPLAT FILED IN THE OFFICE OF THE COUNTY CLERK AND EX-OFFICIO RECORDER OF LINCOLN COUNTY, NEW MEXICO ON DECEMBER 31, 2014, IN BOOK C-J, PAGE 1062.

AND THAT JOSHUA C. BOTKIN AND SARAH L. BOTKIN, HUSBAND AND WIFE, AS JOINT TENANTS, ARE THE RECORD OWNERS AND PROPRIETORS OF TRACT 3 WITHIN THE NW/4 NE/4, SECTION 27, TOWNSHIP 10 SOUTH, RANGE 13 EAST, N.M.P.M., LINCOLN COUNTY, NEW MEXICO, AS SHOWN BY THE BOUNDARY SURVEY REPLAT FAMILY CLAIM OF EXEMPTION FILED IN THE OFFICE OF THE COUNTY CLERK AND EX-OFFICIO RECORDER OF LINCOLN COUNTY, NEW MEXICO ON MAY 23, 2012, IN BOOK C-J, PAGE 735.

BY THE FILING OF THIS PLAT SAID OWNERS AND PROPRIETORS DO HEREBY CAUSE SAID TRACTS TO BE REPLATTED AS SHOWN HEREON. THIS PLAT WAS PREPARED WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS THEREOF.

CLAIM OF EXEMPTION

WE, FRANK REED, ELLEN BRAMBLETT, JOSHUA C. BOTKIN AND SARAH L. BOTKIN, CLAIM AN EXEMPTION FROM THE REQUIREMENTS OF THE NEW MEXICO SUBDIVISION ACT AND THE LINCOLN COUNTY, NEW MEXICO, SUBDIVISION REGULATIONS FOR THE FOLLOWING REASON. WE CERTIFY THAT THIS TRANSACTION INVOLVES:

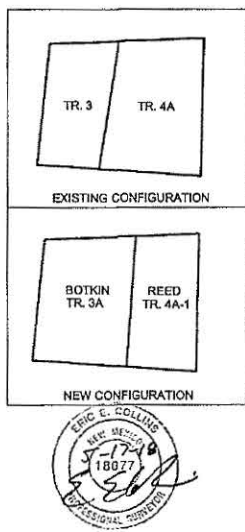
THE DIVISION OF LAND RESULTING ONLY IN THE ALTERATION OF PARCEL BOUNDARIES WHERE PARCELS ARE ALTERED FOR THE PURPOSE OF INCREASING OR REDUCING THE SIZE OF CONTIGUOUS PARCELS AND WHERE THE NUMBER OF PARCELS IS NOT INCREASED.

FRANK REED

ELLEN BRAMBLETT

JOSHUA C. BOTKIN

SARAH L. BOTKIN



ACKNOWLEDGMENT

STATE OF NEW MEXICO) SS
 COUNTY OF LINCOLN) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 19th DAY OF April, 2018, BY FRANK REED, A SINGLE MAN.

MY COMMISSION EXPIRES: 4/30/20

ERIC E. COLLINS
 NOTARY PUBLIC
 My Commission Expires: 4/30/20

ACKNOWLEDGMENT

STATE OF NEW MEXICO) SS
 COUNTY OF LINCOLN) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 17th DAY OF April, 2018, BY ELLEN BRAMBLETT, A SINGLE WOMAN.

MY COMMISSION EXPIRES: 4/30/20

ERIC E. COLLINS
 NOTARY PUBLIC
 My Commission Expires: 4/30/20

ACKNOWLEDGMENT

STATE OF NEW MEXICO) SS
 COUNTY OF LINCOLN) SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 25th DAY OF April, 2018, BY JOSHUA C. BOTKIN AND SARAH L. BOTKIN, HUSBAND AND WIFE AS JOINT TENANTS.

MY COMMISSION EXPIRES: 4/30/20

ERIC E. COLLINS
 NOTARY PUBLIC
 My Commission Expires: 4/30/20

APPROVAL BY LINCOLN COUNTY

APPROVED BY SUMMARY PROCEDURE BY LINCOLN COUNTY THIS 19th DAY OF June, 2018.

NITA TAYLOR, COUNTY MANAGER

SAMANTHA MENDEZ, PLANNING DIRECTOR

TAX CERTIFICATE

THE LINCOLN COUNTY ASSESSOR'S OFFICE CERTIFIES THAT TAXES ARE PAID THROUGH THE CURRENT TAXABLE YEAR FOR PARCEL(S) SHOWN ON THIS PLAT.

6/19/18
 DATE

LINCOLN COUNTY ASSESSOR

INDEXING INFORMATION FOR COUNTY CLERK

REED/BOTKIN	N/A - SEE PLAT
OWNER OF PROPERTY	SUBMISSION
27	110 S
SECTION	TOWNSHIP
	R 13 E
	RANGE
	N.M.P.M.

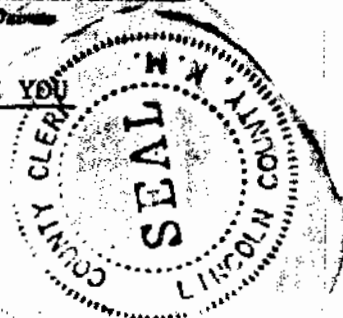
UPC NUMBERS:
 TRACT 3: 4-072-059-329-027
 TRACT 4A: 4-072-059-357-029

INSTRUMENT OF TITLE:
 TRACT 3 - BOTKIN; BOOK 2014, PAGE 2916
 TRACT 4A - REED/BRAMBLETT; BOOK 2014, PAGE 2015

LINCOLN COUNTY-RECORDS & SURVEYS CLERK
 20180526
 Book 627 of 1
 05-25-2018 09:20:53 AM

COUNTY CLERK SEAL
 LINCOLN COUNTY

COUNTY CLERK FILING INFO
 COUNTY CLERK SEAL



PLEASE READ THIS DISCLOSURE STATEMENT BEFORE YOU SIGN ANY DOCUMENTS OR AGREE TO ANYTHING

DISCLOSURE STATEMENT
OF
RANCHO RUIDOSO VALLEY ESTATES

THIS DISCLOSURE STATEMENT INTENDED TO PROVIDE YOU WITH ENOUGH INFORMATION TO PERMIT YOU TO MAKE AN INFORMED DECISION ON THE PURCHASE OR LEASE OF PROPERTY DESCRIBED IN THIS STATEMENT. YOU SHOULD READ CAREFULLY ALL OF THE INFORMATION CONTAINED IN THIS STATEMENT BEFORE YOU DECIDE TO BUY OR LEASE THE DESCRIBED PROPERTY. YOU SHOULD BE AWARE OF THE FACT THAT VARIOUS STATE AGENCIES MAY HAVE ISSUED OPINIONS ON BOTH THE SUBDIVISION PROPOSAL AND WHAT IS SAID IN THIS DISCLOSURE STATEMENT ABOUT THE PROPOSAL. THESE OPINIONS, WHEN REQUIRED TO BE ISSUED, WHETHER FAVORABLE OR UNFAVORABLE, ARE CONTAINED IN THIS DISCLOSURE STATEMENT AND SHOULD ALSO BE READ CAREFULLY.

THE BOARD OF COUNTY COMMISSIONERS HAVE EXAMINED THIS DISCLOSURE STATEMENT TO DETERMINE WHETHER THE SUBDIVIDER CAN SATISFY WHAT HE HAS SAID IN THIS DISCLOSURE STATEMENT. HOWEVER, THE BOARD OF COUNTY COMMISSIONERS DOES NOT VOUCH FOR THE ACCURACY OF WHAT IS SAID IN THIS DISCLOSURE STATEMENT. FURTHER, THIS DISCLOSURE STATEMENT IS NOT A RECOMMENDATION OR ENDORSEMENT OF THE SUBDIVISION BY EITHER THE COUNTY OR THE STATE. IT IS INFORMATIVE ONLY.

FINALLY, THE BOARD OF COUNTY COMMISSIONERS RECOMMENDS THAT YOU SEE THE PROPERTY BEFORE BUYING OR LEASING IT. HOWEVER, IF YOU DO NOT SEE THE PROPERTY PRIOR TO PURCHASING OR LEASING IT, YOU HAVE SIX MONTHS FROM THE TIME TO PURCHASE OR LEASE TO INSPECT THE PROPERTY. UPON INSPECTING THE PROPERTY, YOU HAVE THREE DAYS FROM THE DATE OF INSPECTION TO RESCIND THE TRANSACTION AND RECEIVE ALL OF YOUR MONEY BACK FROM THE SUBDIVIDER. YOU MUST GIVE THE SUBDIVIDER NOTICE OF YOUR INTENTION TO RESCIND WITHIN THREE DAYS OF YOUR INSPECTION OF THE PROPERTY.

Receipt

By signing this Receipt, you acknowledge that you have received a copy of the DISCLOSURE STATEMENT covering the Rancho Ruidoso Valley Estates Subdivision

SIGNATURE: _____ DATE: _____
NAME: _____
ADDRESS: _____
(Street) (City) (State) (Zip)

1158
600

EXHIBIT B

1. NAME OF SUBDIVISION AND LOCATION:

Name: RANCHO RUIDOSO VALLEY ESTATES
Location: Approximately seven (7) miles North of the Village of Ruidoso
in Lincoln County, New Mexico.

2. NAME AND ADDRESS OF SUBDIVIDER:

Name: STANTON CORPORATION
Address: 4171 N. Mesa Ave., Suite B-206
El Paso, Texas 79902

3. NAME AND ADDRESS OF PERSON IN CHARGE OF SALES OR LEASING IN NEW MEXICO:

Name: FOSTER & FOSTER REAL ESTATE
Address: Pinetree Square
P.O. Box 2600
Ruidoso, New Mexico 88345

4. SIZE OF SUBDIVISION BOTH PRESENT AND ANTICIPATED:

Present: 507 parcels
305.7925 acres

Anticipated: 507 parcels
305.7925 acres

5. SIZE OF LARGEST PARCEL OFFERED FOR SALE OR LEASE WITHIN THE SUBDIVISION:

.7426 acres (32,347.6 sq. ft.)

6. SIZE OF SMALLEST PARCEL OFFERED FOR SALE OR LEASE WITHIN THE SUBDIVISION:

.3333 acres (14,518.5 sq. ft.)

7. PROPOSED RANGE OF SELLING OR LEASING PRICES:

Lowest: \$12,500.00 for a 1/3 acre lot

Highest: \$23,500.00 for a 1/2 acre or larger lot

8. FINANCING TERMS:

Interest Rate: Fourteen percent (14%) per annum

Term: Not to exceed ten (10) years

Payment: Equal monthly installments

1159
601

borne equally by all lot owners in proportion to the number of lots owned in proportion to the number of lots in the Subdivision. The estimated cost of maintenance is undeterminable and there is no limit on the amount which the Owner's Association may assess each owner, other than that total assessments may not exceed total costs.

In the event that the County shall accept the roadways within the Subdivision, the obligation of the Owner's Association to maintain the roadways shall terminate two (2) years following the date of such acceptance. In the event that the Rancho Ruidoso Water Company shall accept ownership of the liquid waste disposal system, the obligation for its maintenance by the Owner's Association shall then terminate.

However, notwithstanding that it is the obligation of the Owner's Association to pay the entire cost of, and be responsible for, the maintenance and operation of the roadway and sewer systems as above described, the Subdivider has agreed to underwrite the cost of operation and maintenance of the roadways and sewer system until January 1, 1986, which is the date when Subdivider estimates there will be a sufficient number of lot owners in the Owner's Association to have pro rata assessment of these costs (whatever they may be) fairly reflect what these costs may be when the Subdivision is substantially sold out. In this regard, and prior to January 1, 1986, the annual maintenance assessment for roadways will not exceed \$100.00 per lot, and the monthly stand-by or minimum service charge for sewer service will not exceed \$13.50 per month.

Each individual lot owner shall be responsible for all of the maintenance and construction duties and costs associated with the ownership of residential real estate.

35. ADVERSE CONDITIONS:

There are no activities or conditions adjacent to or nearby the Subdivision, such as feedlots, cement plants, and the like, which would subject the Subdivision land to any unusual conditions affecting its use or occupancy.

36. RECREATIONAL FACILITIES:

- Existing Facilities: one (1) enclosed stable building with stalls for nine (9) horses.
- Proposed Facilities: two (2) open park areas as shown on the Subdivision Map, 22 miles of bridal paths as shown on the Subdivision Map, and a corral adjacent to the stables.
- Related Facilities: on a limited basis, and under the terms of the "Rancho Ruidoso Vacation Plan" each lot owner

WITNESS our hands and seals this 5th day of Nov, 1982.

STANTON CORPORATION

ATTEST

Paul O. Sargent, Secretary

By: O. Gene Duvall
O. Gene Duvall, President

THE STATE OF New Mexico
Lincoln
COUNTY OF Lincoln

The foregoing instrument was acknowledged before me this the 5th day of September, 1982, by O. Gene Duvall, President of STANTON CORPORATION, a Texas corporation, on behalf of said corporation.

Mrs. Mike Luras
Notary Public
Lincoln
STATE OF NEW MEXICO
My commission expires 1-1-86

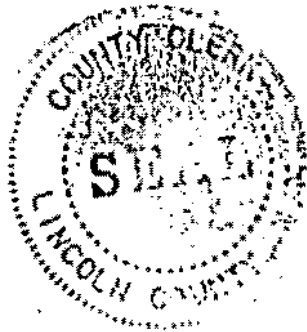
Mrs. Mike Luras
Notary Public in and for
Lincoln, Texas
7.11.82

STATE OF NEW MEXICO
County of Lincoln

Filed for record in the Clerks office
the 30th day of November
A. D. 1982 at 3:02 o'clock P. M.
and recorded in book 82
of Misc. on page 1158 - 1173
Jane McSwane

County Clerk
Manuel E. Liddens

Rec. # 79289 - Fee: \$18.00



1173
615

BOARD OF COUNTY COMMISSIONERS
RESOLUTION NO. _____
DECLARING THAT ANY CONCRETE BATCH PLANT BUILT AND OPERATED ON
NM HIGHWAY 220 NEAR THE INTERSECTION OF HIGHWAY NM 220 AND NM 48
CONSTITUTES A PUBLIC NUISANCE

WHEREAS, under NMSA 1978, Section 3-8-1, a public nuisance consists of creating, performing or maintaining anything affecting any number of citizens without lawful authority which is either: (A) injurious to public health, safety, morals or welfare; or, (B) interferes with the exercise and enjoyment of public rights, including the right to use public property;

WHEREAS, NMSA 1978, Section 3-18-17 permits a county to define a nuisance;

WHEREAS, Roper Construction Inc. (“Roper”) is proposing to construct and operate a concrete batch plant (“CBP”) on Highway NM 220 near the intersection of Highway NM 220 and NM 48;

WHEREAS, the Application for an Air Quality Permit submitted by Roper to the New Mexico Environment Department (“NMED”) reveals that Roper’s proposed CBP will be a source of Hazardous Air Pollutants (“HAP”);

WHEREAS, Roper claims that its CBP will be a “minor” source, i.e., less than 10 tpy of any single HAP, only by virtue of Roper’s proposed intent to implement certain controls designed to reduce HAP emissions;

WHEREAS, the Board has been informed that the fugitive dust emissions from the handling sources at Roper’s CBP must be controlled by adding water sprays to the exit of the aggregate/sand feed hopper to obtain control efficiencies and, without adequate water to implement these controls, the proposed CBP would be a “major” source of HAP because it would emit more than 10 tpy of one or more hazardous air pollutants;

WHEREAS, the Board has been informed that the only source of water for Roper’s proposed CBP is a permit to appropriate 3-acre-feet per annum solely for livestock and grazing purposes;

WHEREAS, Highway NM 220 and Highway NM 48, including at the intersection of those two highways, are designated a “Scenic Byway” under federal laws and regulations and, together, are known as the “Billy the Kid Scenic Byway”;

WHEREAS, the White Mountain Wilderness Area of Lincoln National Forest, a Class 1 area under the federal Clean Air Act entitled to special air quality and visibility protection under the act, is located approximately two (2) miles from the site of Roper’s proposed CBP;

WHEREAS, the White Mountains are critical habitat for at least five (5) listed threatened or endangered species: red-breasted nuthatches, Townsend’s solitaire, Clark’s nutcrackers, northern three-toed woodpeckers, and golden crowned kinglets;

EXHIBIT C

WHEREAS, the Lincoln National Forest is home to at least four (4) listed endangered species: the Mexican Spotted Owl, New Mexico Meadow Jumping Mouse; Checkerspot butterfly, and Sacramento Mountain Salamander;

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential impact to the critical habitat for the species found in the White Mountain Wilderness Area and Lincoln National Forest identified as endangered or threatened;

WHEREAS, the Fort Stanton Snowy River Cave National Conservation Area, located approximately five (5) miles from Roper's proposed CBP, was established in 2009 to protect, conserve, and enhance the unique and nationally important Snowy River Cave system, which is the second longest cave in New Mexico, the 14th largest cave in the United States, the 62nd longest cave in the world, and the largest cave managed by the Bureau of Land Management;

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential impact to the ecosystem of the Fort Stanton Snowy River Cave National Conservation Area;

WHEREAS, the application Roper submitted to the NMED for the CBP does not address the potential for runoff contamination from the plant to nearby surface waters, including the Rio Bonito and Little Creek;

WHEREAS, the area surrounding the proposed site of Roper's CBP is virtually exclusively residential and is comprised of several organized neighborhood and neighborhood associations;

WHEREAS, the residential neighborhoods surrounding the proposed site of Roper's CBP are scenic, quiet, and peaceful, and enjoy unimpeded views of the well-recognized beauty of the mountains located in the White Mountain Wilderness Area, including Sierra Blanca Peak, southern New Mexico's highest peak;

WHEREAS, the Board finds that a CBP at the proposed location would directly impair the quiet enjoyment of the citizens of Lincoln County living in this area by creating a deleterious effect on the visual and other aesthetic amenities that are prevalent in the area and which formed a substantial reason for the residents to live in the area and constitute a visual and aesthetic impairment;

WHEREAS, the deed covenants governing many of the lots adjacent to the proposed site of Roper's CBP contain a covenant of quiet enjoyment with specific restrictions against any use which, by its nature (whether noise, odor, hours of operation, etc.) would be a nuisance to adjoining owners;

WHEREAS, the Disclosure Statement from at least one (1) neighborhood surrounding the proposed site of the Roper CBP, found at Record # 8109 of the Lincoln County records, specifically noted, as an enticement to buy property in the neighborhood, that there were “no activities or conditions adjacent to or nearby the Subdivision, such as feedlots, *cement plants*, and the like, which would subject the Subdivision land to any unusual conditions affecting its use or occupancy.”;

WHEREAS, the Board finds that a CBP at the proposed location would be contrary to the representations in the Disclosure Statement found at Record #8109 to assure the citizens of Lincoln County purchasing residential property in this area that a cement plant would not be located in this area;

WHEREAS, the Board finds that emissions of HAP from the CBP proposed by Roper, the construction of a CBP in this scenic residential area, the lack of consideration of potential impact to the threatened and endangered species found in the White Mountain Wilderness Area and Lincoln National Forest, the lack of consideration of the potential impact to the Fort Stanton Snowy River Cave ecosystem, the lack of consideration of the potential contamination of the nearby surface waters, accompanied by the excessive traffic from large trucks, including cement mixer trucks and water tanker trucks, on the Billy the Kid Scenic Byway, is injurious to public health, safety, welfare, and quality of life of the residents of Lincoln County and, accordingly, is a public nuisance;

WHEREAS, the Board further finds that the existence of such a public nuisance would likely result in visual and environmental blight, and unhealthy, unsafe and devaluing conditions; and

WHEREAS, the Board determines that it is necessary to control and limit such adverse conditions that are markedly divergent from the character of the surrounding neighborhood, and are adverse to the public health, safety and general welfare of the citizens of Lincoln County.

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF LINCOLN COUNTY, THE GOVERNING BODY OF THE COUNTY OF LINCOLN:
The CBP proposed by Roper, located near the intersection of Highway NM 220 and Highway NM 48 in Lincoln County is found to be a public nuisance.

Points Indicate
Approximate Location
of Plaintiff Residences

Approximate Location of
Proposed Roper CBP



EXHIBIT D



**NSR MINOR SOURCE PERMIT APPLICATION
FOR ROPER CONSTRUCTION, INC.
ALTO CBP**

Alto, New Mexico

PREPARED FOR

ROPER CONSTRUCTION, INC.

Dated June 14, 2021

Prepared by

Montrose Air Quality Services, LLC



EXHIBIT E

<p>Mail Application To:</p> <p>New Mexico Environment Department Air Quality Bureau Permits Section 525 Camino de los Marquez, Suite 1 Santa Fe, New Mexico, 87505</p> <p>Phone: (505) 476-4300 Fax: (505) 476-4375 www.env.nm.gov/aqb</p>		<p>For Department use only:</p> <p>AIRS No.:</p>
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Universal Air Quality Permit Application

Use this application for NOI, NSR, or Title V sources.

Use this application for: the initial application, modifications, technical revisions, and renewals. For technical revisions, complete Sections, 1-A, 1-B, 2-E, 3, 9 and any other sections that are relevant to the requested action; coordination with the Air Quality Bureau permit staff prior to submittal is encouraged to clarify submittal requirements and to determine if more or less than these sections of the application are needed. Use this application for streamline permits as well. **See Section 1-I for submittal instructions for other permits.**

This application is submitted as (check all that apply): Request for a No Permit Required Determination (no fee)
 Updating an application currently under NMED review. Include this page and all pages that are being updated (no fee required).
 Construction Status: Not Constructed Existing Permitted (or NOI) Facility Existing Non-permitted (or NOI) Facility
 Minor Source: a NOI 20.2.73 NMAC 20.2.72 NMAC application or revision 20.2.72.300 NMAC Streamline application
 Title V Source: Title V (new) Title V renewal TV minor mod. TV significant mod. TV Acid Rain: New Renewal
 PSD Major Source: PSD major source (new) minor modification to a PSD source a PSD major modification

Acknowledgements:

I acknowledge that a pre-application meeting is available to me upon request. Title V Operating, Title IV Acid Rain, and NPR applications have no fees.
 \$500 NSR application Filing Fee enclosed **OR** The full permit fee associated with 10 fee points (required w/ streamline applications).
 Check No.: 8335 in the amount of \$500
 I acknowledge the required submittal format for the hard copy application is printed double sided ‘head-to-toe’, 2-hole punched (except the Sect. 2 landscape tables is printed ‘head-to-head’), numbered tab separators. Incl. a copy of the check on a separate page.
 I acknowledge there is an annual fee for permits in addition to the permit review fee: www.env.nm.gov/air-quality/permit-fees-2/.
 This facility qualifies for the small business fee reduction per 20.2.75.11.C. NMAC. The full \$500.00 filing fee is included with this application and I understand the fee reduction will be calculated in the balance due invoice. The Small Business Certification Form has been previously submitted or is included with this application. (Small Business Environmental Assistance Program Information: www.env.nm.gov/air-quality/small-biz-eap-2/)

Citation: Please provide the **low level citation** under which this application is being submitted: **20.2.72.200.A(1) NMAC** (e.g. application for a new minor source would be 20.2.72.200.A NMAC, one example for a Technical Permit Revision is 20.2.72.219.B.1.b NMAC, a Title V acid rain application would be: 20.2.70.200.C NMAC)

Section 1 – Facility Information

Section 1-A: Company Information

		AI # if known (see 1 st 3 to 5 #s of permit IDEA ID No.):	Updating Permit/NOI #:
1	Facility Name: Alto Concrete Batch Plant	Plant primary SIC Code (4 digits): 3273	
		Plant NAIC code (6 digits): 327320	
a	Facility Street Address (If no facility street address, provide directions from a prominent landmark): The approximate location of this site is 0.35 miles east of the intersection of Highways 48 and 220 north of Ruidoso, NM in Lincoln County.		
2	Plant Operator Company Name: Roper Construction, Inc	Phone/Fax: (575) 973-0440/	
a	Plant Operator Address: 6610 US HWY 380, Carrizozo, NM 88301		

b	Plant Operator's New Mexico Corporate ID or Tax ID: EIN 20-3734510 NM CRS 03-058563-005	
3	Plant Owner(s) name(s): Ryan Roper	Phone/Fax: (575) 973-0440/
a	Plant Owner(s) Mailing Address(s): P.O. Box 969, Alto, NM 88312	
4	Bill To (Company): Roper Construction, Inc	Phone/Fax: (575) 973-0440/
a	Mailing Address: P.O. Box 969, Alto, NM 88312	E-mail: ryan@roper-nm.com
5	<input type="checkbox"/> Preparer: <input checked="" type="checkbox"/> Consultant: Paul Wade, Montrose Air Quality Services, LLC	Phone/Fax: (505) 830-9680/(505) 830-9678
a	Mailing Address: 3500G Comanche Rd NE, Albuquerque, NM 87107	E-mail: pwade@montrose-env.com
6	Plant Operator Contact: Ryan Roper	Phone/Fax: (575) 973-0440/
a	Address: 6610 US HWY 380, Carrizozo, NM 88301	E-mail: ryan@roper-nm.com
7	Air Permit Contact: Ryan Roper	Title: President
a	E-mail: ryan@roper-nm.com	Phone/Fax: (575) 973-0440/
b	Mailing Address: P.O. Box 969, Alto, NM 88312	
c	The designated Air permit Contact will receive all official correspondence (i.e. letters, permits) from the Air Quality Bureau.	

Section 1-B: Current Facility Status

1.a	Has this facility already been constructed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	1.b If yes to question 1.a, is it currently operating in New Mexico? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
2	If yes to question 1.a, was the existing facility subject to a Notice of Intent (NOI) (20.2.73 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes to question 1.a, was the existing facility subject to a construction permit (20.2.72 NMAC) before submittal of this application? <input type="checkbox"/> Yes <input type="checkbox"/> No
3	Is the facility currently shut down? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	If yes, give month and year of shut down (MM/YY):
4	Was this facility constructed before 8/31/1972 and continuously operated since 1972? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
5	If Yes to question 3, has this facility been modified (see 20.2.72.7.P NMAC) or the capacity increased since 8/31/1972? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
6	Does this facility have a Title V operating permit (20.2.70 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is: P-
7	Has this facility been issued a No Permit Required (NPR)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NPR No. is:
8	Has this facility been issued a Notice of Intent (NOI)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the NOI No. is:
9	Does this facility have a construction permit (20.2.72/20.2.74 NMAC)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the permit No. is:
10	Is this facility registered under a General permit (GCP-1, GCP-2, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, the register No. is:

Section 1-C: Facility Input Capacity & Production Rate

1	What is the facility's maximum input capacity, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 468.9 tons/hour	Daily: 7033.5 tons/hour	Annually: 1,875,500 tons/hour
2	What is the facility's maximum production rate, specify units (reference here and list capacities in Section 20, if more room is required)			
a	Current	Hourly:	Daily:	Annually:
b	Proposed	Hourly: 125 cubic yards/hour	Daily: 1875 cubic yards/day	Annually: 500,000 cubic yards/yr

a	If yes, NOV date or description of issue:	NOV Tracking No:
b	Is this application in response to any issue listed in 1-F, 1 or 1a above? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, provide the 1c & 1d info below:	
c	Document Title:	Date: Requirement # (or page # and paragraph #):
d	Provide the required text to be inserted in this permit:	
2	Is air quality dispersion modeling or modeling waiver being submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
3	Does this facility require an "Air Toxics" permit under 20.2.72.400 NMAC & 20.2.72.502, Tables A and/or B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
4	Will this facility be a source of federal Hazardous Air Pollutants (HAP)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
a	If Yes, what type of source? <input type="checkbox"/> Major (<input type="checkbox"/> ≥10 tpy of any single HAP OR <input type="checkbox"/> ≥25 tpy of any combination of HAPS) OR <input checked="" type="checkbox"/> Minor (<input checked="" type="checkbox"/> <10 tpy of any single HAP AND <input type="checkbox"/> <25 tpy of any combination of HAPS)	
5	Is any unit exempt under 20.2.72.202.B.3 NMAC? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
a	If yes, include the name of company providing commercial electric power to the facility: _____ Commercial power is purchased from a commercial utility company, which specifically does not include power generated on site for the sole purpose of the user.	

Section 1-G: Streamline Application (This section applies to 20.2.72.300 NMAC Streamline applications only)

1	<input type="checkbox"/> I have filled out Section 18, "Addendum for Streamline Applications." <input checked="" type="checkbox"/> N/A (This is not a Streamline application.)
---	--

Section 1-H: Current Title V Information - Required for all applications from TV Sources

(Title V-source required information for all applications submitted pursuant to 20.2.72 NMAC (Minor Construction Permits), or 20.2.74/20.2.79 NMAC (Major PSD/NNSR applications), and/or 20.2.70 NMAC (Title V))

1	Responsible Official (R.O.) (20.2.70.300.D.2 NMAC):	Phone:
a	R.O. Title:	R.O. e-mail:
b	R. O. Address:	
2	Alternate Responsible Official (20.2.70.300.D.2 NMAC):	Phone:
a	A. R.O. Title:	A. R.O. e-mail:
b	A. R. O. Address:	
3	Company's Corporate or Partnership Relationship to any other Air Quality Permittee (List the names of any companies that have operating (20.2.70 NMAC) permits and with whom the applicant for this permit has a corporate or partnership relationship):	
4	Name of Parent Company ("Parent Company" means the primary name of the organization that owns the company to be permitted wholly or in part.):	
a	Address of Parent Company:	
5	Names of Subsidiary Companies ("Subsidiary Companies" means organizations, branches, divisions or subsidiaries, which are owned, wholly or in part, by the company to be permitted.):	
6	Telephone numbers & names of the owners' agents and site contacts familiar with plant operations:	
7	Affected Programs to include Other States, local air pollution control programs (i.e. Bernalillo) and Indian tribes: Will the property on which the facility is proposed to be constructed or operated be closer than 80 km (50 miles) from other states, local pollution control programs, and Indian tribes and pueblos (20.2.70.402.A.2 and 20.2.70.7.B)? If yes, state which ones and provide the distances in kilometers:	

Table 2-C: Emissions Control Equipment

Unit and stack numbering must correspond throughout the application package. Only list control equipment for TAPs if the TAP's maximum uncontrolled emissions rate is over its respective threshold as listed in 20.2.72 NMAC, Subpart V, Tables A and B. In accordance with 20.2.72.203.A(3) and (8) NMAC, 20.2.70.300.D(5)(b) and (e) NMAC, and 20.2.73.200.B(7) NMAC, the permittee shall report all control devices and list each pollutant controlled by the control device regardless if the applicant takes credit for the reduction in emissions.

Control Equipment Unit No.	Control Equipment Description	Date Installed	Controlled Pollutant(s)	Controlling Emissions for Unit Number(s) ¹	Efficiency (% Control by Weight)	Method used to Estimate Efficiency
3b	Additional Moisture Content	TBD	PM10, PM2.5	3	95.82	AP-42 11.19.2
4b	Additional Moisture Content	TBD	PM10, PM2.5	4	95.82	AP-42 11.19.2
5b	Additional Moisture Content	TBD	PM10, PM2.5	5	95.82	AP-42 11.19.2
6b	Additional Moisture Content	TBD	PM10, PM2.5	6	95.82	AP-42 11.19.2
7b	Baghouse - REX Model #200DCS	TBD	PM10, PM2.5	7, 8	99.9	Based on baghouse exit control efficiency
9b	Baghouse - WAM SiloTop Zero	TBD	PM10, PM2.5	9	99.9	Based on baghouse exit control efficiency
10b	Baghouse - WAM SiloTop Zero	TBD	PM10, PM2.5	10	99.9	Based on baghouse exit control efficiency

¹ List each control device on a separate line. For each control device, list all emission units controlled by the control device.

Table 2-D: Maximum Emissions (under normal operating conditions)

This Table was intentionally left blank because it would be identical to Table 2-E.

Maximum Emissions are the emissions at maximum capacity and prior to (in the absence of) pollution control, emission-reducing process equipment, or any other emission reduction. Calculate the hourly emissions using the worst case hourly emissions for each pollutant. For each pollutant, calculate the annual emissions as if the facility were operating at maximum plant capacity without pollution controls for 8760 hours per year, unless otherwise approved by the Department. List Hazardous Air Pollutants (HAP) & Toxic Air Pollutants (TAPs) in Table 2-I. Unit & stack numbering must be consistent throughout the application package. Fill all cells in this table with the emission numbers or a "-" symbol. A "-" symbol indicates that emissions of this pollutant are not expected. Numbers shall be expressed to at least 2 decimal points (e.g. 0.41, 1.41, or 1.41E-4).

Unit No.	NOx		CO		VOC		SOx		PM ¹		PM10 ¹		PM2.5 ¹		H ₂ S		Lead	
	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr
1									1.38	5.78	0.28	1.16	0.068	0.28				
2									0.83	3.66	0.39	1.73	0.060	0.26				
3									0.56	2.46	0.21	0.90	0.031	0.14				
4									0.56	2.46	0.21	0.90	0.031	0.14				
5,6									0.56	2.46	0.21	0.90	0.031	0.14				
7									43.4	190.1	12.0	52.7	2.16	9.48				
8									22.2	97.2	6.05	26.5	1.20	5.25				
9									22.3	97.7	14.4	62.9	2.84	12.5				
10									25.9	113.5	25.9	113.5	9.08	39.7				
11									1.09	4.78	0.52	2.26	0.078	0.34				
12	0.063	0.28	0.053	0.23	0.0070	0.031	0.00068	0.0030	0.0048	0.021	0.0048	0.021	0.0048	0.021				
Totals	0.063	0.28	0.053	0.23	0.00068	0.003	0.007	0.031	119	520	60	263	15.6	68				

¹Condensable Particulate Matter: Include condensable particulate matter emissions for PM10 and PM2.5 if the source is a combustion source. Do not include condensable particulate matter for PM unless PM is set equal to PM10 and PM2.5. Particulate matter (PM) is not subject to an ambient air quality standard, but PM is a regulated air pollutant under PSD (20.2.74 NMAC) and Title V (20.2.70 NMAC).

Table 2-E: Requested Allowable Emissions

Unit & stack numbering must be consistent throughout the application package. Fill all cells in this table with the emission numbers or a "-" symbol. A "--" symbol indicates that emissions of this pollutant are not expected. Numbers shall be expressed to at least 2 decimal points (e.g. 0.41, 1.41, or 1.41E⁻⁴).

Unit No.	NOx		CO		VOC		SOx		PM ¹		PM10 ¹		PM2.5 ¹		H ₂ S		Lead	
	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr	lb/hr	ton/yr
1									1.38	2.64	0.28	0.53	0.068	0.13				
2									0.83	1.16	0.39	0.55	0.060	0.083				
3									0.026	0.053	0.0086	0.017	0.0024	0.0049				
4									0.026	0.053	0.0086	0.017	0.0024	0.0049				
5,6									0.026	0.053	0.0086	0.017	0.0024	0.0049				
7,8									0.066	0.13	0.018	0.036	0.0032	0.0060				
9									0.022	0.045	0.014	0.029	0.0033	0.0057				
10									0.026	0.052	0.0091	0.018	0.0021	0.0036				
11									1.09	1.51	0.52	0.72	0.078	0.11				
12	0.063	0.28	0.053	0.23	0.0070	0.031	0.00068	0.0030	0.0048	0.021	0.0048	0.021	0.0048	0.021				
Totals	0.063	0.28	0.053	0.23	0.00070	0.031	0.00068	0.0030	3.50	5.72	1.26	1.95	0.23	0.37				

Condensable Particulate Matter: Include condensable particulate matter emissions for PM10 and PM2.5 if the source is a combustion source. Do not include condensable particulate matter for PM unless PM is set equal to PM10 and PM2.5. Particulate matter (PM) is not subject to an ambient air quality standard, but it is a regulated air pollutant under PSD (20.2.74 NMAC) and Title V (20.2.70 NMAC).

NOTICE

Roper Construction, Inc. announces its application to the New Mexico Environment Department for a new air quality permit for the construction of a concrete batch plant. The expected date of application submittal to the Air Quality Bureau is June 4, 2021.

Roper Construction's Alto CBP is located off Highway 220, near Alto, north of Ruidoso in Lincoln County, New Mexico. The exact location of the facility will be UTM Zone 13, UTM Easting 438,235, UTM Northing 3,697,950, NAD 83. The approximate location of this site is 0.35 miles east of the intersection of Highways 48 and 220 north of Ruidoso, NM in Lincoln County.

The proposed construction consists of a 125 cubic yard per hour concrete batch plant to produce concrete for construction projects.

The estimated maximum quantities of any regulated air contaminants will be as follows in pound per hour (pph) and tons per year (tpy). These reported emissions could change slightly during the course of the Department's review:

Pollutant:	Pounds per hour	Tons per year
PM ₁₀	3.50 pph	5.72 tpy
PM _{2.5}	1.26 pph	1.95 tpy
Sulfur Dioxide (SO ₂)	0.00068 pph	0.0030 tpy
Nitrogen Oxides (NO _x)	0.063 pph	0.28 tpy
Carbon Monoxide (CO)	0.053 pph	0.23 tpy
Volatile Organic Compounds (VOC)	0.0070 pph	0.031 tpy
Total sum of all Hazardous Air Pollutants (HAPs)	0.0012 pph	0.0052 tpy
Toxic Air Pollutant (TAP)	<0.0001 pph	<0.0001 tpy
Green House Gas Emissions as Total CO _{2e}	n/a	< 10,000 tpy

The standard operating schedule of the facility will be from 7 a.m. to 5 p.m. for the months of November through February, and from 5 a.m. to 5 p.m. for the months of March through October, 6 days a week and a maximum of 52 weeks per year. The maximum operating schedule will be 11 hours per day from 7 a.m. to 6 p.m. for the months of November through February, 14 hours per day from 5 a.m. to 7 p.m. for the months of March and November, 17 hours per day from 4 a.m. to 9 p.m. for the months of April and October, and 18 hours per day from 3 a.m. to 9 p.m. in the months of May through August, 7 days a week and a maximum of 52 weeks per year.

The owner and operator of the Facility will be:

Roper Construction, Inc.
P.O. Box 969
Alto, NM 88312

If you have any comments about the construction or operation of this facility, and you want your comments to be made as part of the permit review process, you must submit your comments in writing to this address: Permit Programs Manager; New Mexico Environment Department; Air Quality Bureau; 525 Camino de los Marquez, Suite 1; Santa Fe, New Mexico; 87505-1816; (505) 476-4300; 1 800 224-7009; https://www.env.nm.gov/aqb/permit/aqb_draft_permits.html. Other comments and questions may be submitted verbally.

With your comments, please refer to the company name and facility name, or send a copy of this notice along with your comments. This information is necessary since the Department may have not yet received the permit application. Please include a legible return mailing address. Once the Department has completed its preliminary review of the application and its air quality impacts, the Department's notice will be published in the legal section of a newspaper circulated near the facility location.

Atención

Este es un aviso de la Agencia de Calidad de Aire del Departamento de Medio Ambiente de Nuevo México, acerca de las emisiones producidas por un establecimiento en esta área. Si usted desea información en español, por favor de comunicarse con la oficina de Calidad de Aire al teléfono 505-476-5557.

Notice of Non-Discrimination

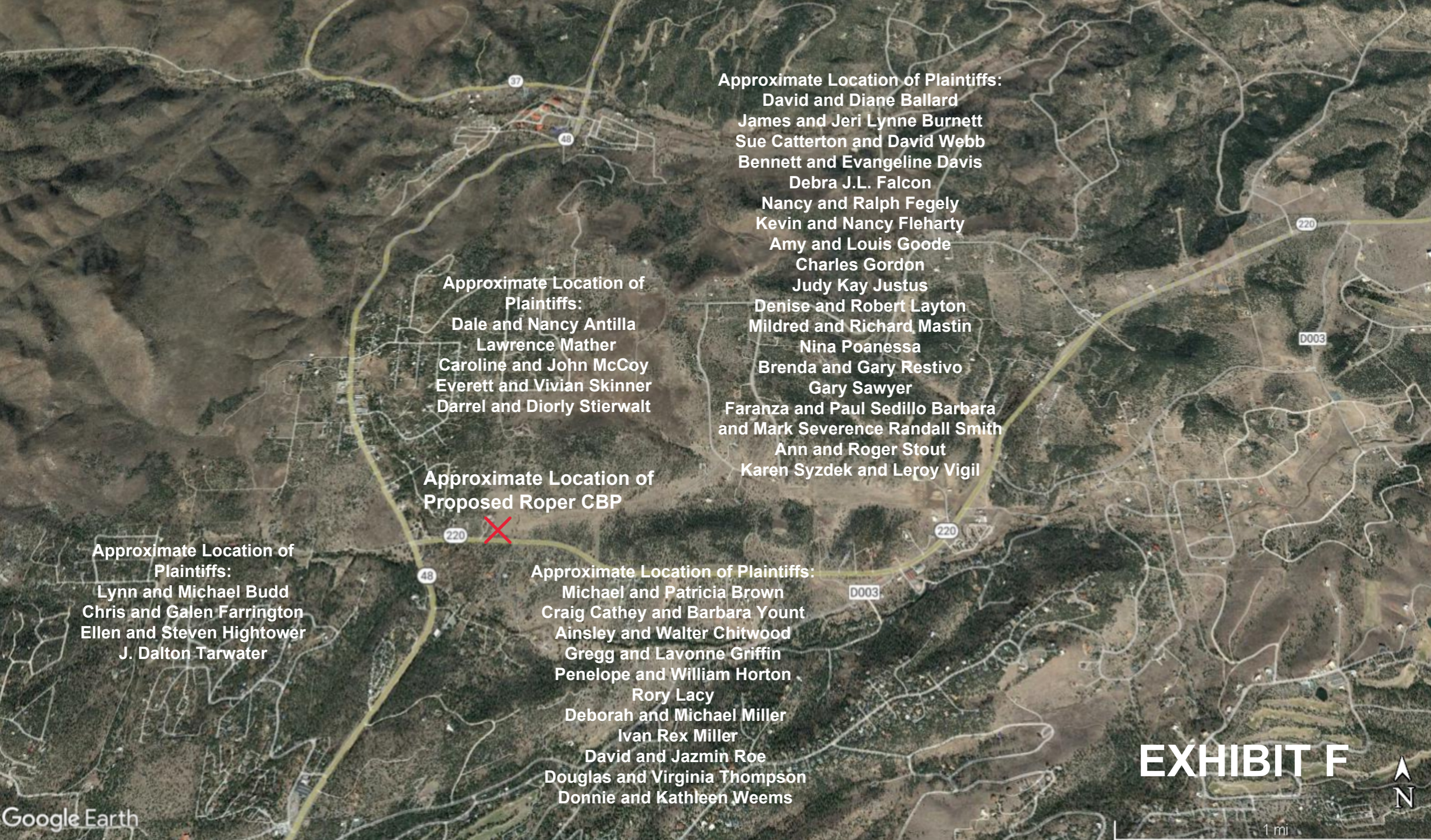
NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED's non-discrimination programs, policies or procedures, you may contact: Kristine Pintado, Non-Discrimination Coordinator, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at <https://www.env.nm.gov/NMED/EJ/index.html> to learn how and where to file a complaint of discrimination.

TABLE 3-1: CBP Plant Hours of Operation (MST)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
12:00 AM	0	0	0	0	0	0	0	0	0	0	0	0
1:00 AM	0	0	0	0	0	0	0	0	0	0	0	0
2:00 AM	0	0	0	0	0	0	0	0	0	0	0	0
3:00 AM	0	0	0	0	1	1	1	1	0	0	0	0
4:00 AM	0	0	0	1	1	1	1	1	1	0	0	0
5:00 AM	0	0	1	1	1	1	1	1	1	1	0	0
6:00 AM	0	0	1	1	1	1	1	1	1	1	0	0
7:00 AM	1	1	1	1	1	1	1	1	1	1	1	1
8:00 AM	1	1	1	1	1	1	1	1	1	1	1	1
9:00 AM	1	1	1	1	1	1	1	1	1	1	1	1
10:00 AM	1	1	1	1	1	1	1	1	1	1	1	1
11:00 AM	1	1	1	1	1	1	1	1	1	1	1	1
12:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
1:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
2:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
3:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
4:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
5:00 PM	1	1	1	1	1	1	1	1	1	1	1	1
6:00 PM	0	0	1	1	1	1	1	1	1	1	0	0
7:00 PM	0	0	0	1	1	1	1	1	1	0	0	0
8:00 PM	0	0	0	1	1	1	1	1	1	0	0	0
9:00 PM	0	0	0	0	0	0	0	0	0	0	0	0
10:00 PM	0	0	0	0	0	0	0	0	0	0	0	0
11:00 PM	0	0	0	0	0	0	0	0	0	0	0	0
Total	11	11	14	17	18	18	18	18	17	14	11	11

TABLE 3-2: CBP Daily Throughput per Month

Months	Cubic Yards Per Day
November through February	1125
March and October	1500
April and September	1750
May through August	1875



Approximate Location of Plaintiffs:

David and Diane Ballard
James and Jeri Lynne Burnett
Sue Catterton and David Webb
Bennett and Evangeline Davis
Debra J.L. Falcon
Nancy and Ralph Fegely
Kevin and Nancy Fleharty
Amy and Louis Goode
Charles Gordon
Judy Kay Justus

Denise and Robert Layton
Mildred and Richard Mastin
Nina Poanessa
Brenda and Gary Restivo
Gary Sawyer
Faranza and Paul Sedillo Barbara
and Mark Severence Randall Smith
Ann and Roger Stout
Karen Syzdek and Leroy Vigil

Approximate Location of Plaintiffs:

Dale and Nancy Antilla
Lawrence Mather
Caroline and John McCoy
Everett and Vivian Skinner
Darrel and Diorly Stierwalt

Approximate Location of Proposed Roper CBP



Approximate Location of Plaintiffs:

Lynn and Michael Budd
Chris and Galen Farrington
Ellen and Steven Hightower
J. Dalton Tarwater

Approximate Location of Plaintiffs:

Michael and Patricia Brown
Craig Cathey and Barbara Yount
Ainsley and Walter Chitwood
Gregg and Lavonne Griffin
Penelope and William Horton
Rory Lacy
Deborah and Michael Miller
Ivan Rex Miller
David and Jazmin Roe
Douglas and Virginia Thompson
Donnie and Kathleen Weems

EXHIBIT F



1 mi