

OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

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DATE: AUGUST 25, 2014

DOCKET NO.: W-02312A-13-0326

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

HALCYON ACRES ANNEX NO. 2 WATER COMPANY, INC.
(DELETION OF TERRITORY)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 3, 2014

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

SEPTEMBER 9, 2013 and SEPTEMBER 10, 2013

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

AUG 25 2014

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JODI JERICHI
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
PRESIDIO TRAILS DEVELOPMENT, LLC AND
HALCYON ACRES ANNEX NO. 2 WATER
COMPANY, INC. FOR DELETION OF PRESIDIO
TRAILS DEVELOPMENT, LLC'S PROJECT
FROM HALCYON ACRES ANNEX NO. 2
WATER COMPANY, INC.'S CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-02312A-13-0326

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING:	June 12, 2014
PLACE OF HEARING:	Tucson, Arizona
ADMINISTRATIVE LAW JUDGE:	Belinda A. Martin
APPEARANCES:	Mr. Gregory E. Good, of Good Law, P.C., on behalf of Applicant Halcyon Acres Annex No. 2 Water Company, Inc.;
	Mr. Matthew Bingham and Mr. Thomas H. Campbell, of Lewis Roca Rothgerber, LLP, on behalf of Applicant Presidio Trails Development, LLC;
	Mr. Jonathan Kent, Intervenor, <i>in propia persona</i> ;
	Mr. John Moritz, Intervenor, <i>in propia persona</i> ; and
	Mr. Brian Smith and Mr. Matthew Laudone, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On September 20, 2013, Presidio Trails Development, LLC ("Presidio") filed with the Arizona Corporation Commission ("Commission") an application to have Presidio's development real property ("Parcel") deleted from Halcyon Acres Annex No. 2 Water Co., Inc.'s ("Halcyon" or

1 “Company”) Certificate of Convenience and Necessity (“CC&N”), claiming that Halcyon was unable
2 to provide water service to the Parcel.

3 Having considered the entire record herein and being fully advised in the premises, the
4 Commission finds, concludes, and orders that:

5 * * * * *

6 **FINDINGS OF FACT**

7 **PROCEDURAL HISTORY**

8 1. Presidio filed its application on September 20, 2013.

9 2. On October 10, 2013, the Commission’s Utilities Division (“Staff”) docketed a Notice
10 of Case Status observing that Halcyon was not a party to Presidio’s application. Staff concluded that
11 although Presidio’s filing was styled as an application for deletion of territory, it was more in the
12 nature of a complaint against Halcyon. Staff noted that Presidio and Halcyon had not brought the
13 matter to the Commission as an informal complaint for mediation and recommended that the entities
14 avail themselves of the process to try to resolve the issues.

15 3. In Presidio’s Response to Staff’s Notice of Case Status filed on October 15, 2013, it
16 acknowledged Staff’s recommendation and proposed that the matter be stayed pending mediation.

17 4. On October 22, 2013, Halcyon filed its Response to Presidio Trails Development,
18 LLC’s October 15, 2013 Filing, stating it did not object to participating in mediation.

19 5. A Procedural Order docketed October 29, 2013, stayed the proceedings and directed
20 Presidio to file a status update regarding the mediation’s outcome.

21 6. On January 27, 2014, Presidio docketed its Status Update and Motion for Joinder of
22 Halcyon as Co-Applicant (“Joinder Motion”), which Halcyon co-signed. Presidio stated that it and
23 Halcyon had resolved their dispute and requested that Halcyon be joined with Presidio as a co-
24 applicant in this docket and moved to have the stay lifted.

25 7. A Procedural Order docketed February 11, 2014, granted the Joinder Motion.
26 (Halcyon and Presidio are jointly referred to as the “Applicants.”) The Procedural Order also
27 confirmed that the matter would be considered as an application by Halcyon to delete a portion of its
28 certificated area (“Application”).

1 8. On February 14, 2014, Staff docketed its Response to Status Update and Motion for
2 Joinder of Halcyon as Co-Applicant, advising that Staff did not object to Halcyon's joinder as a co-
3 applicant, and agreeing to process the Application as a request from Halcyon to delete a portion of its
4 CC&N.

5 9. On March 13, 2014, the Applicants docketed an Amendment to the Application
6 reflecting the correct legal description for the portion of Halcyon's CC&N proposed for deletion.

7 10. On March 13, 2014, Staff filed its Sufficiency Letter indicating that the Application
8 met the requirements outlined in the Arizona Administrative Code ("A.A.C.").

9 11. On March 14, 2014, Halcyon filed a Clarification of Halcyon's Joinder in Presidio's
10 Application for Deletion.

11 12. On April 2, 2014, the Applicants filed a Motion for Procedural Order Setting
12 Schedule.

13 13. Pursuant to a Procedural Order docketed March 26, 2014, a procedural conference was
14 held on April 10, 2014, during which the parties discussed procedural matters and scheduling issues.

15 14. A Procedural Order was issued on April 15, 2014, setting a hearing on the matter for
16 June, 12, 2014, and establishing procedural deadlines.

17 15. On May 9, 2014, John Mortiz, a Halcyon customer, and Jonathan Kent, a customer
18 and shareholder, filed Motions to Intervene. The parties did not file any objections. A Procedural
19 Order issued May 19, 2014, granted intervention to Mr. Mortiz and Mr. Kent.

20 16. On May 15, 2014, Halcyon docketed its Affidavit of Mailing and Publication, averring
21 that it had mailed notice of the hearing to its customers on April 18, 2014, and published the hearing
22 notice in the *Arizona Daily Territorial* on April 22, 2014. No customer comments were received in
23 response to the notice.

24 17. Staff docketed its Staff Report on May 23, 2014, recommending denial of the
25 Application.

26 18. On June 3, 2014, the Applicants submitted their Response to Staff Report
27 ("Response"), objecting to Staff's denial recommendation.

28

1 **Presidio's Parcel**

2 29. Presidio is an Arizona manager-managed limited liability company formed on March
3 21, 2012. Mr. McCallister, Presidio's manager, has been in the apartment development, construction
4 and management business since 1983. He stated that through his own entity he has overseen
5 approximately 15 multi-family housing construction projects, totaling around 5,000 units, mostly in
6 Pima County, but with some in Sierra Vista and Phoenix.⁷ Mr. McCallister's entity also manages
7 around 7,000 units throughout the southwest.⁸

8 30. The Parcel is located on Tucson's east side near the Rincon Mountains, in an area
9 consisting by-and-large of single family homes on larger lots. The Parcel consists of approximately
10 11 undeveloped acres, with 9.24 acres of usable land, zoned in the 1970's as C1.⁹ According to Mr.
11 McCallister, an affiliate of Pepper Viner Homes had owned the property and intended to construct a
12 subdivision consisting of 50 single family homes beginning in 2008. Due to the 2008 economic
13 downturn, the development did not move forward.¹⁰ In 2011, Mr. McCallister put the Parcel under
14 contract with his own entity, MC Realty Advisors, LLC, and later assigned the contract to Presidio's
15 affiliate, Presidio Development, LLC.¹¹ The real estate transaction closed in April 2012.¹² The legal
16 description for the Parcel is attached as Exhibit A.

17 31. Presidio intends to use the Parcel to construct a 208-unit multi-family complex known
18 as The Place at Presidio Trail Apartments ("Project"). One of Halcyon's distribution lines currently
19 runs through the Parcel, but Presidio will need to relocate the line elsewhere on the Parcel as part of
20 the Project's construction.¹³ Presidio recorded the plat for the Project with the Pima County
21 Recorder's Office on September 24, 2012.¹⁴

22 ...

23 ...

24

25 ⁷ Tr. at 26.

⁸ Tr. at 52.

26 ⁹ Tr. at 40, 43.

¹⁰ Tr. at 45 - 47.

27 ¹¹ Tr. at 45 - 46.

¹² Tr. at 44 - 45.

¹³ Tr. at 49 - 50.

28 ¹⁴ Application, Exhibit D.

1 **Halcyon's Ability to Serve the Project**

2 32. Halcyon's existing well site is situated in a small, triangle-shaped plot adjacent to
 3 Presidio's Parcel.¹⁵ At the time of closing, Presidio was aware Halcyon's well site lacked sufficient
 4 pumping and storage capacity to serve the Project.¹⁶ To bring the well site into compliance with
 5 ADEQ regulations, Presidio's engineering firm determined the needed improvements included the
 6 installation of a 16-foot, 150,000-gallon storage tank, a new 750-gallon per minute booster station, a
 7 second two-inch interconnection with Tucson Water, and making a number of improvements to the
 8 existing well, at a cost of approximately \$500,000.¹⁷ The plans for the upgrade were approved by the
 9 Pima County Department of Environmental Quality.¹⁸

10 33. Mr. McCallister testified that it was not until October 2012 that Presidio learned
 11 Halcyon's well site does not conform to current City zoning regulations governing minimum lot size
 12 and building set-backs, and had not been approved as a special exception land use ("SELU").¹⁹ The
 13 City advised Halcyon it would have to file applications with the City's Zoning Examiner for a SELU
 14 and the Board of Adjustment ("Board") for approval of any necessary variances from the minimum
 15 lot size and set back requirements.²⁰

16 34. As directed by the City, Halcyon filed the required applications. The Zoning Examiner
 17 held a public hearing on Halcyon's application on April 18, 2013. Some Halcyon customers
 18 provided comment at the hearing to voice their opposition to the SELU because they were opposed to
 19 the construction of an apartment complex in the area, insisting the Project is not appropriate for the
 20 neighborhood. Other customers claimed that they did not like the improvements, asserting that a 16-
 21 foot storage tank would be obtrusive.²¹ The Board held a public hearing on April 24, 2013.²²

24 ¹⁵ Application, Exhibit I, page 1.

¹⁶ Tr. at 47.

25 ¹⁷ Application, Exhibits D, G and J.

¹⁸ Application, page 3. The Pima County Department of Environmental Quality is authorized by ADEQ to review and
 26 approve projects located within Pima County.

¹⁹ Tr. at 47 – 48. Halcyon's well site was already in place when the current zoning regulations were adopted, and was
 27 grandfathered in. Tr. at 33, 107.

²⁰ Application, page 3.

²¹ Application, Exhibit I.

28 ²² Application, Exhibit I, page 5. The Applicants did not provide any information regarding the Board's hearing.

1 35. The City's Zoning Examiner approved Halcyon's SELU and the Board granted the
2 requested variances.²³ Two Halcyon customers appealed the Zoning Examiner's SELU approval to
3 the Mayor and City Council, reiterating their objections to the SELU, the storage tank and the
4 Project. On July 9, 2013, the City Mayor and Council reversed the Zoning Examiner's decision and
5 rejected Halcyon's SELU application.²⁴

6 36. In an August 5, 2013, letter to Halcyon, Presidio asserted that without the SELU,
7 Halcyon cannot obtain the permits to construct the necessary upgrades and concluded that Halcyon is
8 unable to serve the Parcel. Presidio requested that the Company apply to the Commission to have the
9 Parcel deleted from Halcyon's certificated area. Presidio advised Halcyon it planned to receive water
10 service from Tucson Water, which has distribution facilities nearby.²⁵

11 37. On August 13, 2013, Presidio received a will-serve letter from Tucson Water for fire
12 flow to the Project. The letter explained that because the Project is within the City limits, Tucson
13 Water is required to provide it with fire flow service, but stated it could not provide the Project with
14 water service since the Parcel is within Halcyon's certificated area. Tucson Water advised Presidio
15 that if the Commission were to delete the Parcel from Halcyon's service territory, Tucson Water
16 would be able and willing to provide domestic water service.²⁶

17 38. Halcyon responded to Presidio's letter on August 20, 2013, declaring that Presidio's
18 request for deletion was premature. The Company claimed that Presidio was obligated under the
19 Line Extension Agreement ("LEA") to re-evaluate the engineering plans for the Project.²⁷ Halcyon
20 contended there was likely more than one way to configure the necessary upgrades and bring the well
21 site up to ADEQ regulations and City codes, and suggested Presidio work with its engineer to come
22 up with a new plan. The Company affirmed that it was willing and able to provide water service to
23
24

25 ²³ Application, Exhibit I.

26 ²⁴ Application, Exhibit D.

27 ²⁵ Application, Exhibit D. Sewer service for the Project will be provided by Pima County Regional Wastewater
Reclamation Department. Tr. at 51.

28 ²⁶ Application, Exhibit E.

²⁷ Application, Exhibit J. The Commission approved the LEA on December 5, 2012. Staff Report, Attachment A, page
2, footnote 3.

1 the Project, and that it would not agree to file an application with the Commission for deletion of the
2 Project from its CC&N until Presidio confirmed there were no workable configurations.²⁸

3 39. Mr. McCallister testified that Presidio's engineers studied various configurations for
4 the improvements on the well site that would meet both the City's zoning requirements and the
5 Project's needs, but due to the small size and odd shape of Halcyon's well site, Presidio's engineers
6 could not configure the necessary facilities in a way that would satisfy all regulatory requirements.²⁹
7 Mr. Wilcox agreed that there is not a plot within Halcyon's CC&N where a 16-foot, 150,000-gallon
8 storage tank could be placed and still meet zoning, engineering and financial requirements.³⁰

9 40. Presidio filed its Application with the Commission on September 20, 2013,
10 contending Halcyon was unable to provide service to the Project and requested deletion of the Parcel
11 from the Company's CC&N. At Staff's urging, Presidio and Halcyon again entered into discussions
12 to see if they could overcome their impasse. On December 23, 2013, Halcyon and Presidio signed a
13 settlement agreement ("Settlement") resolving the issues between them. Under the Settlement's
14 terms, Halcyon agreed to support the Application and to grant an access easement as indicated on the
15 final plat. Presidio agreed to pay all expenses related to the relocation, construction or design of the
16 Project's water delivery system and to make a \$100,000 upfront payment to Halcyon. The Settlement
17 is expressly contingent on the Commission's deletion of the Parcel from Halcyon's CC&N.³¹

18 41. On January 27, 2014, Presidio and Halcyon docketed a Motion requesting that the
19 Company be joined as a co-applicant in the docket. The Motion was granted by a Procedural Order
20 issued February 11, 2014.

21 42. In its Staff Report, Staff expressed concern that deletion of 11 acres from the 106-acre
22 CC&N would diminish Halcyon's ability to expand its customer base, yet acknowledged that the
23 \$100,000 payment to the Company would benefit the Company and customers.

24 43. Staff related that one option explored by the Applicants was the excavation of the site
25 to place a portion of the storage tank underground, thereby decreasing its obtrusiveness and perhaps

26 _____
27 ²⁸ Application, Exhibit F.

²⁹ Tr. at 41 – 42.

³⁰ Tr. at 106.

28 ³¹ Hearing Exhibit A – 3.

1 providing a better chance at successfully bringing the well site within the City's height/set back ratio
2 requirements. But in a data request response, the Applicants noted this option would still require the
3 approval of the Zoning Examiner and the Board and they feared this could lead to another rejection of
4 Halcyon's SELU application by the Mayor and Council. Staff also noted the parties did not have any
5 cost estimates for excavation of the well site to lower the storage tank and the concomitant changes to
6 the system required to accommodate the lowered tank.³²

7 44. Staff also stated Halcyon dismissed any suggestion that it sell its system to the City.
8 Mr. Wilcox stated that the Company and its customers object to Tucson Water's practice of
9 chlorinating its water and Halcyon would not accept water from the City except in emergencies.³³

10 45. Staff believed an option the Applicants had not considered was the possibility of
11 entering into a wholesale water purchase agreement with Tucson Water to provide the additional
12 water needed to support the Project.³⁴ The water could be supplied via the emergency
13 interconnection, although the current 2-inch line is not sufficient to meet the additional demand.

14 46. Staff also referenced the Commission's concern over the ability of small water
15 companies to remain financially viable, declaring:

16 Given Halcyon's very small size, with only 36 customers, Staff believes that the
17 Commission interest in making small water companies more viable in the long term is an
18 important consideration in determining how to treat Halcyon's application in this
19 proceeding....If Halcyon can retain the Presidio development within its CC&N, it would
potentially increase its customer base from 36 to approximately 244. If this occurred, it
would provide a much bigger customer base over which to spread any future costs.³⁵

20 47. Staff acknowledged the large amount of time, effort and cost expended by the
21 Applicants to advance the Project, as well as the benefits of the \$100,000 payment Halcyon stands to
22 receive under the Agreement. Nevertheless, Staff believed that the Applicants should pursue
23 wholesale water purchase with Tucson Water before moving forward with deletion of the Parcel. As
24 such, Staff recommended denial of the Application.

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26
27 ³² Staff Report, pages 2 – 3.

³³ Tr. at 109 – 110.

³⁴ The estimated use per connection is 200 gallons per day. Tr. at 58.

³⁵ Staff Report, page 5.

1 48. In the Applicant's Response, Presidio countered Staff's recommendation, advising that
2 it had contacted Tucson Water and the City Attorney's Office to discuss the viability of Staff's
3 recommendation. The City advised Presidio that under the provisions of the City's "Water Policies"
4 adopted in 1998, Tucson Water cannot deliver water to a wholesale customer that is debited against a
5 City groundwater account by ADWR unless that customer has a source of renewable water (such as a
6 CAP allocation) that can be "wheeled" through Tucson Water's system. Halcyon does meet these
7 requirements and Tucson Water cannot sell water to Halcyon on a wholesale basis.³⁶ Further,
8 although Halcyon does have an interconnection agreement with Tucson Water, the interconnection is
9 for the provision of water on a temporary, emergency basis only.³⁷ Presidio said it would provide a
10 witness from the City to testify regarding the City's policies.

11 49. Presidio also observed that a Tucson Water wholesale water agreement requires
12 approval from the Mayor and Council. Presidio expressed concern that the same individuals who
13 opposed the SELU might also oppose the wholesale water purchase agreement and it could be
14 rejected by the Mayor and Council.³⁸ Presidio emphasized that it has been working on the Project
15 since 2011 and striving for a resolution to the SELU issue since 2012, and insisted it does not want to
16 begin yet another potentially fruitless administrative process with the City.³⁹

17 50. Halcyon stated in the Response that it had no reason to dispute Presidio's assertions
18 regarding the City's Water Policies and the Company continued to believe that the terms of the
19 Settlement are in everyone's best interests.⁴⁰

20 51. In its Reply, Staff stated that if the City's witness confirmed Presidio's statements,
21 then purchasing water from Tucson Water is not a viable option, and Staff would recommend
22 approval of the Application.

23 52. At hearing, Presidio presented as a witness Christopher Avery, a Principal City
24 Attorney in the City Attorney's Office. Since 1998, Mr. Avery's primary responsibility has been
25 representing Tucson Water.⁴¹

26 ³⁶ Response, Exhibit A, Section III.C.6.g.

27 ³⁷ Response, Exhibit B.

28 ³⁸ Response, page 3.

³⁹ *Id.*

⁴⁰ Response, pages 3 - 4.

1 53. Mr. Avery testified that the City has a legal obligation to provide water service to
2 people living within the City limits unless they live in an area that is within a private water
3 company's CC&N.⁴²

4 54. Mr. Avery explained that under the City's Water Policies, Halcyon would not be
5 eligible to enter into a wholesale water purchase agreement because, to the best of his knowledge, the
6 Company does not have an independent source of renewable water that could be wheeled into Tucson
7 Water's system.⁴³ Mr. Wilcox confirmed that Halcyon is not able to obtain rights to a renewable
8 water source.⁴⁴

9 55. Further, under the terms of the interconnection agreement with Halcyon, the
10 interconnection is to be used solely for emergency purposes only; it cannot be used to provide day-to-
11 day service in the absence of an urgent need.⁴⁵ Mr. Avery noted that the cost for water under an
12 interconnection agreement is fairly high and it would be difficult for a water company to sell water
13 supplied under an interconnection agreement at a profit.⁴⁶

14 56. Mr. Avery testified that if the Commission deletes the Parcel from Halcyon's CC&N,
15 Tucson Water is willing and able to provide water service to the Parcel.⁴⁷

16 57. Based on Mr. Avery's testimony, Staff believes the Parcel's deletion is in the public
17 interest and recommends approval of the Application, subject to certain conditions.⁴⁸

18 58. Halcyon and Presidio assert that the Agreement is in the public interest because it
19 provides a just and reasonable resolution of the issues presented in the Application, and it allows a
20 final resolution that avoids the expense, delay and risk associated with protracted litigation. Halcyon,
21 Presidio and Staff agree that deletion of the Project from Halcyon's CC&N is in the public interest
22 because the up-front \$100,000 payment from Presidio inures to the benefit of customers and the

23
24 ⁴¹ Tr. at 60.

⁴² Tr. at 61.

25 ⁴³ Tr. at 62 – 63. Mr. Avery stated that he believes Vail Water Company, which has a CAP allocation, is the only private
26 water company that has an agreement with the City. The City also has agreements with the Town of Oro Valley and
Metropolitan Water District.

⁴⁴ Tr. at 93.

⁴⁵ Tr. at 72 – 73.

⁴⁶ Tr. at 73.

⁴⁷ Tr. at 61.

⁴⁸ Tr. at 158.

1 Company.⁴⁹ In contrast, Mr. McCallister calculated that it would take Halcyon roughly 15 years to
2 earn \$100,000 in revenues from the Project.⁵⁰

3 59. Mr. McCallister stated that if the Commission approves the Application, construction
4 of the Project should begin in late 2014; if the Commission denies the Application, the Project will
5 not proceed.⁵¹

6 **The Intervenors' Positions**

7 60. Mr. Kent is a both a Halcyon customer and shareholder and has lived in Halcyon
8 Acres for 28 years.⁵² At hearing, Mr. Kent emphasized his concern that all possible alternatives to
9 the SELU issue had not been fully evaluated by the Applicants. He claims that in their rush to get the
10 Project moving, Presidio and Halcyon selected a quick and inexpensive solution, ignoring more
11 desirable options.⁵³

12 61. In his testimony, Mr. Kent related that he opposed the initial development plan
13 because he believed a 16-foot high storage tank was ill-fitting for the SR zoned, low-density, rural
14 neighborhood.⁵⁴ Mr. Kent claimed in his opening statement that the Mayor and Council rejected the
15 SELU because the storage tank was too high and did not suit the area. He asserted the Mayor and
16 Council suggested Presidio and Halcyon explore alternatives to the obtrusive storage tank – but they
17 did not object to the apartment complex itself.⁵⁵

18 62. One alternative that Mr. Kent claims Halcyon failed to consider would have been to
19 enter into an agreement with an adjacent small private water company, Halcyon Acres Water Users
20 Association (“HAWUA”). Mr. Kent contended that Halcyon should have approached HAWUA to
21 see if it would be amenable to providing a location for the storage tank or some other arrangement.⁵⁶

22 63. Mr. Moritz is a customer of Halcyon and has lived in Halcyon Acres for 20 years.⁵⁷
23 During his testimony, Mr. Moritz admitted he opposed the addition of the storage tank and remains

24 ⁴⁹ Tr. at 37 – 38, 51, 84 – 85, 111, 156 – 157, 164.

25 ⁵⁰ Tr. at 38.

26 ⁵¹ Tr. at 29, 31.

27 ⁵² Motion to Intervene; Tr. at 130.

28 ⁵³ Tr. at 130.

⁵⁴ *Id.*

⁵⁵ Tr. at 22 – 23.

⁵⁶ Tr. at 132.

⁵⁷ Tr. at 117.

1 opposed to the apartment complex.⁵⁸ He stated that his home is approximately 100 yards away from
2 the Parcel's property line and insists the apartments do not comport with the aesthetics of the
3 neighborhood.⁵⁹ Mr. Moritz reasoned that if Presidio cannot use its Parcel for the apartment
4 complex, the property does not become worthless – Presidio could develop another project more in
5 line with the rural setting.⁶⁰

6 64. Both Mr. Kent and Mr. Moritz embraced the discussion in the Staff Report regarding
7 the viability of small water companies. Although the Parcel's deletion would negate the need for the
8 storage tank, Mr. Kent and Mr. Moritz argued the deletion was not in the best interests of Halcyon or
9 its customers. The removal of what amounts to ten percent of the Company's certificated area
10 lessens its ability to expand its customer base – through appropriate development – financially
11 harming the Company and its customers.⁶¹ Each expressed concern that the owners of the remaining
12 undeveloped property in the certificated area, which is mostly zoned at a higher density C1
13 designation, might also sue to have their property deleted from Halcyon's CC&N, resulting in a
14 "death by a thousand cuts"⁶² for the Company.

15 65. Mr. Kent and Mr. Mortiz requested that the Commission deny the Application. Mr.
16 Kent proposed that as an alternative, the Commission postpone its decision and direct Halcyon to
17 explore other alternatives to deletion of the Parcel from the CC&N.⁶³ Mr. Kent also suggested that if
18 the Commission approves the Application, the Parcel's deletion should be conditioned on the
19 Project's completion. Mr. Kent's concern is that if the Project is not built, there will be an
20 undesirable hole in Halcyon's CC&N.⁶⁴

21 66. Mr. McCallister addressed this last concern by noting that the Application's purpose is
22 the Parcel's deletion so the Project can be built. Mr. McCallister stated that Presidio has all other
23 governmental approvals, Tucson Water stands ready to provide water service, and the financing is
24

25 _____
⁵⁸ Tr. at 120 – 121, 127.

26 ⁵⁹ Tr. at 117, 123.

27 ⁶⁰ Tr. at 127.

28 ⁶¹ Tr. at 124, 132 – 135.

⁶² Tr. at 119, 126 – 127, 132, 140.

⁶³ Tr. at 131.

⁶⁴ Tr. at 21.

1 arranged; upon the Application’s approval, Presidio is ready to begin construction.⁶⁵ Mr. McCallister
2 stressed that the intervenors’ proposals to either make the approval conditional, or to postpone the
3 matter while other options were explored, conflict with the terms of the Settlement and are not
4 acceptable to Presidio.⁶⁶ He pointed out that Halcyon and Presidio had already evaluated various
5 configurations before Presidio concluded that Halcyon was unable to serve the Parcel.⁶⁷

6 67. Staff testified it believed adopting the intervenors’ proposals could affect the terms of
7 the Settlement and delay the payout of the \$100,000 to Halcyon.⁶⁸

8 68. Mr. McCallister also disputed the claims that the Project was not sensitive to the
9 surrounding neighborhood, noting that the 13 building complexes were set far back from the property
10 line and the complex’s design was aesthetically pleasing and sympathetic to the designs predominant
11 in the area.⁶⁹ He stated he had also met with Halcyon customers twice to discuss the Project.⁷⁰

12 69. Mr. Wilcox testified the Company was not willing to negotiate any sort of agreement
13 with HAWUA. He related that Halcyon’s and HAWUA’s systems had been interconnected until
14 approximately 15 years ago, when there was a disagreement about payment for usage and they
15 dismantled the interconnection. The ill-feelings between the two companies remain and Halcyon has
16 no wish to approach HAWUA with any proposals.⁷¹ Mr. McCallister added that the Applicants
17 evaluated alternatives using only Halcyon’s property.⁷²

18 70. Regarding Mr. Kent’s and Mr. Moritz’ fears that other developers would seek to have
19 their property deleted from Halcyon’s service area, Mr. Wilcox asserted that they would have to
20 come to the Company with the request and Halcyon would not allow further deletions unless it was
21 unable to provide service.⁷³

22 ...
23 ...

24 _____
65 Tr. at 31 – 32, 55.
25 66 Tr. at 56.
67 Tr. at 34 – 35.
26 68 Tr. at 159.
69 Tr. at 52.
70 Tr. at 53.
27 71 Tr. at 94 – 96.
72 Tr. at 44.
28 73 Tr. at 148, 151.

1 **Other Recommendations**

2 71. In its Reply, Staff recommended that Halcyon deposit the \$100,000 payment into an
3 interest-bearing account until such time as the Commission approves the funds' expenditure in a
4 future rate case or other proceeding. Staff concedes that there is no evidence of financial
5 mismanagement warranting the recommendation, but believes this level of oversight is advisable
6 given the amount of money involved. Staff explained that requiring the Company to obtain approval
7 prior to the money's use will help protect Halcyon's future viability.⁷⁴

8 72. Mr. Wilcox testified that Halcyon does not object to placing the money in an interest-
9 bearing account and stressed that the Company had already determined to save the money for needed
10 repairs and improvements. But Halcyon does object to Staff's recommendation that the Company
11 must obtain Commission approval before it uses any of the money for repairs, improvements and/or
12 emergencies, arguing that the Company should have control over the funds.⁷⁵ Mr. Wilcox insisted
13 the Company does not intend to distribute any of the funds to shareholders or use it for any other
14 purposes.⁷⁶

15 73. Staff also recommends that Halcyon should file with Docket Control, as a compliance
16 item in this docket, within 90 days of this Decision's effective date, documentation from ADWR
17 indicating that the water system is in compliance with ADWR requirements governing water
18 providers and/or community water systems.

19 **ANALYSIS AND CONCLUSIONS**

20 **Deletion**

21 74. In *James P. Paul Water Company v. Arizona Corp. Com'n*, the Arizona Supreme
22 Court held: "Where a public service corporation holds a certificate for a given area, the public interest
23 requires that that corporation be allowed to retain its certificate until it is unable or unwilling to
24 provide needed service at a reasonable rate."⁷⁷ Although Halcyon had been willing to provide water
25 service to Presidio's Project, the issue is whether the evidence presented is sufficient to demonstrate

26 _____
27 ⁷⁴ *Id.*

⁷⁵ Tr. at 108 – 109, 113 – 114.

⁷⁶ Tr. at 113.

28 ⁷⁷ 137 Ariz. 426, 430, 671 P.2d 404, 408 (Ariz. 1983).

1 that the Company is unable to provide service and deletion of the Parcel from Halcyon's CC&N is in
2 the public interest.

3 75. Since 2012, Presidio and Halcyon have been attempting to find a solution to the City
4 code and zoning issues with Halcyon's well site. The original engineering plan drafted by Presidio's
5 engineers to address the SELU issue was approved by the Zoning Examiner and the variances
6 approved by the Board, but on appeal, the Mayor and Council reversed the approval. The evidence
7 reflects that Halcyon and Presidio investigated other options, but none of them were viable from a
8 financial and/or engineering standpoint. Likewise, Staff's proposal that Halcyon enter into a
9 wholesale water purchase agreement with Tucson Water is not permitted under the City's Water
10 Policies, and Halcyon has no interest in selling the system to the City.

11 76. Mr. Kent contends that the Applicants did not consider all possible options. He claims
12 the decision to delete the Parcel from the CC&N was made in a rush and it will harm the Company in
13 the long run. The testimony and evidence indicates that the decision to delete the Parcel was not
14 made in a rush, nor is there evidence that it will harm Halcyon. Mr. McCallister and Mr. Wilcox did
15 testify that there were some options they were not willing to consider, but there is no evidence that
16 those options would ultimately result in service at a reasonable rate.

17 77. Mr. Moritz was forthcoming in his testimony that his main objection to the
18 Application is the construction of the apartment complex.

19 78. Regarding Halcyon's ability to remain financially viable after deletion of the Parcel
20 from the Company's certificated area, we agree with Staff that Presidio's \$100,000 payment will
21 provide Halcyon with substantial and immediate financial stability, allowing it to remain viable into
22 the future and continue to provide safe and reliable water service to its customers.

23 79. We believe that Mr. Kent's request that the deletion be conditioned on the Project's
24 completion is unnecessary. The City has agreed to provide water service to the Parcel upon
25 cancellation of Halcyon's CC&N.

26 80. The evidence demonstrates that the Applicants explored a number of configurations to
27 bring the needed upgrades within City code and zoning requirements, but these potential solutions
28 either did not guarantee approval of a revised engineering plan, were not legally viable, or were not

1 approaches that one or both parties deemed reasonable or desirable. Halcyon has conceded that it is
2 unable to provide service to Presidio's Parcel.

3 81. We find there is sufficient evidence to support a finding that Halcyon is unable to
4 provide water service to the Parcel.

5 82. We further find that deletion of Presidio's Parcel from Halcyon's CC&N is in the
6 public interest and the Application should be approved.

7 **Other Issues**

8 83. Staff recommends that the \$100,000 payment from Presidio should be held in an
9 interest-bearing account until such time that the Commission approves their expenditure, but Staff
10 does not point to any specific reason necessitating such oversight, other than a general claim that it
11 would protect the Company's fiscal viability.

12 84. Mr. Wilcox testified that the Company had already decided it would deposit the funds
13 in the bank for emergency use, needed repairs, or capital improvements, but objects to Staff's
14 requirement that Halcyon must obtain Commission approval before accessing the funds.

15 85. Staff presented no evidence of past financial improprieties or concerns of
16 mismanagement. Requiring Halcyon to obtain Commission approval before the Company can use its
17 money is unnecessarily burdensome, especially in an emergency situation. If Halcyon uses the
18 money for several separate projects, the Company would have to apply to the Commission each time,
19 resulting in delay and expense. We also note that Halcyon's books are managed by SUM and we
20 expect the money to be properly accounted for and the support for any expenditure documented for
21 review by the Commission in a future rate case or other proceeding.

22 86. We adopt Staff's recommendation that Halcyon should place the \$100,000 payment
23 from Presidio in an interest-bearing account, but we will not require Halcyon to obtain Commission
24 approval prior to expending those funds. Nevertheless, we understand Staff's concerns that the
25 money should be preserved for emergencies and improvements.

26 87. Accordingly, we believe it is reasonable to require the Company, as it has agreed, to
27 restrict its use of the money to emergency situations or capital improvement projects, and not for
28

1 purposes that are, wholly or in part, reasonably chargeable to operating expenses, or to pay dividends
2 to shareholders.

3 88. We also believe it is reasonable to require Halcyon to maintain detailed records and
4 invoices supporting the funds' expenditure and the Company must make the information available to
5 the Commission upon Staff's request.

6 89. We find Staff's recommendation that Halcyon must file, within 90 days of this
7 Decision's effective date, documentation from ADWR reflecting that the Company is in compliance
8 with ADWR regulations, is reasonable and we adopt it.

9 **CONCLUSIONS OF LAW**

10 1. Halcyon is a public service corporation within the meaning of Article XV of the
11 Arizona Constitution and A.R.S. §§40-250 and 40-251.

12 2. The Commission has jurisdiction over Halcyon and the Application's subject matter.

13 3. Notice of the Application was given in accordance with Arizona law.

14 4. The evidence demonstrates that Halcyon is unable to provide service to Presidio's
15 Parcel located with the Company's CC&N.

16 5. Tucson Water is willing and able to provide water service to Presidio's Project upon
17 the Parcel's deletion from Halcyon's CC&N.

18 6. Deletion of Presidio's Parcel from Halcyon's CC&N is in the public interest.

19 7. Staff's recommendations, as modified, are reasonable and shall be adopted.

20 **ORDER**

21 IT IS THEREFORE ORDERED that Presidio Trails Development, LLC's Parcel, as legally
22 described in Exhibit A, is deleted from Halcyon Acres Annex No. 2 Water Company, Inc. Certificate
23 of Convenience and Necessity.

24 IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc. shall file
25 with Docket Control, as a compliance item in this docket, within 90 days of this Decision's effective
26 date, documentation from ADWR indicating that Halcyon Acres Annex No. 2 Water Company, Inc.'s
27 water system is in compliance with ADWR requirements governing water providers and/or
28 community water systems.

1 IT IS FURTHER ORDERED that Presidio Trails Development, LLC shall file with Docket
2 Control, as a compliance item in this docket, within 10 days of making the required payment to
3 Halcyon Acres Annex No. 2 Water Company, Inc., a Notice of Payment advising the Commission of
4 the transaction.

5 IT IS FURTHER ORDERED that upon receipt of Presidio Trails Development, LLC's
6 payment, Halcyon Acres Annex No. 2 Water Company, Inc. shall place the funds in an interest-
7 bearing account and shall file with Docket Control, as a compliance item in this docket, within 10 of
8 the funds' deposit, a Notice of Deposit affirming that the funds have been deposited as required.

9 IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc. shall use
10 the funds solely for emergency purposes and/or capital improvement projects as set forth herein.

11 IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc. shall not
12 use the funds received from Presidio Trails Development, LLC, for purposes that are, wholly or in
13 part, reasonably chargeable to operating expenses, nor for dividend distributions to shareholders.

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1 IT IS FURTHER ORDERED that Halcyon Acres Annex No. 2 Water Company, Inc. shall
2 maintain detailed records and invoices supporting the funds' expenditure and shall make the
3 information available to the Commission upon Staff's request.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
6

7 CHAIRMAN _____ COMMISSIONER

8
9 COMMISSIONER _____ COMMISSIONER _____ COMMISSIONER

10
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IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____ 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
BAM:tv

1 SERVICE LIST FOR: HALCYON ACRES ANNEX NO. 2 WATER
2 COMPANY, INC.

3 DOCKET NO.: W-02312A-13-0326

4 John Moritz
5 9025 East 21st Street
6 Tucson, AZ 85710

7 Jonathan Kent
8 9066 East 20th Street
9 Tucson, AZ 85710

10 Thomas H. Campbell
11 Matthew Bingham
12 LEWIS ROCA ROTHGERBER LLP
13 40 North Central Avenue
14 Phoenix, AZ 85004

15 Gregory E. Good
16 GOOD LAW, P.C.
17 Foothills Corporate Center
18 3430 East Sunrise Drive, Suite 270
19 Tucson, AZ 85718

20 Janice Alward, Chief Counsel
21 Legal Division
22 ARIZONA CORPORATION COMMISSION
23 1200 West Washington Street
24 Phoenix, AZ 85007

25 Steven M. Olea, Director
26 Utilities Division
27 ARIZONA CORPORATION COMMISSION
28 1200 West Washington Street
Phoenix, AZ 85007



EXHIBIT A

LEGAL DESCRIPTION

THE PLACE AT PRESIDIO TRAIL BLOCK 1, A SUBDIVISION WITHIN THE CITY OF TUCSON, PIMA COUNTY, ARIZONA, RECORDED AT SEQUENCE 20122680359, RECORDS OF THE PIMA COUNTY RECORDER, BEING WITHIN THE SOUTH HALF OF SECTION 15, TOWNSHIP 14 SOUTH, RANGE 15 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 15 AS MONUMENTED BY A BRASS DISC SURVEY MONUMENT;

THENCE SOUTH $89^{\circ}26'07''$ WEST 2645.24 FEET UPON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15 TO THE SOUTH ONE QUARTER CORNER THEREOF, AS MONUMENTED BY ANOTHER BRASS DISC SURVEY MONUMENT;

THENCE NORTH $42^{\circ}48'20''$ EAST 1032.64 FEET TO THE **POINT OF BEGINNING** AT THE MOST EASTERLY CORNER OF SAID **THE PLACE AT PRESIDIO TRAIL BLOCK 1** MONUMENTED BY A HALF INCH REBAR WITH IDENTIFICATION TAG, LS 17479;

THENCE THE FOLLOWING COURSES UPON THE BOUNDARY OF SAID **THE PLACE AT PRESIDIO TRAIL BLOCK 1**;

SOUTH $29^{\circ}05'08''$ WEST 422.62 FEET;

SOUTH $89^{\circ}51'50''$ WEST 619.68 FEET TO A NON-TANGENT CURVE CONCAVE NORTHERLY, THE RADIUS POINT OF SAID CURVE BEARS NORTH $00^{\circ}13'14''$ WEST;

WESTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF $23^{\circ}18'44''$, FOR AN ARC DISTANCE OF 10.17 FEET TO A NON-TANGENT LINE;

NORTH $00^{\circ}29'11''$ WEST 595.46 FEET TO A TANGENT CURVE CONCAVE EASTERLY;

NORTHERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 35.00 FEET AND A CENTRAL ANGLE OF $27^{\circ}48'42''$, FOR AN ARC DISTANCE OF 16.99 FEET TO A TANGENT LINE;

NORTH $27^{\circ}19'31''$ EAST 165.87 FEET TO A TANGENT CURVE CONCAVE SOUTHERLY;

EASTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF $84^{\circ}04'44''$, FOR AN ARC DISTANCE OF 36.69 FEET TO A TANGENT LINE;

SOUTH $68^{\circ}35'45''$ EAST 269.55 FEET TO A TANGENT CURVE CONCAVE SOUTHWESTERLY;

SOUTHEASTERLY UPON THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 666.20 FEET AND A CENTRAL ANGLE OF $16^{\circ}02'39''$, FOR AN ARC DISTANCE OF 186.55 FEET TO A TANGENT LINE;

SOUTH $52^{\circ}33'06''$ EAST 192.16 FEET TO A TANGENT CURVE CONCAVE NORTHEASTERLY;

AND SOUTHEASTERLY UPON THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 766.20 FEET AND A CENTRAL ANGLE OF $14^{\circ}10'53''$, FOR AN ARC DISTANCE OF 189.64 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 10.8 ACRES MORE OR LESS

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PAGE 1 OF 2

3945 East Fort Lowell Road • Suite 111 • Tucson • Arizona • 85712 • (520) 795-1000 • Fax: (520) 322-6956 • www.rickengineering.com

DECISION NO. _____

RICK
ENGINEERING COMPANY

3945 EAST FORT LOWELL ROAD - SUITE 111
TUCSON, AZ 85712
520.795.1000
(FAX) 520.322.6956

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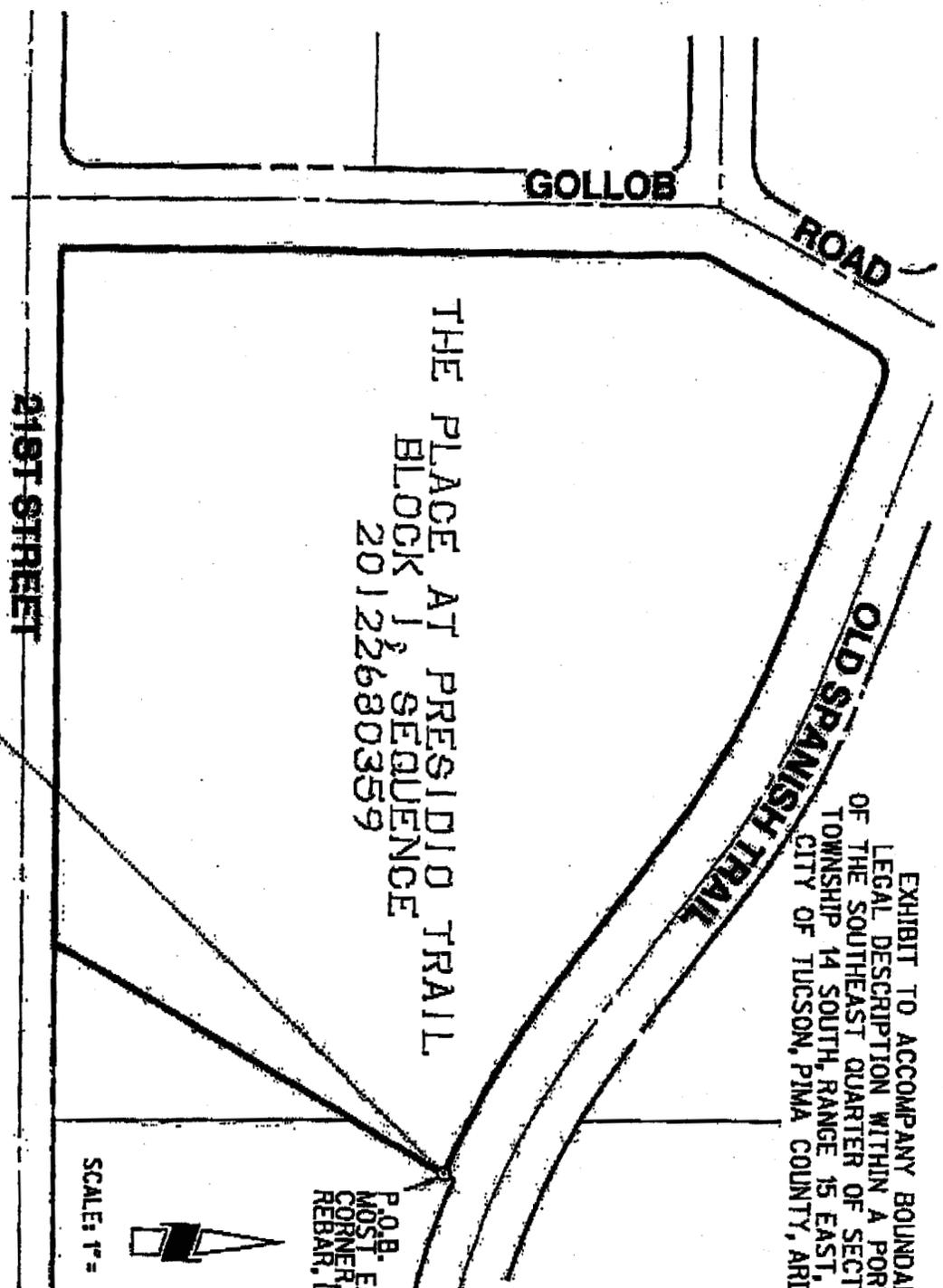


EXHIBIT TO ACCOMPANY BOUNDARY
LEGAL DESCRIPTION WITHIN A PORTION
OF THE SOUTHEAST QUARTER OF SECTION 15,
TOWNSHIP 14 SOUTH, RANGE 15 EAST, G&SRM,
CITY OF TUCSON, PIMA COUNTY, ARIZONA

THE PLACE AT PRESIDIO TRAIL
BLOCK 1, SEQUENCE
20122680359

21ST STREET

GOLLOB ROAD

OLD SPANISH TRAIL

P.O.B. MOST EASTERLY
CORNER, 1/2
REBAR, LS 17479

SCALE: 1" = 130'

S 1/4 CORNER
SECTION 15
BRASS DISC

BASIS OF BEARINGS
SOUTH 89° 26' 07" WEST

SE CORNER
SECTION 15
BRASS DISC

DECISION NO. _____