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PLANNING & COMMUNITY DEVELOPMENT

TO: El Paso County Board of Adjustment
Kevin Curry, Chair

From: Kylie Bagley, Planner III
Carlos Hernandez, Engineer I
Meggan Herington, AICP, Executive Director

RE: Project File Number: BOA219
Project Name: 10015 Calle Bernardo Point
Parcel Number: 5735004001

OWNER:	REPRESENTATIVE:
Jesus Barron 10015 Calle Bernardo Point Fountain, CO 80817	Van Remortel, LLC Fred Van Remortel 2570 West Main Street Littleton, CO 80120

Commissioner District: 4

Board of Adjustment Hearing Date:	6/28/2023
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EXECUTIVE SUMMARY

A request by Jesus Barron for approval of a Dimensional Variance to allow a front setback of 3 feet where 25 feet is required for an existing single-family dwelling. The 5.8-acre property is zoned RR-5 (Residential Rural) and is located at 10015 Calle Bernardo Point, directly south of the intersection of Calle Bernardo Point and La Piedra Point, El Paso County, Colorado.

A. REQUEST

A request by Jesus Barron for approval of a dimensional variance to allow a front setback of 3 feet where 25 feet is required for an existing single-family dwelling.

2880 INTERNATIONAL CIRCLE
OFFICE: (719) 520 – 6300



COLORADO SPRINGS, CO 80910
PLNWEB@ELPASOCO.COM

B. APPROVAL CRITERIA

Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Land Development Code (2019), states the following:

The Board of Adjustment is authorized to grant variances from the strict application of any physical requirement of this Code which would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the property. Practical difficulties and hardship, in this context, may exist where the legal use of the property is severely restricted due to:

- 1) The exceptional narrowness, shallowness, or shape of the specific piece of property.

The 5-acre parcel was platted in 1971 as lot 14, Villa Casitas Filing No. 1 in the shape of an obtuse triangle. The west portion of the parcel has a depth of 30 feet and gets larger as it moves east with a maximum depth of roughly 450 feet.

- 2) The exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of property.

There are no exceptional topographic conditions or other extraordinary or exceptional situation or condition of this piece of property.

However, Section 5.5.2.B.2.a, Variance to Physical Requirements, of the Code continues by stating the following:

The Board of Adjustment may also grant variances from the strict application of any physical requirement of this Code based upon equitable consideration, finding that the burdens of strict compliance with the zoning requirement(s) significantly exceed the benefits of such compliance for the specific piece of property and;

- The variance provides only reasonably brief, temporary relief; or

If approved, the variance would provide for permanent relief.



- The variance request includes an alternative plan, standards or conditions that substantially and satisfactorily mitigate the anticipated impacts or serve as a reasonably equivalent substitute for current zoning requirements; or

An alternative plan, standard, or condition was not submitted by the applicant.

- Some other unique or equitable consideration compels that strict compliance not be required.

The applicant requested that 70 feet of County Right of Way be vacated in order for the applicant to meet the front setback requirements of the RR-5 zoning district. Staff evaluated the proposal and determined that the request was not feasible and determined that 3-foot vacation of County Right of Way was sufficient for both the applicant and the County.

C. BACKGROUND

The property was platted in 1971, as lot 14, Villa Casitas Filing No. 1. In 2001, a modular home was placed on the property with a portion of the home being placed within the County right-of-way. The northeast corner of the house extends 1.9 feet into the existing right-of-way.

The applicant is requesting a front setback of 3 feet where 25 feet is required in the RR-5 (Residential Rural) zoning district. If the request is approved the applicant is required to replat the property in order to contain the existing single-family dwelling on his property. The applicant currently has an application in for a Vacation and Replat (VR2114) to vacate the additional right-of-way needed to allow for a 3-foot front setback.

D. ALTERNATIVES EXPLORED

There is one alternative that would not require a dimensional variance request:

- Applicant can move existing home 25 feet from the front property line to meet the setbacks in the RR-5 (Residential Rural) zoning district.

E. LOCATION

North:	RR-5 (Residential Rural)	Single-Family Residential
South:	Pueblo County	Vacant Land
East:	RR-5 (Residential Rural)	Single-Family Residential
West:	RR-5 (Residential Rural)	Single-Family Residential

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F. SERVICE

1. WATER

Water is provided by an existing well.

2. WASTEWATER

Wastewater is provided by an onsite wastewater treatment system.

3. EMERGENCY SERVICES

The parcel is located within the Hanover Fire Protection District. The District was sent a referral and has no outstanding comments.

G. ENGINEERING

1. FLOODPLAIN

The subject parcel is not within a FEMA floodplain. The applicant's request for a reduced setback is not anticipated to adversely impact floodplains in the area or be affected by flood hazards.

2. DRAINAGE AND EROSION

The parcel is in the Young Hollow Drainage Basin. This drainage basin is an unstudied basin and has no corresponding basin and bridge fees associated with improvements done within the basin. Based on the applicant's letter of intent, the parcel's impervious area is not increasing as no new structure is being built and the request is for a reduction to setback requirements for the existing residence. The applicant has further stated in the letter of intent that the proposed request will not adversely impact adjacent properties or existing drainage patterns.

A grading and erosion control plan is not required with this application as there is no land disturbance proposed with this Board of Adjustment request.

3. TRANSPORTATION

The parcel is adjacent to and obtains access from Calle Bernardo Point which is a non-county maintained rural-local gravel roadway. The current El Paso County Engineering Criteria Manual shows that a rural local-gravel roadway has a 60-foot right-of-way. However, the Villa Casitas Filing No. 1 subdivision, which was platted in 1971, (plat number 3427) dedicated 140-feet of right-of-way for Calle Bernardo Point to El Paso



County. The existing residence was built in 2001, and a portion of the structure was placed in the right-of-way. The applicant has requested a right-of-way vacation in a separate application to solve the existing residence's right-of-way encroachment.

The 2016 El Paso County Major Corridors Plan Update does not show roadway improvements to Calle Bernardo Point in the 2040 Roadway Plan nor in the 2060 Corridors Preservation Plan. Since the property is not on a county maintained road, the owner obtained a driveway access permit waiver. The proposed setback is not anticipated to impact the roadway nor generate additional vehicular traffic to the parcel. Road Impact Fees as described in Resolution 19-471 are not accessed with this application because additional vehicular traffic is not being generated.

H. RECOMMENDED CONDITIONS OF APPROVAL

Should the Board of Adjustment determine that the application is consistent with the criteria for approval of a Dimensional Variance for a 3-foot front setback, and that the applicant has met the review and approval criteria for granting variances from the applicable standards, staff recommends the following conditions and notation of approval:

CONDITIONS

1. The approval applies only to the plans as submitted. Any expansion or additions to the proposed single-family dwelling may require separate Board of Adjustment application(s) and approval(s) if the development requirements of the applicable zoning district cannot be met.
2. The Vacate Replat shall be recorded prior to the issuance of any additional building permits.

NOTATION

1. The PCD Director may require a survey, certified by a registered surveyor, licensed in the State of Colorado, depicting the improvement in relationship to the lot lines affected to demonstrate compliance with the approval of the administrative relief.

I. PUBLIC COMMENT AND NOTICE

The Planning and Community Development Department notified five adjoining property owners on 6/8/2023, for the Board of Adjustment meeting. Responses will be provided at the hearing.

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J. ATTACHMENTS

Map Series

Letter of Intent

Site Plan

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Map Exhibit #1: Aerial



Map Exhibit #2: Aerial



Map Exhibit #3: Zoning



VAN REMORTELL LLC
ATTORNEYS & COUNSELORS AT LAW
2570 WEST MAIN STREET, SUITE 200, LITTLETON, CO 80120
PHONE: (303) 484-9919

Fred Van Remortel
f.vanremortel@fvrlaw.com

April 4, 2023

El Paso County, Colorado
Planning and Community Development Department
2880 International Circle
Colorado Springs, Colorado 80910

By E-Application and Email

Re: PCD File No. VR-2114 and PCD File No. BOA-219
Owner/Applicant: Jesus Barron, 10015 Calle Bernardo Point, Fountain CO
80817, (720) 688-1659, barronviper1@gmail.com
Property Address: 10015 Calle Bernardo Point, Fountain, CO 80817
Application: Board of Adjustment and Plat Vacation with ROW

Dear Planning and Community Development Department:

This firm, Van Remortel, LLC represents owner/applicant, Jesus Barron (“Mr. Barron” or “Applicant”), the owner of property commonly known as 10015 Calle Bernardo Point, Fountain, Colorado 80817 and more specifically described as:

Lot 14, Villa Casitas Filing No. 1,
County of El Paso, State of Colorado

Tax ID/Parcel No.: 5735004001
Existing Land Use/Development: RR-5
Zoning District: RR-5

(the “Property”).

This letter is intended to constitute as the cover letter as required with application, and referred in the application as *Exhibit A*. The applicant is requesting a variance to allow for a front setback of 3 feet where 25 feet is required in the RR-5 zoning district in order to resolve an encroachment, and a “bump-out” of approximately 3 feet in order to resolve an encroachment of part of the residence into the right of way (“ROW”), as further described in the survey plat submitted herewith.

Calle Bernardo runs over part of the ROW, but not the part containing the residence or any of Applicant's Property. The part of the ROW over Applicant's Property was originally platted for a road which is not and has never been utilized. This letter is submitted in connection with such application.

This request does not adversely impact adjacent properties or existing drainage patterns.

Applicant applied for an Access Permit (standalone), File No. AP22577 and the Access Permit was approved on April 4, 2022 by El Paso County Planning and Community Development Department.

Introduction

Applicant seeks front setback of 3ft where 25ft is required in the RR-5 zoning district in order to resolve an encroachment, and a "bump-out" of approximately 3 feet in order to resolve an encroachment of part of the residence into part of the ROW over which Calle Bernardo travels and for part of the ROW which was originally platted for a road, but was never used as such. The porch of Applicant's house and the northeast corner of Applicant's house encroach on the ROW. *A true and correct copy of the Land Survey Plat is submitted herewith as **Exhibit 1**.* A survey obtained of the Property shows that the house extends roughly 1.9 feet into the ROW (the "Encroachment").

A gravel road, Calle Bernardo, lies in the ROW and consumes approximately 8-15 feet of the 140-foot ROW. **Exhibit 2** identifies the road highlighted in orange, the part of the ROW over Applicant's Property in green, and the remaining ROW highlighted in yellow. **Exhibit 3**, from the El Paso County Assessor's office, shows Calle Bernardo in the ROW and then turning Northwest in front of Applicant's property (specifically his driveway) to where it meets Avenida Alegre. It also shows that there is no road over the ROW West of the point where Calle Bernardo turns Northwest, and proceeds West along the Northerly edge of Applicant's Property. In fact, that part of the ROW is unused for a road or anything else.

Photographs submitted herewith show views of Calle Bernardo, the unused ROW and Avenida Alegre. See **Exhibit 4-8**. All of the properties that border the Northern edge of the ROW, West of the Property are accessible by Avenida Alegre, and in fact use Avenida Alegre for ingress and egress.

Background of the Application

On January 30, 2020, Mr. Barron acquired title to the Property from Superior Properties, Inc., via General Warranty Deed recorded February 3, 2020, at Reception No. 220015077. *A true and correct copy of the General Warranty Deed is submitted herewith as **Exhibit 9**.*¹ The

¹ All references to "recorded" documents are to documents recorded in El Paso County, unless specifically identified otherwise.

ROW is not identified in the General Warranty Deed and is not identifiable by a site visit. An affixed, manufactured home ("House") is located on the Property. Per an Affidavit of Real Property for a Manufactured Home, recorded July 12, 2012, it appears that the House was affixed to the Property at least by 2012.

In or around July of 2020, Applicant applied to the County for a building permit to construct a detached garage on the Property. El Paso County denied the building permit, asserting that the Property is noncompliant because the House "appears to be over the [P]roperty line."

In August of 2020, Applicant obtained a Land Survey Plat that depicts the north easterly corner of the House extending 1.9' over the Property line causing the Encroachment, onto the 140' Calle Bernardo ROW. The ROW was dedicated to the County per the 1971 subdivision plat, titled Villa Casitas Filing No. 1, El Paso County, Colorado ("Subdivision Plat"). Calle Bernardo is a gravel road located on roughly the northerly half of the ROW. Therefore, while the ROW directly abuts the Property and the House encroaches onto the ROW, the Road, itself does not abut the Property, and the House does not encroach the Road. *A true and correct copy of the Survey is submitted herewith as **Exhibit 1**.* In fact, the House is approximately 70 feet from Calle Bernardo.

Applicant originally requested that El Paso County vacate 70' of the ROW, through an application with El Paso County and an EA file No. 20114. On August 26, 2020, Engineer Meeting notes were obtained with all requirements and policies. This request was denied, due to Applicant not completing all the County's right-of-way vacation request requirements. *A true and correct copy of the El Paso County Checklist for EA-20-114 is submitted herewith as **Exhibit 10**.*

On September 22, 2021, we completed a traffic survey that meets the county requirements. *A true and correct copy of the Traffic Memorandum is submitted herewith as **Exhibit 11**.* We also procured a Title Commitment, which is submitted herewith as **Exhibit 12**.

Historic Background

It appears that the ROW was granted by virtue of a subdivision plat titled Villa Casitas Filing No. 1, dated and ratified April 21, 1971, and recorded May 29, 1971 in Plat Book R-2, Page 63, Reception No. 803466 (the "Filing"). *A true and correct copy of the Filing is submitted herewith as **Exhibit 13**.* The Filing states "All streets so platted shall be dedicated to public use . . . upon acceptance at resolution, all streets and drainage ways so dedicated will become matters of maintenance by El Paso County, Colorado."

The Filing demonstrates that Calle Bernardo was originally planned to jog Southwest beginning at about the Property's Northeast corner until about the Property's Southwest corner and then proceed due West. However, Calle Bernardo actually takes a jog Northwest onto what

is labeled Los Taos on the Filing, but subsequently and currently is identified as Calle Bernardo. See *El Paso County Assessor Information at Exhibit 3*.

Exhibit 14 shows the current Calle Bernardo in yellow, and the ROW labeled Calle Bernardo, but never used as a road in green. It also shows what was labeled as Los Taos, but is now part of Calle Bernardo in orange. Calle Bernardo now continues in a Northwesterly direction until it intersects with Avenida Alegre.

By virtue of a Grant of Right Way from LWD, LLC (“LWD”), as grantor to Mountain View Electric Association, Inc., as grantee dated November 16, 2000 and recorded November 20, 2000 at Reception No. 200140056, LWD granted an easement for power lines, among other things (the “Power Line Easement”). *A true and correct copy of the Power Line Easement is submitted herewith as Exhibit 15*. The requested vacation of the ROW, will not effect the Power Line Easement.

Legal Authorities and Support for the Requested Vacation

A right of way may be an easement. *DeReus v. Peck*, 162 P.2d 404 (Colo. 1945). The term “right of way” is generally construed to describe an easement. See *Hutson v. Agric Ditch & Reservoir Co.*, 723 P.2d 736 (Colo. 1986). The term may be merely descriptive of the purpose to which the is being put. *Dep’t of Transp. v. Gypsum Ranch Co., LLC*, 244 P.3d 127 (Colo. 2010).

Easements may be created by the filing of a plat “specifically dedicating certain portions of the land as avenues to the use of the occupants of the platted tracts” *Page v. Lane*, 211 P.2d 549 (Colo. 1949). An easement is created “if the owner of the property to be burdened . . . conveys a lot or unit in a general-plan development or for the development or community.” *Allen v. Nickerson*, 155 P.3d 595 (Colo. App. 2006). Under this general principle, a plat can give rise to an express easement or dedication for private or public use. *Bolinger v. Neal*, 259 P.3d 1259 (Colo. App. 2010).

The existence of an easement does not preclude the creating of additional easements so long as the additional easements do not unreasonably interfere with the enjoyment of the prior easement holders. *Bolinger*, , 259 P.3d 1259.

Mere nonuse of an easement acquired by grant, however long continued, does not constitute an abandonment. *People ex rel. Standart v. Farmer High Line Canal & Reservoir Co.*, 54 P. (Colo. 1898). Failure to use the full width of the right of way does not constitute an abandonment. *Dep’t of Transp. v. First Place, LLC*, 148 P.3d (Colo. App. 2006). Cessation of the primary purpose for which an easement was granted does not terminate the easement if such purpose was not the sole purpose of the grant. *Smith v. Wright*, 424 P.2d 384 (Colo. 1967).

An easement may be terminated by abandonment. *Williams v. Stirling* 583 P.2d 290 (Colo. 1978). To establish an abandonment of an easement, the party asserting the easement was abandoned must show affirmative acts manifesting an intention on the part of the owner of the

dominant estate to abandon the easement. *Rivera v. Queree*, 358 P.2d 40 (Colo. 1960); *but see* C.R.S. § 13-25-127.

However, a use by the owner of the servient estate which is inconsistent with the enjoyment of the easement for a period of time long enough to create a prescriptive right will terminate the easement. The servient owner's use of the land must (1) adverse to the use of the easement, (2) open or notorious, and (3) continued with effective interruption for 18 years.

A platted public road or part thereof, may not be vacated so as to leave any land adjoining the public road without an established public road or private access easement connecting the land to another public road. C.R.S. § 43-2-303(2)(a). If a roadway is vacated, the documents vacating the road, including but not limited to any resolution, ordinance, deed, conveyance document, plat, or survey, must be recorded in the office of the clerk and recorder of the county in which the road is located. C.R.S. § 43-2-303(2)(f).

All right, title, or interest of a county in and to any roadway is divested upon vacation by any of the following methods (C.R.S. § 43-2-303(1)):

The board of county commissioners of any county may vacate any roadway or any part thereof located entirely within the county if the roadway is not within the limits of any city or town. If a roadway has been established as a county road at any time, the roadway may not be vacated by any method other than a resolution approved by the board of county commissioners of the county at a meeting ten days' notice of which has been provided to landowners owning one acre or more adjacent to the roadway. This provision does not apply to a roadway that has been established but has not been used after such establishment.

We now amend and revise to application for Board of Adjustment and Plat Vacation with ROW, and submit additional required documents for these requests.

Sincerely,

VAN REMORTEL LLC

Fred Van Remortel, Esq

cc: Jesus Barron

FINAL PLAT
VILLA CASITAS FILING No. 4
D A PORTION OF CALLE BERNARDO RIGHT-OF-WAY VILLAGE OF
ST QUARTER OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE
COUNTY OF EL PASO, STATE OF COLORADO



KNOW ALL BY THESE PRESENTS:

Intel ~~ASSAULT~~ ~~HEARD~~ being the owner of the following described tract of land to wit:

Lot 14, Villa Castles Filing No. 1, County of El Paso, State of Colorado.

[illegible]

thence along the Northerly line of said lot 14, 375.80 feet along the arc of a 1070.00 foot radius curve to the left, passing a corner angle of 200°05' and a chord point N 81°14'.43" E, 371.91 feet to the POINT OF BEGINNING, thence N 88°35'36" E, a distance of 55.26 feet to the POINT OF BEGINNING, thence S 71°24'34" E, a distance of 25.66 feet to a point on the Northerly line of said lot 14, thence along the Northerly line of said lot 14, 25.66 feet along the arc of a 1070.00 foot radius curve to the right, passing a corner angle of 173°25' and a chord point S 5°10'39.14" W, 25.66 feet to the POINT OF BEGINNING.

DEDICATION

the above named property is located on the south side of the road to be added into a lot as shown hereon. The undersigned does hereby grant and convey to the County of El Paso, State of Texas, all of any applications and easements for public use. The tract of land herein plotted shall be known as **MILACOSTAS LAND, No. 4** in the County of El Paso, State of Colorado

OWNERS CERTIFICATE

understand, being all the owners, mortgagees, beneficiaries of the deeds of trust and holders of other interests in the land described herein, have had said subdivided, and platted town lots into a lot as shown herein under the name and subdivision of MILA CASTAS ELLING No. 4.

of _____ Jesus Barron _____ Date _____

55 }

By Jesus Berriel, Owner

others very tired and have

 Name, Address

COUNTY OF EL PASO OFFICIAL _____ Date _____

COUNTY OF }
Sd }

The above and aforementioned instrument was acknowledged before me this _____ day of _____, 20__.

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2000

EASEMENT STATEMENT:

[illegible]

FLOOD PLAIN CERTIFICATION

The Federal Emergency Management Agency's Flood Insurance Rate Map No. 08061C1170C, effective date December 2018, indicates this parcel of land to be located in Zone X (Areas determined to be outside the 0.2% annual chance floodplain).

SURVEYOR'S NOTES

1. HONTE, E. and GONZALEZ, J. P. *Real commissions on real stock prices* (in press). This survey was conducted from 1998 to 2000. The survey was conducted in the United States and the results were announced more than two years from the date of the commission's survey results.
2. The approval of the Federal Reserve to *move* rather than *invest* in the stock.
3. The total funds were in the opening U.S. Survey Panel. A U.S. Survey Panel is defined as 1000/3527 members.
4. The survey data are available in the survey by Global Vantage, LLC. In numerous variables, rights-of-way or requests-for-information are available. The survey data are available in the U.S. Survey Panel and the Global Vantage Survey Panel.
5. The survey was conducted in the field on August 7, 2000.

6 The overall subject parcel contains a recorded area of 252.201 square feet (3.798 acres) of land, more or less.

7 BASIS OF BOUNDARIES: Bearings are based upon the South line of Lot 14, Via Caridea Filing No. 1, monumented at its East end with a 3/4" cedar and orange pine cap (diameter 7.5" x 18.14") and on the West with a 3/4" rope and as compared to bear N 87°37'25" W, a line measured distance of 1,253.81 feet.

[illegible]

- [illegible]

SURVEYOR'S CERTIFICATE:

[illegible]

COUNTY APPROVAL

This plan for YULA CASTLAS FILING No. 4 was approved for filing by the El Paso County, Colorado Planning and Community Development Department this _____ day of _____, 20____.

Typing and Commonly Used Words

[illegible]

RECORDING

STATE OF COLORADO }
COUNTY OF EL PASO } 55

I hereby certify that this instrument was filed for record at my office at _____ O'clock _____ M. this
day of _____, 2023 A.D., and a duly recorded under Reception Number _____

Fee _____

Surcharge _____

Steve Schalkier, Hecor

FILES

Script Fee _____

Peru Fee: \$100

OWNERS OF RECORD:

County of El Paso, State of Colorado
1675 W. Garden of the Gods Road
Suite 2201
719-520-6202

[illegible]

A REPEAT OF LOT 14 AND A PORTION OF CALLE BERNARDO RIGHT-OF-WAY, VILLA CASTAS FILING No. 1, LOCATED WITHIN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 17 SOUTH, RANGE 65 WEST OF THE 6TH P.M. COUNTY OF EL PASO, STATE OF COLORADO

•NOT A PART OF THIS SUBDIVISION•

LOT 16
OF THIS

LOT 15
NOT A PART OF THIS SUBDIVISION

LOS ANGELES
PUBLIC RIGHT-OF-WAY
MAP BOOK #11 (2012 EDITION)

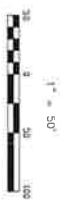
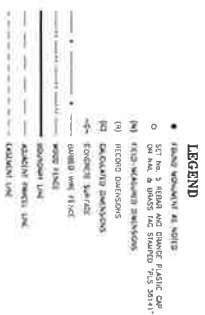
LOT 13
NOT A PART OF THIS SUBDIVISION

UNPLATTED
PART OF THIS SUBDIVISION.

LOT 14

TRACT D
NOT A PART OF THIS SUBDIVISION

UNPLATTED
NOT A PART OF THIS SUBDIVISION

[illegible]

AS REPLATTED



DATE: 12/27/2022	REVISED:
Map	Sheet(s)
ADDRESS, COUNTY COMMENTS	
1	11/1/22
2795 N. Academy Blvd. Suite 210 Carmichael, CA 95602	
www.BARRONLAND.com	
PROJECT No: 20-241	
SHEET 3 OF 3	

