

# Organizing The Alto Coalition Opposing the Concrete Batch Plant

Mark Severance

The Ranches of Sonterra Property Owners Association

Board of Directors

September 2, 2021

Revised, September 5, 2021

# Donation Information (added 9/5/21)

- Donations for the Alto Concrete Batch Plant Legal Fund can be made by check or money order payable to "ROS POA". Please add a "For/Memo" note designating the Concrete Batch Plant Legal Defense. Donations should be mailed to:

Phyllis Bewley CPA

PO Box 123

Ruidoso, NM 88354

ATTN: ROS POA CBP

- Donations can be made via PayPal at: [https://www.paypal.com/donate?hosted\\_button\\_id=QFLCBD63TN95N](https://www.paypal.com/donate?hosted_button_id=QFLCBD63TN95N)
- Additional information on donations can be found on Pages 25-27 of this briefing
- **DONATIONS ARE NOT TAX DEDUCTABLE**

# Agenda

1. Introductions
2. Status
  - Bottom Line Up Front
  - Attorney Activities
  - NMED Hearing Process
  - Discussions with other Agencies
3. Anticipated Legal Fees
4. Organizing the Coalition
  - Background
  - Draft Mission Statement
  - Draft Charter
  - Proposed Coalition Structure
  - Proposed Roles & Responsibilities
5. Coalition Meeting Rhythm
6. Cost Sharing & Fund Raising
7. Disbursement of Surplus Funds
8. Major Takeaways
9. Next Meeting
10. Discussion
  - Comments & Concerns
  - General Q & A
  - Volunteers
11. Adjourn

# Introductions

- About Me
- Around the Room

# Status: Bottom Line Up Front

- Folks are upset - We all agree that a Concrete Batch Plant (CBP) in this area is bad on multiple levels with significant near-term & long-term negative consequences
- The proposed CBP will impact all Alto area neighborhoods and business ***This is not an issue for just one business or neighborhood***
- The most effective way to oppose this is to organize a coalition, combine resources, ***consolidate the great research that has already been done***, speak publicly with “one voice” and provide consolidated legal opposition through an experienced Environmental Attorney
- ***Such legal opposition will be expensive - cost sharing by all is required for us to be successful***

# Status: An Environmental Attorney Has Been Hired & Is Actively Working the Case

- The Ranches of Sonterra Property Owners Association has committed \$10K for the engaging and the initial work of Attorney Thomas Hnasko of Hinkle Shanor LP in Santa Fe (Letter of Engagement to be posted on the ROS website)
- Mr. Hnasko has been practicing Environmental & Natural Resource law and litigation since 1982, representing both plaintiffs and defendants
- Mr. Hnasko's notable accolades:
  - Best Lawyers in America, Environmental Law 2003 - 2014
  - Best Lawyers' Lawyer of the Year, Santa Fe, Environmental Law, 2011
  - Best Lawyers' Lawyer of the Year, Santa Fe, Environmental Litigation, 2013, 2019
  - Southwest SuperLawyer, 2007 - 2014
  - Recognized by the New Mexico Board of Legal Specialization: Specialist in Environmental Law
  - Chair of the New Mexico Environmental Specialization Committee
  - Fellow in the American College of Environmental Lawyers.

# Status: Mr. Hnasco's Activities (1 of 2)

- I provided Mr. Hnasco with a 10-page brief with background information on the Alto area, the level of local objection (letters, email, petition), initial actions taken by ROS, RRVE and others, our concept of forming a coalition, technical concerns from reviews of the Air Quality Permit application, personal observations from members of the community, and our initial legal questions (as discussed at the August 19 informal meeting)
  - "Very much appreciated...a great help in getting up to speed on the case...this paper will save me considerable time"
  - "The more work you can do on the ground, the better"
- Mr. Hnasco is approaching the case by pursuing multiple categories of legal objection (also discussed at the August 19 informal meeting)

# Status: Mr. Hnasko's Activities (2 of 2)

- Mr. Hnasko is planning a site visit to Alto tentatively planned for Wednesday September 15 - Friday September 17
  - Eyes-on-site
  - Individual meetings with business owners and neighborhood leads
  - Q & A at our next meeting open to all



# Status: Public Hearing Granted by NMED

- Due to the level of public interest (objection) the New Mexico Environment Department (NMED) has granted a public hearing regarding the Alto CBP air quality application
- NMED's hearing schedule has been significantly delayed due to COVID-19 constraints
- Mr. Hnasco was informed by NMED/Ms. Deepika Saikrishnan that the hearing will be held "this winter"

# Status: NMED Public Hearing Process (1 of 2)

- NMED Public Hearings are run similar to a courtroom trial
  - An NMED appointed Hearing Examiner presides over the hearing in a Judge like function
  - Plaintiff and Defendant, with legal counsel on both sides
  - Courtroom trial rules of evidence generally apply
  - Pre-hearing Discovery of Evidence by both sides
    - ***Note: All Coalition Meeting minutes, presentations, email etc. will be discoverable (Executive Session documentation is an exception)***
  - Evidence presented in the hearing by both sides, expert testimony etc.
  - Public comment and attendance

# Status: NMED Public Hearing (2 of 2)

- At the conclusion of the hearing, the Hearing Examiner makes a recommendation (a recommended ruling) on the case
- The Hearing Examiner's recommendation is passed to the Cabinet Secretary for the Environment (head of NMED) who makes the final legal ruling
  - The norm is that the Cabinet Secretary accepts the Hearing Examiner's recommendation

# Status: Discussion with Other Agencies

- I have been in contact with representatives from the U.S. Forestry Service (*Lincoln National Forest and White Mountain Wilderness Area*) and the Bureau of Land Management (BLM) (*Fort Stanton Snowy River Cave National Conservation Area*) regarding the CBP air quality proposal
  - US Forestry submitted a formal request to NMED for additional information/clarifications regarding potential impacts to the White Mountain Wilderness Area
  - BLM had no knowledge of the application; they are now reviewing it internally
- I am staying in touch with these Agency representatives, and will engage Mr. Hnasko with their Agencies as appropriate

# Anticipated Legal Fees (1 of 2)

- Mr. Hnasko's rate is \$425/hour
  - He will also have Associate Attorneys and Paralegals working the case
    - Associate Attorneys (\$175-275/hour)
    - Paralegals (\$100-140/hour)
- Additional anticipated expenses are:
  - Expert Fees: Subject Matter Experts reviewing the CBP air quality app, other case related material, and providing Expert Testimony in the Public Hearing
  - Travel: Site visits by Mr. Hnasko, staff, Subject Matter Experts, as well as travel to and from the Public Hearing
  - Misc. Out-of-Pocket Expenses: Document production/printing, delivery/courier fees, deposition transcripts, filing fees, etc.

# Anticipated Legal Fees (2 of 2)

- Mr. Hnasko's has estimated his total fee for several months of case preparation and support of 2-to-3-day hearing at approximately \$500K
- **Cost Sharing and Fund Raising are musts!**
  - ***This is a shared problem - the cost pursuing a legal solution must also be shared***
- ***The Ranches of Sonterra cannot cover the entirety of legal fees***
- More about legal fee cost sharing later in the brief

# Organizing the Coalition (1 of 3)

- As agreed by the participants of the August 19 informal meeting, a coalition of Alto area residents, neighborhood property owner's associations and businesses will be formed to finance and provide a consolidated legal opposition to the proposed CBP
- Also as agreed to by the participants of the August 19 informal meeting, The Ranches of Sonterra (ROS) would proceed with hiring an Environmental Attorney to represent ROS and the members of the Coalition
  - **Done!**

# Organizing the Coalition (2 of 3)

- Additionally, the participants of the August 19 informal meeting agreed that the Coalition should not be formed as a stand-alone corporation due to the time involved in completing that process
- It was agreed that ROS POA would be used as the corporate entity to represent the interests of the Coalition
  - ROS POA is a 501.3 corporation, incorporated under New Mexico state law and IRS regulation as a domestic nonprofit corporate association
  - ROS POA is a corporation with a Registered Agent (Phyllis Bewley, CPA)



# Organizing the Coalition: (3 of 3)

- The ROS POA Attorney retained for general legal matters (Zach Cook) stated there is no legal issue with ROS POA obtaining funding from individuals or entities who are not ROS POA members (property owners) for financing the payment of the legal fees associated with a legal objection to the proposed CBP
- The ROS Property Owners Association Board of Directors (ROS POA BOD) approved the formation of an ad hoc “Concrete Batch Plant Legal Opposition Committee” to facilitate our legal objection to the proposed CBP
  - The ROS POA BOD approved that the multi-neighborhood/multi-business Coalition being formed be considered a Member of the ROS Concrete Batch Plant Legal Opposition Committee
  - Creates a formal link between the ROS POA and the Coalition

# Draft Mission Statement

## (subject to edits, Attorney review and approval)

“The ‘Alto Coalition for Environmental Preservation’ (aka: ‘The Alto Coalition’) is a coalition of individual residents, neighborhood property owner associations and businesses, in the Alto-Ruidoso-Ruidoso Downs area.

The Alto Coalition’s primary mission is to consolidate the resources and opinions of its membership, to provide a consolidated legal opposition against the permitting, construction and operation of the proposed concrete batch plant (CBP) in the Alto area (as defined by ZIP code 88312).

Additionally, The Alto Coalition will provide other entities, who may or may not be familiar with of proposed CBP, with data to facilitate their formulation of an informed opinion regarding the proposed CBP.

Data will also be provided to The Alto Coalition’s legal team to facilitate our legal objection.

The Alto Coalition will perform fund raising to cover the cost of incurred legal fees.

# Draft Charter

## (subject to edits, Attorney review & approval)

“The Alto Coalition for Environmental Preservation (aka “The Alto Coalition”) is a Member of the Ranches of Sonterra Concrete Batch Plant Legal Opposition Committee, of the Ranches of Sonterra Property Owners Association (ROS POA). The ROS POA is the corporate entity providing legal objection to the proposed concrete batch plant (CBP).

Participants in The Alto Coalition agree to support and execute the Coalition's Mission Statement, as neighborhood representatives, private business owners or their representatives, or individual residents. This includes making monetary or in-kind donations (at the discretion of the individual or business), and participation in fund raising activities, to cover the legal fees associated with The Alto Coalition's legal objection to the CBP.”

# Proposed Coalition Structure

- Chair
- Vice Chair
- Secretary
- Treasury Team
- Neighborhood & Business Points-of-Contact
- Communications Team
- Community Outreach & Fund- Raising Team
- Litigation Assistance Team
- General Membership

# Proposed Roles & Responsibilities (1 of 3)

## (revised 9/5/21)

- Chair (Mark Severance, The Ranches of Sonterra)
  - Primary Point-of-Contact (POC) to Attorney
  - Develop Mission Statement/Charter, Structure, provide coordination & oversight
  - Develop Meeting Agendas
  - Communicate Coalition status with Membership in meetings and via Comm Team
  - Approve the Coalition's "Official Position", as needed, based on Membership input
- Vice Chair (Ellen Hightower, Gray Fox Lane)
  - Backs up Chair on all the above tasks
  - Determines best method for disposition of any surplus funds
- Secretary (Vacant)
  - Generates Meeting Minutes & ensures archival posting
  - Meeting scheduling (date, time, location) and posting of Meeting Agendas
  - Maintains contact lists of Coalition members

# Proposed Roles & Responsibilities (2 of 3)

- Treasury Team
  - Phyllis Bewley, CPA - Donation reception, Account statements
  - Check signatories for Attorney payments (Mark Severance, Brenda Restivo, Sue Catterton)
- Neighborhood & Business Points-of-Contact
  - Prime POC and Representative for their Neighborhood or Business
  - Solicit and report inputs from your Neighborhood or Business
  - Work with Comm Team to ensure dissemination of Coalition information to their Neighborhood or Business
- Communications Team
  - Send out "Blast Emails" for Coalition news & events, and maintain email distribution lists
  - Create and maintain a Coalition website
  - Receive and coordinate response for general media inquiries and lead Coalition media releases
  - Create and maintain social media accounts (Facebook, Twitter)

# Proposed Roles & Responsibilities (3 of 3)

- Community Outreach & Fund-Raising Team
  - Engage with local business or organizations, not yet included, to garner their interest and support of the Coalition and our activities
  - Develop and coordinate fund raising events hosted by local businesses or organizations who support the Coalition
- Litigation Assistance Team
  - Gather and provide data that can be of use to our legal team
  - Example: Copies of emails and letters sent to NMED
  - Additional identification and compilation of issues with the CBP Air Quality Application and other CBP issues that can have a negative impact on the Alto community
  - Independent analysis or opinions from Subject Matter Experts, if available
- General Membership
  - Let us hear your ideas and opinions
  - Participate as you can, where your interests lie
  - Stay informed and convey the Coalition's message by word-of-mouth to the community

# Coalition Meeting Rhythm

- Notionally every 2 weeks - will look at regular venue
  - Thursday Nights at 7:00 pm (?)
- Provide a general case status
- Report out and input from the Coalition's Teams
- Input from the General Membership
- Teams are encouraged to meet on their own schedule to facilitate their activities



# Cost Sharing & Fund Raising

- ***We Need Your Financial Assistance to Win***
  - ***Insufficient funds will result in a “Stop Work Order” for Mr. Hnasko and will likely result in a failure to Win our case***
- A separate account has been set up by ROS POA for contributions to cover legal fees
- In order to use the Tax ID for our Corporation checks must be made out to “ROS POA”. Please add a “For/Memo” note designating the Concrete Batch Plant Legal Defense
- This Account will be overseen by ROS POA Registered Agent Phyllis Bewley, CPA
  - Checks sent to her office address - not ROS POA
  - PayPal Account has also been set up, to be managed by Ms. Bewley, which will deposit into the account to cover legal fees
  - Checks will be issued to Mr. Hnasko’s firm only. Checks will be signed by Mark Severance, ROS POA President Brenda Restivo, and/or ROS POA Secretary Sue Catterton (2 signatures required)

# Cost Sharing & Fund Raising (2 of 2)

- Monthly Statements for this account will be posted on the ROS website (and eventually a Coalition website)
  - Account Balance
  - Payments made to Mr. Hnasko's firm
  - List of contributions made by check (names removed) by date and amount
  - List of contributions made via PayPal (names removed) by date and amount
- **DONATIONS ARE NOT TAX DEDUCTABLE**
- In addition to direct contributions, we hope to hold fund raising events at local venues
  - Fund Raising Team to develop these events

# Disposition of Surplus Funds (revised 9/5/21)

- A good problem to have....
- Several notional options:
  - Issue an apportioned refund to donors, based on amount donated
    - Percentage based refund calculated from a donor's total amount donated to total donations received
    - That percentage of the surplus funds would be refunded to the donor
  - Donation of funds to local charities agreed to by Coalition Membership
    - High Mountain Youth, Lincoln County Food Bank etc.
  - Retain the funds as a financial resource for the possible engagement in future environmental protection action
  - Other ideas?
- Vice Chair will be tasked with determining the best method, with input from the Coalition Membership

# Major Takeaways

- ***We have a solid case and solid legal representation***
- ***This is a community issue requiring a community solution:  
We Need Everyone's Participation in Order to Win***
  - Involvement within the Coalition structure
  - Stay informed - use word of mouth to convey the Coalition's message
  - ***If you have sent, or will be sending, an email or letter of objection to NMED, please forward me a copy - these can be used as Evidence***
- ***Please Donate Monetarily or In-Kind As Best You Can***

# Next Meeting

- Proposed Date of Thursday September 16 at 7:00pm
  - Location TBD
- Primarily focused on Q & A with Mr. Hnasko
- Also provide a status on Coalition formation

# Discussion

***This briefing will be available on The Ranches of Sonterra Home Page***

***<https://www.theranchesofsonterra.com>***

***Mark Severance contact info:***

***Email: [mseverance@comcast.net](mailto:mseverance@comcast.net)  
88312***

***Postal Mail: 106 Sonterra Dr., Alto NM***

***Cell: 281-543-0706***

***Alto CBP Air Quality Proposal:***

***<https://www.env.nm.gov/air-quality/wp-content/uploads/sites/2/2021/06/AQBP-Roper-AltoCBP-Application-Recv-2021.06.22.pdf>***

- Concerns
- Comments
- Q & A
- ***Volunteers (Please!)***

***THANK YOU FOR YOUR TIME  
AND YOUR HELP!***