

# CITY OF ALBUQUERQUE



Letter to the Environmental Planning Commission Regarding Withdrawal of Review for Project # 1003859 – 04EPC-01844.

March 21, 2014

Peter Nicholls, Chair  
Environmental Planning Commission  
C/O: City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

RE: Withdrawal of Review for Project # 1003859 – 04EPC-01844

Dear Mr. Nicholls and Commissioners:

PO Box 1293 On July 26, 2013, I submitted a letter seeking clarification by the Environmental Planning  
Albuquerque Commission (“EPC”) relating to EPC Project #1003859 – 04EPC-01844. Subsequent to my  
original letter, there was a deferral request by the property owner and Taylor Ranch  
Neighborhood Association to allow discussion regarding development of the project. An  
additional deferral request was made by the Planning Department last month, which was  
approved by the EPC until May 8.

New Mexico 87103

The Planning Department has decided to resolve the status of the project administratively.  
Therefore, I respectfully request that the EPC allow my original letter seeking clarification to  
be withdrawn.

[www.cabq.gov](http://www.cabq.gov)

Sincerely,

Jack Cloud, Chair  
Development Review Board



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Dear Mr. Nicholls and Commissioners:

PO Box 1293 Albuquerque New Mexico 87103  
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Development Review Board

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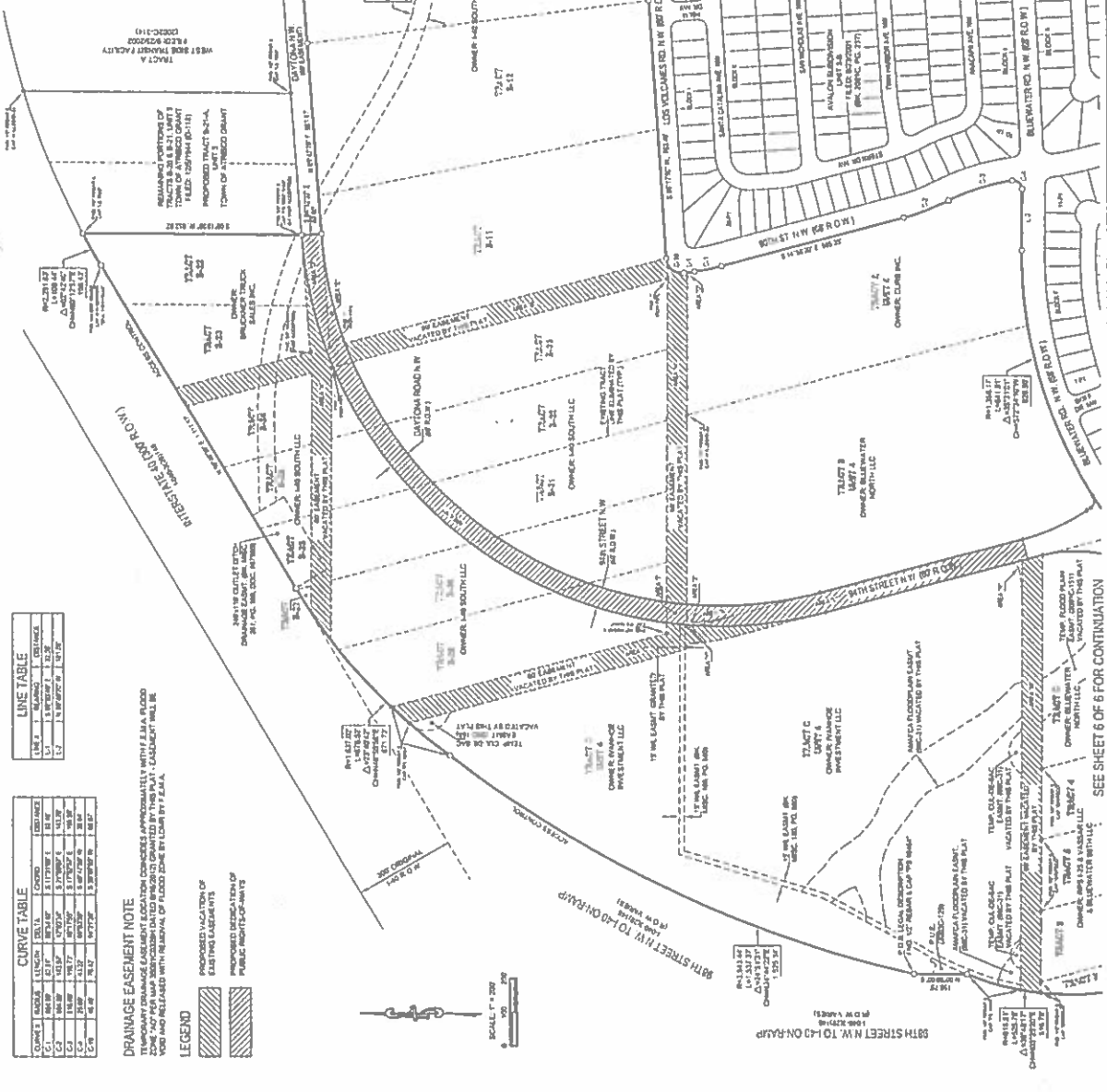
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PROJECT #: 1009438  
 DATE: 3-5-14  
 APP#: 14-70038 (VPR)  
 14-70039 (VPR)

PLAT OF TRACTS 1 THROUGH 12  
 AVALON SUBDIVISION UNIT 5  
 ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO  
 JANUARY 2013

EXISTING TRACTS, OWNERSHIP,  
 LEGAL DESCRIPTION, VACATIONS & DEDICATIONS - SHEET 1



LINE TABLE

LINE #	REMARKS	DATE
1	...	...
2	...	...
3	...	...

CURVE TABLE

CURVE #	BEARING	LENGTH	DELTA	CHORD	CHORD BEARING
1	...	...	...	...	...
2	...	...	...	...	...
3	...	...	...	...	...

LEGEND

- PROPOSED VACATION OF EXISTING EASEMENTS
- PROPOSED DEDICATION OF PUBLIC RIGHTS OF WAY

SCALE 1" = 200'

DRAINAGE EASEMENT NOTE

TEMPORARY DRAINAGE EASEMENT LOCATIONS APPROXIMATELY WITH E.I.A. FLOOD ZONE AND FLOOD HAZARD ZONE INDICATED BY THIS PLAT - EASEMENT WILL BE VOID AND RELEASED WITH REMOVAL OF FLOOD ZONE BY E.I.A.

VACATIONS AND DEDICATIONS

NO.	DESCRIPTION	DATE
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SEE SHEET 6 OF 6 FOR CONTINUATION

La Q

Ext Stop America

Days Inn Tacoma



## OFFICIAL NOTICE OF DECISION

CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
DEVELOPMENT REVIEW BOARD

February 26, 2014

**Project# 1000060**

14DRB-70026 – 2 YEAR EXTENSION OF SUBDIVISION IMPROVEMENTS AGREEMENT (2YR SIA)

MODRALL SPERLING agents for SANDIA FOUNDATION request the referenced/above action for all or a portion of **GATEWAY SUBDIVISION** zoned SU-2/ C-3, located on the north side of LOMAS BLVD NE and the west side of INTERSTATE 25 containing approximately 24.8365 acre(s). (J-15)

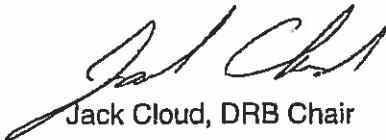
At the February 26, 2014 Development Review Board meeting, a two year extension of the Subdivision Improvements Agreement was approved.

If you wish to appeal this decision, you must do so by March 13, 2014, in the manner described below.

Appeal is to the Land Use Hearing Officer. Any person aggrieved with any determination of the Development Review Board may file an appeal on the Planning Department form, to the Planning Department, within 15 days of the Development Review Board's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal.

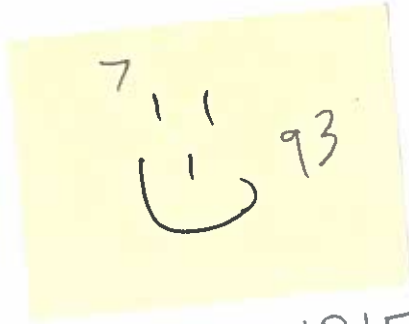
If the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. Such appeal shall be heard within 60 days of its filing.

You will receive notice if any other person files an appeal. Successful applicants are reminded the other requirements of the City must be complied with, even after approval of the referenced application(s).



Jack Cloud, DRB Chair

Cc: MODRALL SPERLING  
File



A+QLIPER  
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# CITY OF ALBUQUERQUE



Letter to the Environmental Planning Commission Regarding Withdrawal of Review for Project # 1003859 – 04EPC-01844.

March 21, 2014

Peter Nicholls, Chair  
Environmental Planning Commission  
C/O: City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

RE: Possible Expiration of Sit Plan for Building Permit for Project # 1003859 – 04EPC-01844

Dear Mr. Nicholls and Commissioners:

PO Box 1293

On July 26, 2013, I submitted a letter seeking clarification by the Environmental Planning Commission (“EPC”) relating to EPC Project #1003859 – 04EPC-01844. Subsequent to my original letter, there was a deferral request by the property owner and Taylor Ranch Neighborhood Association to allow discussion regarding development of the project. An additional deferral request was made by the Planning Department last month, which was approved by the EPC until May 8.

Albuquerque

New Mexico 87103

The Planning Department has decided to resolve the status of the project administratively. Therefore, I respectfully request that the EPC allow my original letter seeking clarification to be withdrawn.

[www.cabq.gov](http://www.cabq.gov)

Sincerely,

Jack Cloud, Chair  
Development Review Board



July 26, 2013

Hugh Floyd PE  
Chair – Environmental Planning Commission  
C/O: City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

Also sent by email to: cmarrone@cabq.gov

CC - 9-19-05

RE: Possible Expiration of Site Plan for Building Permit for Project # 1003859—  
04EPC-01844

Dear Mr. Floyd:

This correspondence is a request for a clarification by the Environmental Planning Commission (the “EPC”) on an issue that has recently arisen relating to EPC Project #1003859. On June 16, 2005, the EPC voted to approve Project #1003859—04EPC-01844, a Site Development Plan for Building Permit (the “Plan”). At that meeting, the EPC delegated final sign-off authority for the Plan to the Development Review Board (the “DRB”) to certify compliance with the EPC conditions of approval. At its January 25, 2006, meeting, the DRB conditionally approved the Plan but withheld the final signatures of the individual board members representing Transportation Development and Planning. In May of this year, Silver Leaf Ventures, LLC, (“Silver Leaf”) recirculated copies of the Plan and requested the final DRB member signatures. On June 5, 2013, I received a letter from Timothy V. Flynn-O’Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the Plan’s current status.

It is my understanding that City of Albuquerque (“City”) Planning and Legal staff have met with Mr. Flynn-O’Brien and representatives of Silver Leaf to discuss the issues surrounding the Plan. In addition to these meetings, more letters from both Mr. Flynn-O’Brien and Mr. Pete Daskalos, as representative of Silver Leaf, followed. I have attached copies of all of these letters to this correspondence. Within these letters, several issues relating to EPC condition conformance, the Coors Corridor Plan, infrastructure, view planes, and previous appeals are discussed. I am not requesting that the EPC make a ruling on these issues. However, one key question requires clarification from the EPC: at what point did the EPC intend that the Plan be “adopted” or “approved” so as to start the Zoning Code’s seven year time period for plan expiration?

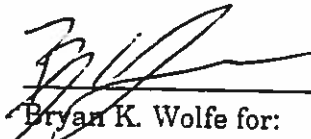


Under § 14-16-3-11 (C) R.O. Albuquerque 1994, “[i]f less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically . . . [s]even years after adoption or major amendment of the plan.” In addition, the Official Notice of Decision for the Plan included wording referencing § 14-16-3-11 and noting “[g]enerally plan approval is terminated 7 years after approval by the EPC.” However, in 2005, the EPC only conditionally approved the Plan and delegated final sign-off authority to the DRB. Under such a delegation, the argument can be made that a plan’s “adoption” occurs at the DRB sign-off, and not through any action of the EPC.

Complicating the issue, the Plan was again conditionally approved at a DRB hearing with final sign-off further delegated to individual DRB board members. Those board members’ signatures have not yet been acquired. Accordingly, a logical argument can be made that the seven year termination provision will not begin to run until the final DRB member’s signature is attached to the Plan. The position that “adoption” occurs upon final DRB signature has been endorsed by Planning staff over the last several years. However, this position also leads to a situation where a site plan requiring a single DRB member signature would be valid indefinitely—regardless of the changes to the surrounding environment and regulations. - 2

I understand that interpretations of the Zoning Code are typically made by the Zoning Enforcement Officer (the “ZEO”). However, the City Council has recently discouraged the ZEO from issuing declaratory rulings when an appeal is pending. Mr. Flynn-O’Brien’s letters generally appear to be an attempt to appeal any decisions regarding DRB sign-off of this EPC delegated Plan. Accordingly, as the Planning Director’s representative on DRB, I am asking the EPC to clarify when, and if, the Plan was “adopted” or “approved”. The City Attorney’s Office has encouraged me to request that you make this decision at an advertised hearing, allowing for notice and appeal.

Very truly yours,

  
Bryan K. Wolfe for:  
Jack Cloud

Chair - Development Review Board



**§ 14-16-3-11 SITE DEVELOPMENT PLAN APPROVAL AND SUBDIVISION REGULATIONS REQUIREMENTS.**

- (A) Site Development Plan approval for either subdivision or building purposes may include:
- (1) Imposition of relevant requirements contained within or authorized by the city's Subdivision Ordinance, including but not limited to dedication of rights of way and assurances for required infrastructure improvements both on site and off site.
  - (2) Imposition of other requirements of other city ordinances.
- (B) Site Development Plans, especially plans for unbuilt areas, are often changed so that developers can better respond to changing market conditions. Amendment of Site Development Plans does not require meeting the criteria which must be met to justify changing zones or changing written specifications imposed by Sector Development Plans or by terms of approval of a zone such as SU-1. Site Development Plans are expected to meet the requirements of adopted city policies and procedures.
- (C) *Possible Termination of Site Development Plans for Sites Which Have Not Been Fully Developed.*
- (1) If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:
    - (a) Seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
    - (b) Subsequently, upon similar requests, the Planning Commission may grant requests for additional five-year extensions of the plan, using the same criteria and process.
    - (c) If a Site Development Plan is approved for any additional five-year period by the Planning Commission, an updated Transportation Impact Study (TIS) shall be required to determine if there are off-site improvements needed that were not previously required.
  - (2) For the purposes of this division (C):
    - (a) Hereafter, the Planning Director shall provide a copy of these Provisions for Plan Termination to the applicant at the time such an initial plan or a major plan amendment is approved;
    - (b) For Site Development Plans approved prior to the effective date of this division, the Planning Director shall as soon as possible provide a copy of these Provisions for Plan

Termination to the current owner(s) of a site covered by a Site Development Plan. For previously approved Site Development Plans, the time periods specified in this division (C) shall be deemed to run from the date this division becomes effective.

- (c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by § 14-16-2-22(A)(6) of this Zoning Code.
  - (d) If an approved Site Development Plan indicates phases of development, that is most often an adequate basis for city extension of the life of the Site Development Plan for the later phases. When the first phase has been built, extension of the plan for later phases may be granted by the Planning Director on behalf of the Planning Commission upon a finding that the plan as previously approved is likely to be built in the future. Appeal of a decision of the Planning Director is to the Planning Commission as provided in § 14-16-4-4 of this Zoning Code.
  - (e) If an approved Site Development Plan has been partially completed, the termination of the plan shall not adversely affect or impose additional requirements upon the developed parcels.
  - (f) Termination of all or part of a Site Development Plan under the terms of this division does not preclude approval of a similar plan at a later date.
  - (g) If a Site Development Plan is terminated, the city shall release the owner from any pending subdivision improvements agreements and financial guarantees for public infrastructure required to be constructed as a condition of approval of the Site Development Plan.
- (3) Fee. A filing fee of \$50 to cover reasonable expenses shall accompany each request for plan extension.

(\*74 Code, § 7-14-40K)

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longstanding interpretation

never before... that we know of...

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on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with “adoption or major amendment of the plan.” (emphasis added)

13. Section 14-16-3-11 (C) (2) (c) of the Zoning Code states that “A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.”
14. The 2005 SPBP is not a major amendment of a site development plan but is instead a site development plan awaiting final sign-off approval by the DRB. *Adopted*
15. With regard to the standard Condition of Approval for site development plans that “delegates final sign-off authority of the site development plan to the DRB”, the Planning Department has interpreted this to mean that the DRB sign-off is the second step in the approval process and without the sign-off, approval is not complete. Final DRB sign-off is final adoption of the plan. *conceptual*
16. There may be a discrepancy regarding §14-16-3-11 (C) (1)(a), that indicates that the seven-year time clock starts with “~~adoption or major amendment~~ of the plan.” Adoption, as interpreted by the Planning Department, occurs with the final sign-off of a site plan while “major amendment of a plan” applies to EPC approval of a site plan.
17. Several Neighborhood Associations were notified regarding this request including La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s. Comments have been received from some of the associations indicating opposition of the Zoning Enforcement Manager’s and the Planning Department’s interpretation regarding which body actually adopts a site plan.
18. After reviewing the record and after much discussion, the EPC determines the following:
- Adoption of a site development plan, as it relates to §14-16-3-11 (C), occurs with [EPC/DRB] approval of the plan.
  - The 2005 SPBP for Andalucia, Tract 6B, Project #1003859, Case #04EPC-01844, is [expired/not expired].
  - The applicant for the 2005 SPBP [can/cannot] pursue final sign-off of the site plan at DRB.
-



# TIMOTHY V. FLYNN-O'BRIEN

Attorney at Law  
817 Gold Avenue SW  
Albuquerque, New Mexico 87102-3014  
Phone: 505-242-4088 / Fax: 866-428-7568

June 5, 2013

Mr. Jack Cloud, DRB Chairman  
City of Albuquerque  
Planning Department  
600 2nd Street NW  
Albuquerque, New Mexico 87102

RE: Project No. 1003859  
04EPC-01844  
DRB Signoff on 2005 plan

Dear Mr. Cloud:

I am sending this on behalf of Taylor Ranch Neighborhood Association. I understand that Silver Leaf or an agent is circulating to DRB what purports to be the above referenced site plan for building permit approved on June 16, 2005. See Official Notification of Decision dated June 17, 2005 (copy attached). This site plan has not, I understand, had a major amendment. In fact it is my understanding that the developer abandoned the plan. In any case, for the reasons set forth herein, I believe the plan has terminated and cannot now be signed-off by DRB.

If less than one-half of the approved square footage has been built, the Zoning Code provides that a site plan terminates "seven years after adoption or major amendment of the plan..." ZC 14-16-3-11(C). There has been no development pursuant to this site plan so the plan terminated seven years after approval, or on June 16, 2012, and cannot now receive sign-off. No signatures should be affixed to the plan at this time as there is, because of automatic termination, no current EPC approved plan. Any DRB signoff at this point (or signoff by other agencies) would be void and in violation of the Zoning Code.

I have heard rumors that some are claiming or asserting that the seven year termination does not begin to run until there is final DRB signoff. Section 14-16-3-11(C) states that plans terminate "seven years *after adoption*" of the plan. DRB does not adopt SU-1 site plans for building permits—that authority resides with the EPC so the words "after adoption" refer to EPC approval. Note also that the zoning code provides that a major amendment is an amendment *adopted by the EPC* indicating that the date referred to in §14-16-3-11(C) is the date of EPC adoption or amendment. Under the plain language of the ordinance the site plan terminated seven years after EPC approval. The assertion that the seven years does not start to run until DRB signs off is also inconsistent with the purpose of the ordinance. The purpose of §14-16-3-11(C) is to terminate site plans so that development is subject to current plans. To allow a

developer to obtain a "back pocket" extension by not submitting to DRB is contrary to the intent of the ordinance.

I also note that the EPC Notification of Decision from 2005 contains Conditions. Condition #12 states:

The applicant shall notice two officers of each affected neighborhood associations [sic] by certified mail approximately two weeks prior to the submittal of this application to the DRB.

TRNA and La Luz Associations only heard about the rumored circulation of the old plan from staff on May 29, 2013 at a meeting on another subject.<sup>1</sup> They have not received certified mail notice. I assume that DRB will not take action because the plan has terminated but, in any case, will ensure full compliance with Condition #12 before proceeding.

I reviewed all DRB agendas for 2013 and 04 EPC 01844 (Project 1003859) did not appear. I assume, therefore, there has been no DRB action.

I would appreciate an update on this matter so that we know if 04 EPC 01844 has been presented to DRB, if the City has taken a position on the site plan's termination etc. In addition, please notify TRNA, La Luz and me of any proposed action concerning this plan.

Thank you for your attention. If you have any questions, please let me know.

Very truly yours,



Timothy V. Flynn-O'Brien

TVFOB/mlg

Enclosure as stated

cc: Rene' Horvath  
Rae Pearls  
Kevin Curran  
Blake Whitcomb

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<sup>1</sup> At the time we received informal notice we were told that all the signatures except Mr. Cloud's had been obtained. The copy of the site plan we obtained from planning on May 31, 2013, however, has only one DRB signature. That sign-off is from Solid Waste and is dated January 17, 2006. If there is another copy of the plan with additional signatures please provide a copy so that we can make a decision as to whether an appeal is necessary. Since the copy provided to us has no signatures after 2006 I am assuming that is the status quo.

**Cloud, Jack W.**

---

**From:** Cloud, Jack W.  
**Sent:** Wednesday, June 05, 2013 5:28 PM  
**To:** 'Tim Flynn-O'Brien'; 'Mary L. Garcia'; Lubar, Suzanne G.  
**Cc:** Curran, Kevin J.; Whitcomb, Blake; 'Rene' Horvath'; 'raeperls@aol.com'; 'ray shortridge'  
**Subject:** FW: Project 1003859 / 04EPC-01844 / DRB Signoff

**Attachments:** Ltr to Cloud.pdf

Mr. Flynn- O'Brien and Ms. Garcia:

Thank you for the attachment. Regarding an update on the referenced DRB action, the site plan was conditionally approved for Final Sign-off at the January 25, 2006 DRB meeting, and certified mail notice was sent to the La Luz Landowners Association, La Luz del Sol and Taylor Ranch Neighborhood Associations on January 6, 2006. However, if I may refer you to the Zoning, Planning and Building Chapter of the City's Cod of Ordinances, I am only the Planning Director's representative on the Development Review Board so the other assertions and questions in your letter should appropriately be addressed to Suzanne Lubar. In advance of your correction, I have included her in this response so that she may direct me accordingly.

- Jack Cloud, Chair  
 Development Review Board  
 505.924.3880

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**From:** Mary L. Garcia [mailto:marylgarcia@swcp.com]  
**Sent:** Wednesday, June 05, 2013 4:56 PM  
**To:** Cloud, Jack W.  
**Cc:** 'Rene' Horvath'; raeperls@aol.com; Curran, Kevin J.; Whitcomb, Blake; 'ray shortridge'; 'Tim Flynn-O'Brien'  
**Subject:** Project 1003859 / 04EPC-01844 / DRB Signoff

Mr. Cloud,

See attached letter and attachment. If you have any questions, please do not hesitate to contact this office.

~~~~~

*Mary L. Garcia*, Legal Administrative Assistant

TIMOTHY V. FLYNN-O'BRIEN  
 ATTORNEY AT LAW

817 Gold Avenue SW  
 Albuquerque, NM 87102  
 Phone: (505) 242-4088  
 Fax: (866) 428-7568  
 Email: [marylgarcia@swcp.com](mailto:marylgarcia@swcp.com)





**Environmental  
Planning  
Commission**

**Agenda Number: 7  
Project Number: 1003859  
Case #: 13EPC-40137  
November 14, 2013**

**Staff Report**

**Applicant** COA Planning Department

**Request** To determine the status of the Andalucia Tract 6B site development plan for building permit, Project #1003859, 04EPC-01844

**Location** southeast corner of Coors & Montano NW

**Acreage** approx. 15 acres

**Zoning** SU-1/O-1, C-2 & PRD

**RECOMMENDATION**

That the 2005 Andalucia, Tract 6B, SPBP is [expired/is not expired], based on Findings beginning on page 6.

**Carmen Marrone, Manager  
Current Planning Section  
COA Planning Department**

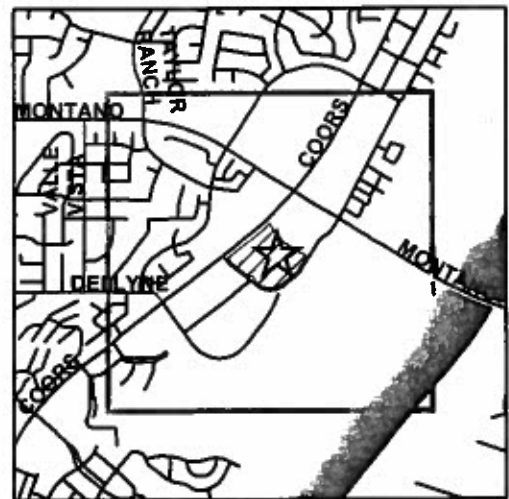
**Request**

This is a request for clarification by the EPC regarding the status of Project #1003859, 04EPC-01844, a site development plan for building permit (SPBP) that was approved by the EPC on 6/16/2005. The EPC's decision was upheld by the City Council on appeal on 9/19/05, with modifications to the EPC Findings and Conditions.

On January 25, 2006, the DRB conditionally approved the SPBP with final signatures to be obtained by board members representing Transportation Development and Planning. In May of this year, the applicant began meeting with Transportation and Planning DRB Members in order to obtain their signatures on the SPBP. On June 5 of this year, a letter was submitted to the DRB Chair by Mr. Tim Flynn-O'Brien as the representative of the Taylor Ranch Neighborhood Association, questioning the status of the subject site plan and whether it was expired.

The purpose of the current request is to determine the status of said site plan and whether the applicant can pursue final sign-off of the site plan at DRB.

Staff is not making a recommendation and is relying on the EPC to make the final decision.

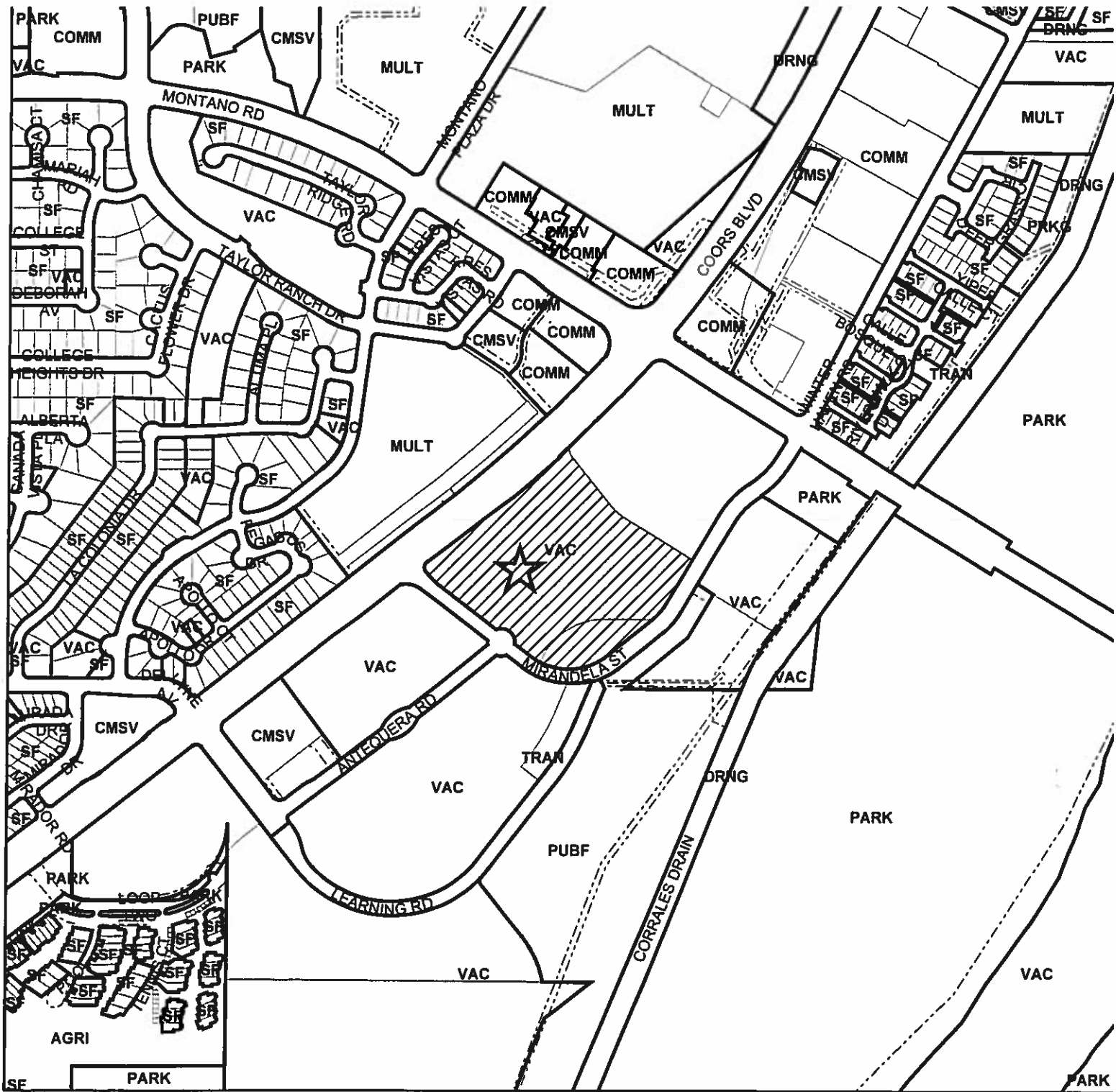


City Departments and other interested agencies reviewed this application. Their comments can be found at the end of this staff report.









# LAND USE MAP

Note: Grey shading indicates County

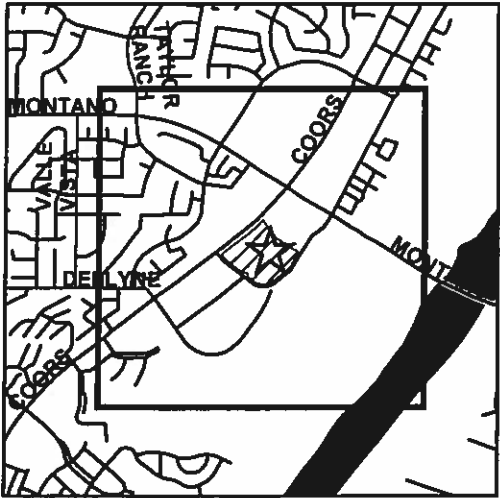
## KEY to Land Use Abbreviations

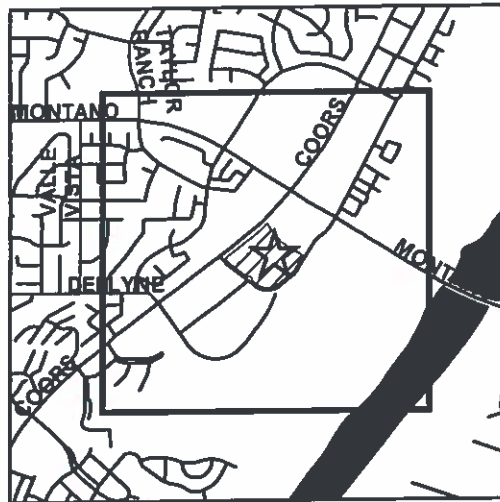
- AGRI Agriculture
- COMM Commercial - Retail
- CMSV Commercial - Service
- DRNG Drainage
- MFG Manufacturing
- MULT Multi-Family or Group Home
- PARK Park, Recreation, or Open Space
- PRKG Parking
- PUBF Public Facility
- SF Single Family
- TRAN Transportation Facility
- VAC Vacant Land or Abandoned Buildings
- WH Warehousing & Storage



1 inch = 600 feet

Project Number:  
1003859  
Hearing Date:  
10-10-2013  
Zone Map Page: E-12  
Additional Case Numbers:  
13EPC 40137





## HISTORY MAP

Note: Grey shading indicates County.

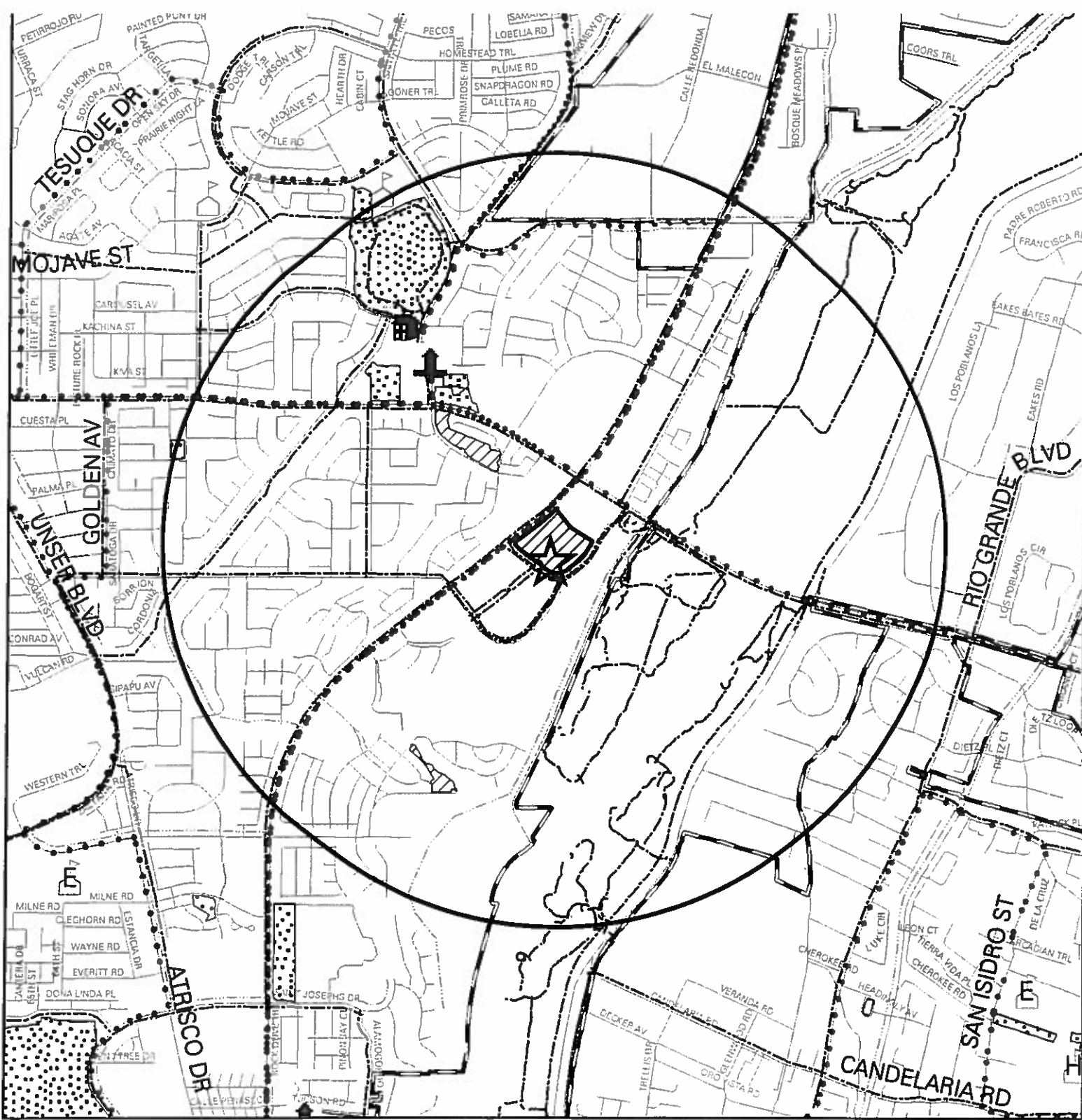


1 inch = 600 feet

Project Number:  
1003859

Hearing Date:  
10-10-2013

Zone Map Page: E-12  
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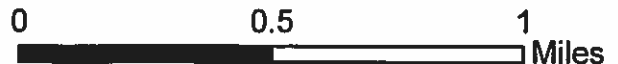


Public Facilities Map with One-Mile Buffer



- |                      |                         |                          |                             |
|----------------------|-------------------------|--------------------------|-----------------------------|
| COMMUNITY CENTER     | FIRE                    | APS Schools              | Landfill Buffer (1000 feet) |
| MULTI-SERVICE CENTER | POLICE                  | ABQ Ride Routes          | Landfills designated by EHD |
| SENIOR CENTER        | SHERIFF                 | ABQ Bike Facilities      | Developed County Park       |
| LIBRARY              | SOLID WASTE             | Proposed Bike Facilities | Undeveloped County Park     |
| MUSEUM               | Albuquerque City Limits |                          | Developed City Park         |
|                      |                         |                          | Undeveloped City Park       |

Project Number: 1003859



## **I. INTRODUCTION**

### ***Proposal***

This is a request for clarification by the EPC on an issue related to EPC Project #1003859, 04EPC-01844, a site development plan for building permit (SPBP) that was approved by the EPC on June 16, 2005. The request is from the DRB Chair, stated in a letter to the EPC Chair, dated July 26, 2013. The letter poses the following question:

1. At what point did the EPC intend that the Plan be “adopted” or “approved” so as to start the Zoning Code’s seven year time period for plan expiration?

The EPC adopted Findings and Conditions associated with the approval of the 2005 SPBP. Condition #1 states,

*“The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.”*

At its January 25, 2006 meeting, the DRB conditionally approved the SPBP with final signatures to be obtained by board members representing Transportation Development and Planning. In May of this year, the applicant began meeting with DRB members representing Transportation and Planning to get their signatures on the site plan. On June 5 of this year, a letter was submitted to the DRB Chair by Mr. Tim Flynn-O’Brien as the representative of the Taylor Ranch Neighborhood Association, questioning the status of the subject site plan and whether it was still valid.

The purpose of the current request is to determine the status of said site plan and whether the applicant can pursue final sign-off of the site plan.

### ***EPC Role***

The EPC’s role is to determine when and if the site plan for building permit, Project #1003859, Case #04EPC-01844 was “adopted” or “approved” by the EPC or if adoption occurs with the final sign off of the SPBP by the DRB based on Condition #1 of the Official Notice of Decision dated June 17, 2005 and in conjunction with Section 14-16-3-11(C) of the Zoning Code.

### ***History/Background***

On June 16, 2005, the EPC conditionally approved Project #1003859, 04EPC-01844, a site development plan for building permit for Andalucia, Tract 6B containing approximately 15 acres and delegated final sign-off of the SPBP to the DRB (Condition 1). The EPC’s decision was appealed

and referred to the Land Use Hearing Officer (LUHO). The LUHO recommended that the City Council grant the appeal and modify the EPC's Findings and Conditions as follows:

Finding #16 should be modified to read:

*The proposed buildings did not meet the height, bulk and setback requirements of the view preservation policies within the Coors Corridor Plan.*

Condition #9.a should be modified to read:

*All buildings must comply with all the requirements of Issue 4, Visual Impression and Urban Design Overlay Zone of the Coors Corridor Plan including, but not limited to the portion in Section C, View Preservation for Corridor Segments 3 and 4, Policy 1 View Preservation, Section B.1 and 2, Height, Bulk, and Massing that specified, "In no event will the building height be permitted to penetrate above the view of the ridge line of the Sandia Mountains as seen from four feet above the east edge of the roadway. Also, in no event will more than one-third of the total building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane. Not more than 50% of the view area shall be obscured by the bulk of the buildings placed on the parcel. The applicant shall ensure that all single story or multi-story buildings and towers comply with this requirement. The [2005] submitted site development will be required to meet the view preservation policies contained in the Coors Corridor Plan.*

In addition, the LUHO recommended an additional condition for approval by the City Council:

*Measurement for the view plane on Coors Boulevard shall be taken from the east edge of the east driving lane as it exists today.*

On **September 19, 2005**, the City Council voted to accept the LUHO's recommendation, in full.

**Note:** Final DRB sign-off of the 2005 SPBP will require compliance with the above conditions.

On **January 25, 2006**, the DRB conditionally approved the SPBP with further sign-off delegated to DRB members representing Transportation Development and Planning (DRB Chair). To date, the final two signatures have not been obtained from Transportation or the DRB Chair.

In **October of 2011**, the property owner/applicant submitted an application for SPBP regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After many public hearings, the City Council ultimately denied the request for SPBP on **March 4, 2013**.

In **April of 2013**, the property owner/applicant of the subject site began inquiring about obtaining the final two DRB signatures on the 2005 SPBP and held separate meetings with various Planning and Transportation staff in order to address the EPC Conditions of Approval imposed by the EPC. The applicant was informed by the Zoning Enforcement Manager and other managers within the Planning Department that the 2005 SPBP was still active and that expiration of a SPBP occurred seven (7) years from DRB final sign-off.

On **June 5, 2013**, the DRB Chair received a letter from Mr. Timothy Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that adoption of the SPBP occurred with the EPC approval in June



of 2005. As such, the SPBP expired seven years after that date - June of 2012. According to Mr. Flynn-O'Brien, the applicant cannot seek final signatures on an expired SPBP and will have to re-apply for SPBP approval.

## II. ANALYSIS

### COMPREHENSIVE ZONING CODE

#### *Applicable Section Language*

Section 14-16-3-11

#### ***(C) Possible Termination of Site Development Plans for Sites which have not been fully developed.***

- (1) If less than one half of the approved square footage of a site development plan has been built or less than one half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:
  - (a) Seven years after adoption of major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
- (2) (c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.

The question before the EPC is whether the 7-year time clock starts with "adoption" or "approval" of the site plan by the EPC or the DRB. Zoning Enforcement Managers (ZEM), both past and present, have had a long-standing interpretation that a site development plan expires seven years after DRB sign-off of the plan.

#### ***Arguments supporting the Zoning Enforcement Manager's interpretation***

The Zoning Enforcement Manager has relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. Staff and applicants have relied on this interpretation since 1994 when this section of the zoning code was amended to establish procedures for possible plan termination (C/S O-23, Enactment No. 43-1994). Except for the current case in question, Planning Staff cannot recall a case where the current language in the ordinance has raised a question.

***Arguments against the Zoning Enforcement Manager's interpretation***

The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation of the ordinance and relies on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with "adoption or major amendment of the plan."

Regarding "major amendment of the plan", the 2005 SPBP is not considered an amendment of a plan since there is no previous plan to amend. The 2005 SPBP is the first site plan to receive conditional approval by the EPC.

Regarding "adoption of the plan", the Zoning Enforcement Manager considers adoption or approval of a plan to occur with the final signature of the DRB since the EPC delegates final approval to the DRB.

***EPC Condition of Approval #1***

Condition #1 of the 2005 SPBP is standard language that the EPC adopts when approving site development plans. This condition is still being applied today. A question for the EPC to consider is whether this condition means that the site development plan is officially approved by the EPC or the DRB.

It is the Planning Department's belief that Condition #1 indicates that final approval of the site plan does not occur until the DRB signs off on the plan. The DRB is responsible for assuring that all EPC Conditions are met and that the site plan complies with other City Regulations including the Subdivision Ordinance and the Development Process Manual (DPM). They are also responsible for making sure the project is financially guaranteed and that all associated infrastructure will be built. Without this second step in the approval process, the EPC plan is still considered "conceptual". An applicant cannot move forward with development of a site until the plan is officially signed off by the DRB. The DRB sign-off is the second step in the approval process and without the sign-off, approval is not complete. The Planning Department equates DRB final sign-off with final "adoption" of the plan.

***III. AGENCY & NEIGHBORHOOD COMMENTS***

***Reviewing Agencies***

The application was distributed to all of the regular agencies for comment. No comments were received.

***Neighborhood/Public***

The La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s were notified regarding this request. Comments have been received from some of the associations indicating opposition with the Zoning Enforcement Manager's and the Planning Department's interpretation regarding which body actually adopts a site plan. The Neighborhood Associations believe that adoption of a site plan occurs with EPC approval.

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Letters to the EPC have been submitted by Tim Flynn-O'Brien, Esq., representing the Taylor Ranch N.A. and by Catherine F. Davis, P.C., representing the property owner/applicant. Both attorneys have expressed opposing views of the matter and are relying on the EPC to make the final decision.

Mr. Flynn-O'Brien asserts that the ZEM's interpretation regarding site plan expiration is inconsistent with the purpose of the ordinance, which is, "to terminate site plans so that development is subject to current plans." He claims that if the time clock starts after final DRB signoff, it would allow site plans to have an infinite life if the developer does not obtain sign off. "This is inconsistent with the plain language, legislative purpose, legislative history and the City's written interpretation of §14-16-3-11". Mr. Flynn-O'Brien emphasizes this point by pointing out that the Official Notice of Decision for the 2005 SPBP includes information from the Planning Department that states, "Generally, plan approval is terminated 7 years after approval by the EPC." This statement was changed in 2010 to simply refer to §14-16-3-11 regarding site plan termination.

Ms. Davis, who represents the applicant for the 2005 SPBP, is of the position that the EPC delegated final sign-off authority to DRB, therefore the Plan's adoption date is not until DRB sign-off. Ms. Davis also claims that the infrastructure on the site has been fully constructed, which amounts to at least \$6,500,000. She refers to a letter from the City Engineer to the applicant dated April 14, 2010. This letter refers to a Subdivision Improvements Agreement (SIA) between the applicant and the City of Albuquerque, executed on September 27, 2005. Staff has not verified whether the SIA is part of the overall site development for subdivision for Andalucia North (approx. 70 acres between Montano and Learning Rd.), which was also approved by the EPC at around the same time as the 2005 SPBP or if the SIA is part of the 2005 SPBP for Tract 6B, approximately 15 acres. Since the 2005 SPBP did not receive conditional approval by the DRB until January 25, 2006, it appears that the \$6,500,000 infrastructure costs are associated with the overall site development for subdivision.

#### **IV. CONCLUSION**

This is a request for clarification by the EPC regarding the status of the Andalucia, Tract 6B Site Development Plan for Building Permit (SPBP), Project #1003859, 04EPC-01844 which was approved by the EPC on June 16, 2005. The subject site is undeveloped and located at the southeast corner of Coors & Montano NW and contains approximately 15 acres. On January 25, 2006, the DRB conditionally approved the SPBP with final signatures to be obtained by board members representing Transportation Development and Planning.

The EPC must determine the status of the 2005 SPBP and whether the applicant can pursue final sign-off of the site plan at DRB. Staff has prepared Findings of Fact that provide historical context for the case. Staff is not making a recommendation, rather Finding #17 presents options from which the EPC must choose.



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**FINDINGS – 13EPC 40137, to determine the status of the Andalucia, Tract 6B Site Development Plan for Building Permit, Project #1003859, Case #04EPC-01844**

1. This is a request for clarification by the EPC regarding the status of the Andalucia, Tract 6B Site Development Plan for Building Permit (SPBP), Project #1003859, Case #04EPC-01844. The subject site is undeveloped and located at the southeast corner of Coors & Montano NW and contains approximately 15 acres.
2. The SPBP was approved by the EPC, with Conditions, on June 16, 2005. Condition #1 states, "The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City Requirements have been met, including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals."
3. The Official Notice of Decision regarding the SPBP, dated June 17, 2005, includes standard template language that informs the applicant of his responsibility for completing the development process. The last section of the template language states, "Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally, plan approval is terminated 7 years after approval by the EPC."
4. The EPC's decision of June 16, 2005 was appealed by the La Luz Landowner's Association. The appeal was referred to the Land Use Hearing Officer (LUHO) who heard the appeal on August 24, 2005. The LUHO recommended that the City Council grant the appeal and modify the EPC's Finding #16 and Condition #9.a. and to add clarifying language regarding the location of where the measurements should be taken of the view plane on Coors Blvd. On September 19, 2005, the City Council voted to accept the LUHO's recommendation, in full.
5. At its January 25, 2006 meeting, the DRB conditionally approved the SPBP but withheld the final signatures of the individual board members representing Transportation Development and Planning.
6. In October of 2011, the property owner/applicant submitted an application for site development plan for building permit approval regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After several public hearings, the City Council ultimately denied the request on March 4, 2013.

- 
7. In April of 2013, the owner/applicant began seeking final DRB sign-off on the 2005 SPBP involving the subject site. The applicant made several inquiries of Planning Staff, including the Zoning Enforcement Manager, the Urban Design & Development Manager and the Current Planning Section Manager regarding the status of the 2005 SPBP and whether the applicant could seek final sign-off of the 2005 SPBP. In all instances of inquiry, the Planning Staff determined that the 2005 SPBP had not expired and that the applicant could proceed with final DRB sign-off of the 2005 SPBP.
  
  8. On June 5, 2013, the DRB Chair received a letter from Mr. Timothy V. Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that pursuant to Section 14-16-3-11 (C) of the Zoning Code, the SPBP expired on June 16, 2012, seven years after EPC approval of the plan.
  
  9. Section 14-16-3-11 (C) (1) of the Zoning Code states,  

If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:

    - (a) Seven years after adoption of major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
  
  10. The long-standing interpretation of the current and past Zoning Enforcement Managers has been that a site development plan expires seven years after DRB sign-off of the plan. The reason for this interpretation is that they have relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. This same interpretation was communicated to the applicant in April of 2013 when he began pursuing final sign-off of the 2005 SPBP.
  
  11. The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation and relies on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with "adoption or major amendment of the plan." (emphasis added)

- 
12. Section 14-16-3-11 (C) (2) (c) of the Zoning Code states that “A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.”
  13. The 2005 SPBP is not a major amendment of a site development plan but is instead a new site development plan awaiting final sign-off approval by the DRB.
  14. There may be a discrepancy regarding §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with “adoption or major amendment of the plan.” Adoption, as interpreted by the Planning Department, occurs with the final sign-off of a site plan while “major amendment of a plan” applies to EPC approval of an amended site plan.
  15. With regard to the standard Condition of Approval for site development plans that “delegates final sign-off authority of the site development plan to the DRB”, the Planning Department has interpreted this to mean that the DRB sign-off is the second step in the approval process. Without DRB sign-off, an applicant cannot move forward with development of a site. The EPC plan is considered “conceptual” until the second step in the process is complete. Final DRB sign-off is final adoption of the plan.
  16. Several Neighborhood Associations were notified regarding this request including La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s. Comments have been received from some of the associations indicating opposition of the Zoning Enforcement Manager’s and the Planning Department’s interpretation regarding which body actually adopts a site plan.
  17. After reviewing the record and after much discussion, the EPC determines the following:
    - a. Adoption of a site development plan, as it relates to §14-16-3-11 (C), occurs with [EPC/DRB] approval of the plan.
    - b. The 2005 SPBP for Andalucia, Tract 6B, Project #1003859, Case #04EPC-01844, is [expired/not expired].
    - c. The applicant for the 2005 SPBP [can/cannot] pursue final sign-off of the site plan at DRB.
-

*C. Marrone*

**Carmen Marrone, Manager  
Current Planning Section  
Urban Design & Development Division  
COA Planning Department**

***Notice of Decision cc list:***

La Luz Del Sol, Art Woods, 33 Wind Rd NW, Albuquerque, NM 87120  
La Luz Del Sol, Terry Wilmot, 10 Mill Rd NW, Albuquerque, NM 87120  
La Luz Landowners Assoc, Laura Campbell, 15 Pool NW, Albuquerque, NM 87120  
La Luz Landowners Assoc., Rae Perls, 15 Tennis Ct. NW, Albuquerque, NM 87120  
Taylor Ranch NA, Ray Shortridge, 4800 College Heights Dr NW, Albuquerque, NM 87120  
Taylor Ranch NA, Rene Horvath, 5515 Palomino Dr NW, Albuquerque, NM 87120  
Westside Coalition, Candelaria Patterson, 7608 Elderwood NW, Albuquerque, NM 87120  
Westside Coalition, Harry Hendricksen, 10592 Rio Del Sole Ct NW, Albuquerque, NM 87114  
Pete Daskalos, Silver Leaf Ventures, LLC, 5319 Menaul Blvd NE, Albuquerque, NM 87110  
Tim Flynn O'Brien, 817 Gold Ave SW, Albuquerque, NM 87102  
Jim Strozier, Consensus Planning, 302 Eighth St NW, Albuquerque, NM 87102  
Catherine David, Hunt & Davis Attorney at Law, 2632 Mesilla NE, Albuquerque, NM 87110

***Attachments***

***CITY OF ALBUQUERQUE AGENCY COMMENTS***

NO COMMENTS RECEIVED REGARDING THIS CASE

**§ 14-16-3-11 SITE DEVELOPMENT PLAN APPROVAL AND SUBDIVISION REGULATIONS REQUIREMENTS.**

- (A) Site Development Plan approval for either subdivision or building purposes may include:
- (1) Imposition of relevant requirements contained within or authorized by the city's Subdivision Ordinance, including but not limited to dedication of rights of way and assurances for required infrastructure improvements both on site and off site.
  - (2) Imposition of other requirements of other city ordinances.
- (B) Site Development Plans, especially plans for unbuilt areas, are often changed so that developers can better respond to changing market conditions. Amendment of Site Development Plans does not require meeting the criteria which must be met to justify changing zones or changing written specifications imposed by Sector Development Plans or by terms of approval of a zone such as SU-1. Site Development Plans are expected to meet the requirements of adopted city policies and procedures.
- (C) *Possible Termination of Site Development Plans for Sites Which Have Not Been Fully Developed.*
- (1) If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:
    - (a) Seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
    - (b) Subsequently, upon similar requests, the Planning Commission may grant requests for additional five-year extensions of the plan, using the same criteria and process.
    - (c) If a Site Development Plan is approved for any additional five-year period by the Planning Commission, an updated Transportation Impact Study (TIS) shall be required to determine if there are off-site improvements needed that were not previously required.
  - (2) For the purposes of this division (C):
    - (a) Hereafter, the Planning Director shall provide a copy of these Provisions for Plan Termination to the applicant at the time such an initial plan or a major plan amendment is approved;
    - (b) For Site Development Plans approved prior to the effective date of this division, the Planning Director shall as soon as possible provide a copy of these Provisions for Plan

Termination to the current owner(s) of a site covered by a Site Development Plan. For previously approved Site Development Plans, the time periods specified in this division (C) shall be deemed to run from the date this division becomes effective.

- (c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by § 14-16-2-22(A)(6) of this Zoning Code.
  - (d) If an approved Site Development Plan indicates phases of development, that is most often an adequate basis for city extension of the life of the Site Development Plan for the later phases. When the first phase has been built, extension of the plan for later phases may be granted by the Planning Director on behalf of the Planning Commission upon a finding that the plan as previously approved is likely to be built in the future. Appeal of a decision of the Planning Director is to the Planning Commission as provided in § 14-16-4-4 of this Zoning Code.
  - (e) If an approved Site Development Plan has been partially completed, the termination of the plan shall not adversely affect or impose additional requirements upon the developed parcels.
  - (f) Termination of all or part of a Site Development Plan under the terms of this division does not preclude approval of a similar plan at a later date.
  - (g) If a Site Development Plan is terminated, the city shall release the owner from any pending subdivision improvements agreements and financial guarantees for public infrastructure required to be constructed as a condition of approval of the Site Development Plan.
- (3) Fee. A filing fee of \$50 to cover reasonable expenses shall accompany each request for plan extension.

(74 Code, § 7-14-40K)



Supplemental Form (SF)

**SUBDIVISION**

- Major subdivision action
- Minor subdivision action
- Vacation
- Variance (Non-Zoning)

**SITE DEVELOPMENT PLAN**

- for Subdivision
- for Building Permit
- Administrative Amendment/Approval (AA)
- IP Master Development Plan
- Cert. of Appropriateness (LUCC)
- EPC Interpretation
- STORM DRAINAGE (Form D)**
- Storm Drainage Cost Allocation Plan

EPC-15

**S Z**

**ZONING & PLANNING**

- Annexation
- DT 2010 SDP Conditional Use (\$100)
- Zone Map Amendment (Establish or Change Zoning, includes Zoning within Sector Development Plans)
- Adoption of Rank 2 or 3 Plan or similar Text Amendment to Adopted Rank 1, 2 or 3 Plan(s), Zoning Code, or Subd. Regulations
- Street Name Change (Local & Collector)
- L A APPEAL / PROTEST of...**
- Decision by: DRB, EPC, LUCC, Planning Director, ZEO, ZHE, Board of Appeals, other

PRINT OR TYPE IN BLACK INK ONLY. The applicant or agent must submit the completed application in person to the Planning Department Development Services Center, 600 2<sup>nd</sup> Street NW, Albuquerque, NM 87102. Fees must be paid at the time of application. Refer to supplemental forms for submittal requirements.

**APPLICATION INFORMATION:**

Professional/Agent (if any): \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_ FAX: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_ E-MAIL: \_\_\_\_\_  
 APPLICANT: COA Planning Dept. PHONE: 924-3860  
 ADDRESS: P.O. Box 1293 FAX: \_\_\_\_\_  
 CITY: Albug STATE NM ZIP 87103 E-MAIL: \_\_\_\_\_  
 Proprietary interest in site: \_\_\_\_\_ List all owners: \_\_\_\_\_

DESCRIPTION OF REQUEST: EPC interpretation of Condition #1, Site Dev. Plan For Bldg. Permit, Project # 1003859, 04EPC-01844

Is the applicant seeking incentives pursuant to the Family Housing Development Program?  Yes.  No.

**SITE INFORMATION: ACCURACY OF THE EXISTING LEGAL DESCRIPTION IS CRUCIAL! ATTACH A SEPARATE SHEET IF NECESSARY.**

Lot or Tract No. 6B Block: \_\_\_\_\_ Unit: \_\_\_\_\_  
 Subdiv/Addn/TBKA: Lands of Ray Graham III, Owen West Corp.  
 Existing Zoning: SU-1/O-L.C.2+PRD Proposed zoning: \_\_\_\_\_ MRGCD Map No. \_\_\_\_\_  
 Zone Atlas page(s): E-12 UPC Code: \_\_\_\_\_

**CASE HISTORY:**

List any current or prior case number that may be relevant to your application (Proj., App., DRB-, AX\_Z\_V\_S\_ etc.): 1003859

**CASE INFORMATION:**

Within city limits?  Yes Within 1000FT of a landfill?   
 No. of existing lots: \_\_\_\_\_ No. of proposed lots: \_\_\_\_\_ Total site area (acres): 15 ac.  
 LOCATION OF PROPERTY BY STREETS: On or Near: Coors  
 Between: Montano and Learning Rd. NW

Check if project was previously reviewed by: Sketch Plat/Plan  or Pre-application Review Team(PRT)  Review Date: \_\_\_\_\_

SIGNATURE C. Marrone DATE 8/28/13  
 (Print Name) Carmen Marrone Applicant:  Agent:

**FOR OFFICIAL USE ONLY**

Revised: 4/2012

|                                                                  | Application case numbers          | Action     | S.F.  | Fees              |
|------------------------------------------------------------------|-----------------------------------|------------|-------|-------------------|
| <input checked="" type="checkbox"/> INTERNAL ROUTING             | <u>13 EPC - 40137</u>             | <u>SBP</u> | _____ | \$ <u>0</u>       |
| <input checked="" type="checkbox"/> All checklists are complete  | _____                             | _____      | _____ | \$ _____          |
| <input checked="" type="checkbox"/> All fees have been collected | _____                             | _____      | _____ | \$ _____          |
| <input checked="" type="checkbox"/> All case #'s are assigned    | _____                             | _____      | _____ | \$ _____          |
| <input checked="" type="checkbox"/> AGIS copy has been sent      | _____                             | _____      | _____ | \$ _____          |
| <input type="checkbox"/> Case history #'s are listed             | _____                             | _____      | _____ | \$ _____          |
| <input type="checkbox"/> Site is within 1000ft of a landfill     | _____                             | _____      | _____ | \$ _____          |
| <input type="checkbox"/> F.H.D.P. density bonus                  | _____                             | _____      | _____ | \$ _____          |
| <input type="checkbox"/> F.H.D.P. fee rebate                     | _____                             | _____      | _____ | \$ _____          |
|                                                                  | Hearing date <u>Oct. 10, 2013</u> |            |       | Total \$ <u>0</u> |

Staff signature & Date: [Signature] 8-29-13 Project # 1003859

July 26, 2013

Hugh Floyd PE  
Chair – Environmental Planning Commission  
C/O: City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

Also sent by email to: [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov)

RE: Possible Expiration of Site Plan for Building Permit for Project # 1003859—  
04EPC-01844

Dear Mr. Floyd:

This correspondence is a request for a clarification by the Environmental Planning Commission (the “EPC”) on an issue that has recently arisen relating to EPC Project #1003859. On June 16, 2005, the EPC voted to approve Project #1003859—04EPC-01844, a Site Development Plan for Building Permit (the “Plan”). At that meeting, the EPC delegated final sign-off authority for the Plan to the Development Review Board (the “DRB”) to certify compliance with the EPC conditions of approval. At its January 25, 2006, meeting, the DRB conditionally approved the Plan but withheld the final signatures of the individual board members representing Transportation Development and Planning. In May of this year, Silver Leaf Ventures, LLC, (“Silver Leaf”) recirculated copies of the Plan and requested the final DRB member signatures. On June 5, 2013, I received a letter from Timothy V. Flynn-O’Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the Plan’s current status.

It is my understanding that City of Albuquerque (“City”) Planning and Legal staff have met with Mr. Flynn-O’Brien and representatives of Silver Leaf to discuss the issues surrounding the Plan. In addition to these meetings, more letters from both Mr. Flynn-O’Brien and Mr. Pete Daskalos, as representative of Silver Leaf, followed. I have attached copies of all of these letters to this correspondence. Within these letters, several issues relating to EPC condition conformance, the Coors Corridor Plan, infrastructure, view planes, and previous appeals are discussed. I am not requesting that the EPC make a ruling on these issues. However, one key question requires clarification from the EPC: at what point did the EPC intend that the Plan be “adopted” or “approved” so as to start the Zoning Code’s seven year time period for plan expiration?

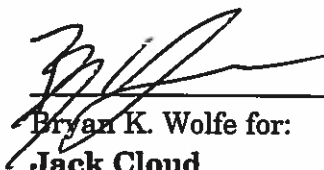


Under § 14-16-3-11 (C) R.O. Albuquerque 1994, “[i]f less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically . . . [s]even years after adoption or major amendment of the plan.” In addition, the Official Notice of Decision for the Plan included wording referencing § 14-16-3-11 and noting “[g]enerally plan approval is terminated 7 years after approval by the EPC.” However, in 2005, the EPC only conditionally approved the Plan and delegated final sign-off authority to the DRB. Under such a delegation, the argument can be made that a plan’s “adoption” occurs at the DRB sign-off, and not through any action of the EPC.

Complicating the issue, the Plan was again conditionally approved at a DRB hearing with final sign-off further delegated to individual DRB board members. Those board members’ signatures have not yet been acquired. Accordingly, a logical argument can be made that the seven year termination provision will not begin to run until the final DRB member’s signature is attached to the Plan. The position that “adoption” occurs upon final DRB signature has been endorsed by Planning staff over the last several years. However, this position also leads to a situation where a site plan requiring a single DRB member signature would be valid indefinitely—regardless of the changes to the surrounding environment and regulations.

I understand that interpretations of the Zoning Code are typically made by the Zoning Enforcement Officer (the “ZEO”). However, the City Council has recently discouraged the ZEO from issuing declaratory rulings when an appeal is pending. Mr. Flynn-O’Brien’s letters generally appear to be an attempt to appeal any decisions regarding DRB sign-off of this EPC delegated Plan. Accordingly, as the Planning Director’s representative on DRB, I am asking the EPC to clarify when, and if, the Plan was “adopted” or “approved”. The City Attorney’s Office has encouraged me to request that you make this decision at an advertised hearing, allowing for notice and appeal.

Very truly yours,



Bryan K. Wolfe for:

**Jack Cloud**

**Chair - Development Review Board**

**Enclosures:**

- ✓ June 5, 2013, Letter from Tim Flynn-O'Brien to Jack Cloud
- ✓ June 25, 2013, Letter from Tim Flynn-O'Brien to Suzanne Lubar
- ✓ July 3, 2013, Letter from Pete Daskalos to Suzanne Lubar
- ✓ July 3, 2013, Letter from Tim Flynn-O'Brien to Jack Cloud
- ✓ July 17, 2013, Letter from Tim Flynn-O'Brien to Suzanne Lubar, Amy Bailey, and Jack Cloud



City of Albuquerque  
Planning Department  
Development Review Division  
P.O. Box 1293  
Albuquerque, New Mexico 87103

Date: June 17, 2005

**OFFICIAL NOTIFICATION OF DECISION**

**FILE: Project # 1003859**  
04EPC-01844 EPC Site Development Plan-  
Building Permit

Silverleaf Venures, LLC  
5351 Menaul Blvd. NE  
Albuq. NM 87110

**LEGAL DESCRIPTION:** for all or a portion of Tract 6B, Lands of Ray Graham III, Ovenwest Corp., zoned SU-1, O-1, C-2 and PRD, located on COORS BLVD. NW, between MONTANO ROAD NW and LEARNING ROAD NW, containing approximately 15 acres. (E-12)  
Juanita Garcia, Staff Planner

On June 16, 2005 the Environmental Planning Commission voted to approve Project 1003859/ 04EPC 04EPC 01844, a Site Development Plan for Building Permit, for a portion of Tract 6B, Lands of Ray Graham III, Ovenwest Corp., and COA, zoned SU-1 for C-2 Uses, O-1 Uses and PRD (Max 20 DU/Acre) located on Coors Blvd between Montano RD NW and Learning RD NW, containing approximately 15 acres, based on the following Findings and subject to the following Conditions:

**FINDINGS:**

1. This is a request for a site development plan for Building Permit for a portion of Tract 6B, Lands of Ray Graham III, Ovenwest Corp., and COA. The site is located on Coors Blvd, south of Montano, zoned SU-1 C-2 Use (23.3 Acres Max), O-1 Uses (11.7 acres max) and PRD (20 DU/Acre) and contains approximately 15 acres.
2. The applicant is proposing to construct 11 buildings within eight building envelopes that range in size from 4,500 to 45,720 square feet. The applicant proposes two freestanding restaurant buildings and the remaining buildings are proposed to be used as retail. The overall site will be surrounded by public streets on three sides and an internal vehicular entrance on the north side; two roundabouts will exist, one the south and north end of the subject site. The subject site will also contain off-street parking, landscaping, signage and pedestrian connections.

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3. The site is controlled by a site development plan that was approved by the EPC on May 19, 2005 (04EPC 01845) in which the applicant was approved to subdivide Tract 6B into eight separate tracts: Tracts 6B-1, 6B-2, Tracts 6B-3, 6B-5, 6B-4, 6B-6, 6B-7, 6B-8. The applicant proposes to construct on future Tract 6B2 and 6B1.
4. The applicant is proposing to construct a freestanding sign on a portion of future Tract 6B1.
5. The subject site will be subject to and will need to comply with the Impact Fees Ordinance and the Impact Fees Regulations that are currently in process of being finalized.
6. The subject site is located in the area designated Established Urban and Developing Urban by the *Comprehensive Plan*. The submittal meets the goals of these areas by creating a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work area and life styles, while creating a visually pleasing built environment. The submittal furthers the policies of the *Comprehensive Plan* as follows:
  - a. The location, intensity and design of this development respects existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural or recreational concern (Policy 5d, *Comprehensive Plan*). The proposed plan will not have deleterious impacts on surrounding uses, established neighborhoods, or community amenities.
  - b. This request proposes to locate employment and service uses to complement residential areas and to site the development in a way that minimizes adverse effects of noise, lighting pollution, and traffic on residential environments (Policy 51, *Comprehensive Plan*).
  - c. This request constitutes new growth that will be accommodated through development in an area where vacant land is contiguous to existing or programmed facilities and services and where the integrity of existing neighborhoods can be ensured. (Policy 5e, *Comprehensive Plan*). This request represents new commercial development and is located in an existing commercially zoned areas (Policy 5j, *Comprehensive Plan*).
  - d. The subject site is adjacent to arterial streets and is planned to minimize harmful effects of traffic, livability and safety of established residential neighborhoods (Policy 5k, *Comprehensive Plan*).
  - e. The site plan represents a quality and innovative design which is appropriate to the plan area (Policy 5l, *Comprehensive Plan*).
7. This request is within a Community Activity Center as designated by the Centers and Corridors section of the *Albuquerque/Bernalillo County Comprehensive Plan*. The submittal furthers the Policies of the Community Activity Center designation as follows:

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- a. The request helps to shape an urban form in a sustainable development pattern that helps to promote transit and pedestrian access both to and within the center, and maximizes cost-effectiveness of City services (*Comprehensive Plan*, Policy II. B. 7. a).
  - b. This request will assist in the development of a Community Activity Center as defined by the *Comprehensive Plan* by providing the primary focus for the entire community sub-area with a higher concentration and greater variety of commercial and entertainment uses in conjunction with community-wide services, employment, and the most intense land uses within the community sub-area.
  - c. This request will also assist in the development of a Community Activity Center as defined by the *Comprehensive Plan* by allowing the location of land uses typical of a low-rise office, educational facilities, medium density residential, senior housing and other similar uses.
  - d. This request meets the policies of the *Comprehensive Plan* by providing moderate floor area ratios and urban land uses and pedestrian connections between buildings and sidewalks, buildings separating off-street parking from streets and public plaza and open space (*Comprehensive Plan*, Activity Center Goal, Policy A, Community Activity Centers).
  - e. The *Comprehensive Plan* is furthered in that the most intense activity centers uses are proposed to be located away from any nearby low-density residential development and is buffered from those residential uses by a transition area of less intensive development (Policy II. B. 7. f.).
  - f. The submitted commercial development plan for the subject site along with the existing and proposed mix of development within the immediate vicinity is consistent with the Enhanced Transit designation of the adjacent arterial corridors (*Comprehensive Plan*, Transportation and Transit Goals and Policies).
8. Transportation:
- a. A Traffic Impact Study (TIS) was completed by the applicant in October of 2004 and has been reviewed by the Planning Department (Transportation Development) and the Department of Municipal Development (DMD). The study was conducted in accordance with the scoping letter and procedures cited in the City's Development Process Manual.
  - b. In addition, in March of 2005, a Supplemental Traffic Analysis was provided by the applicant to support the access approved at the intersection of Street B and Montano Road.
  - c. Coors Boulevard is a limited access, principal arterial with bicycle lanes as designated on the Long Range Roadway System and Long Range Bikeways System.
  - d. The City Engineer may require up to six (6) additional feet of right-of-way on Coors Boulevard to accommodate the designated bicycle lane.
  - e. The ultimate cross-section for Coors Boulevard adjacent to the proposed site includes 4 northbound travel lanes consistent with the Coors Corridor Plan (see figure 6).

- f. Consistent with the Coors Corridor Plan intersection access policy (see policy 5), access approximately midway between Montano Road and Dellyne Avenue at Street "B" is right-in, right-out only.
  - g. Exceptions to the access policy to allow for the proposed left-in access from southbound Coors Boulevard to Street "B" will require the approval of the Metropolitan Transportation Board (MTB) of the Mid-Region Council of Governments. The City Of Albuquerque has indicated that it will support this request to the Council of Governments based upon the TIS and demonstration that the addition of this left-in access will have beneficial impacts to the Coors/Dellyne/Learning Road intersection.
  - h. Montano Road is a limited access, minor arterial with a proposed grade separation at Winterhaven Road as designated on the Long Range Roadway System and on the Coors Corridor Plan. However, no grade separated intersection has been planned, designed or programmed as of this date.
  - i. In the future, if a grade separation is constructed, north-south traffic at Winterhaven will pass under Montano, but no connection will be allowed between Montano and Winterhaven Road. However, in the interim, the City Engineer and the Director of the Department of Municipal Development have allowed for a right-in, right-out and left in at the intersection of Street B and Montano Road.
  - j. Learning Road will serve as a partial public and partial private road. The areas designated as public or private are identified on the site development plan and the subdivision plat. The portion of Learning Road east of the existing City right-of-way is designated to remain a private road, which will provide access to Bosque School and the City Lift Station Access Road only.
  - k. In order to minimize adverse impacts to the Learning Road/La Luz Connector Road intersection and the Coors/Learning Road intersection, Bosque School has agreed to open access from the school to Street B during the morning and afternoon peaks and during special events.
9. The proposed request meets the Transportation and Transit provision of the *Albuquerque/Bernalillo County Comprehensive Plan* with a goal to "provide a balanced circulation system through efficient placement of employment and services, and encouragement of bicycling, walking, and use of transit/ paratransit as alternatives to automobile travel, while providing sufficient roadway capacity to meet mobility and access needs." The submittal furthers the Polices of the Transportation and Transit provision as follows:
- a. The subject site has been reviewed for street design, transit service and development form consistent with Transportation Corridors and Activity Center polices established in the *Comprehensive Plan*.

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- b. The site is adjacent to Coors Blvd and Montano Road, both designated as Enhanced Transit Corridors as identified in the Comprehensive Plan's Activity Centers and Transportation Corridors Map.
  - c. The subject site will contain some access control along Coors Blvd and Montano Road.
  - d. Enhanced Transit Corridors are to operate at a Level of Service (LOS) of "D" or better. The City may allow for lower LOS at an intersection by substituting transit improvements which facilitate transit vehicles bypassing congestion at the intersection for auto improvements; or may be allowed to substitute transit improvements, employee travel demand strategies, and mixed use developments which lower overall trip generation in place of auto based improvements in order to mitigate traffic impacts of a development. The Design Guidelines for the subject site includes a Transportation Demand Management (TDM) plan that will encourage alternative modes of transportation in place of auto based improvements in order to mitigate traffic impacts of this development.
  - e. All intersections near the subject site have transit emergency vehicle signal preemption, the capability of a selected lane for transit and will contain right turn lanes along Coors Blvd.
  - f. The subject site will contain pedestrian circulation that will maximize pedestrian connections to transit stops and between developments.
  - g. The subject site will contain public sidewalks adjacent to the site between 6-8 feet in width.
  - h. Dedicated Bicycle lanes are provided along Coors Blvd and Montano Road.
  - i. The submittal includes a network of internal bike lanes that will provide connections from the site to adjacent facilities on Coors and Montano.
10. The subject site is within the Taylor Ranch Community as identified in the *West Side Strategic Plan* and is within the community's Community Activity Center. The proposed development will include retail, office and multi-family residential uses that are appropriate for the Taylor Ranch Community Center (Policy 3.16, WSSP) and will respect the existing neighborhood values as required in Policy 5d, Established Urban, *Comprehensive Plan*. In addition, the site is an appropriate location for continued growth due to its contiguous location to the rest of the City and efficient location for receiving City services. (Policy 3.12, WSSP)
  11. A remaining intact portion of the "Montano Pueblo" lies within the northern boundary of this site. Two smaller archeological sites are also identified with the site. The affected sites will need to comply with all the goals and policies under *Issue 2, Policy 6, Archeological Sites*, of the *Coors Corridor Plan*, which states, "development within an identified archeological site shall obtain clearance and guidance from the State Historic Preservation Office before actual development begins."
  12. The applicant has obtained clearance from the State Historic Preservation Office with the preferred method of mitigation to contain the burial sites in place and fill the sites with sterile soil to create a sloped surface. The approved mitigation plan also included a commitment to redesign



the parking area and leave a portion of the Montano Pueblo site undeveloped, provide for a "protective covenant", and provide materials for public interpretation such as information signs.

13. If transportation mitigation is required along Montano Road, adjacent to the subject site, and it is determined there may be encroachment in the archeological site, then further review and approval from the State Historic Preservation Officer may be required.
14. The subject site contains an area of habitat for the Tawny Bellied Rat, a State listed species of concern. An agreement was reached between the applicant, the City Of Albuquerque Open Space Division and the abutting Bosque School to relocate the Tawny Bellied Rat to suitable sites.
15. During the review of this application in December of 2004 a preliminary Air Quality Impact Analysis(AQIA) was not required. However, policy has changed within the Planning Department that now requires a preliminary AQIA. The applicant has submitted a preliminary AQIA and has been reviewed and approved by the Environmental Health Department in accordance with Section 14-16-3-14 of the Comprehensive City Zoning Code.
16. The submitted site plan meets the applicable general policies, site planning and architecture policies, view preservation policies, and signage policies contained in the *Coors Corridor Plan*.
17. The site plan contains the information required by the *Comprehensive City Zoning Code* for a site development plan for building permit. The submittal presents the exact structure locations (including signs), structure elevations and dimensions, parking facilities, any energy conservation features of the plan (e.g. appropriate landscaping, building heights and siting for solar access, provision for non-auto transportation, or energy conservational building construction), and the proposed schedule for development.
18. There have been two facilitated meetings between the applicant and the affected neighborhood associations and two non-facilitated meeting to discuss the issues related to the subject request. As an agreement during these meetings, the applicant will not allow for any drive-through restaurants or gas stations on the subject site.
19. Based on the review of the traffic studies and related testimony the EPC recognizes that significant long-range traffic solutions in the Coors and Montano area require a major redesign and reconstruction of the Coors/Montano intersection. Consequently, the EPC urges that the City Council place the redesign/reconstruction of the Coors/Montano intersection on the TCIP or CIP as quickly as possible.

#### **CONDITIONS:**

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that



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have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.

2. The Site Development Plan for Building Permit shall be amended to include a note that states: Fast Food Restaurants with drive-up windows and gas stations shall not be permitted.
3. The submittal shall contain Floor Area Ratio (F.A.R.) calculations on the submittal. The subject request shall not exceed an F.A.R. of 0.35.
4. No building elements are allowed to projecting within the 35' setback area along Coors Blvd as per the Coors Corridor Plan.
5. The applicant shall ensure that final approval has been granted from the State Historic Preservation Officer for the remedial proposal of the three archeological sites on the subject site.
6. **Parking:**
  - a. The submittal shall demonstrate the type of CMU to be used and/or the finished product that is used on the proposed 12' high loading area screen walls and shall ensure that all walls on the subject site meet the requirements of the Design Standards and Section 14-16-3-19 of the Comprehensive City Zoning Code.
  - b. The proposed wall adjacent to Coors Blvd shall contain "Stucco Color 2" instead of "Stucco Color 1."
  - c. A notation shall be included on the submittal specifying that, "If restaurants with alcoholic beverages are sold for on premise consumption, the applicant shall demonstrate that parking will meet the standards as provided in the Comprehensive City Zoning Code for the number of spaces required for all of the proposed/existing uses." Or create a shared parking agreement as provided for in the Comp Plan.
  - d. All pertinent information regarding handicap spaces shall be clearly identified on the submittal, including their exact locations, the exact size of each space, the location of upright handicap signs and the location of the handicap accessibility from the off-street parking spaces to the buildings.
  - e. The submittal shall contain a notation specifying that all parking barriers will be two-feet away from any public sidewalk, abutting lot, pedestrian walkway, landscaped area or any wall or fence.
  - f. A 3' high wall or dense landscape screen shall be installed along the parking areas west of Buildings 6B2.9 – 6B2.12 and west of the internal driveway to allow for a definitive pedestrian walkway.
  - g. The submittal shall contain a notation that references if shopping carts will be stored within the off-street parking areas. If the applicant is providing storage units for shopping carts within the off-street parking areas, the calculation for off-street parking spaces shall

- h. be modified to reflect the existence of these storage units. In addition, the submittal shall be noted to identify the exact location of the shopping cart storage units.
  - i. Two additional bicycle racks, containing five spaces each in the vicinity of Building 6B2.14 and Building 6B2.13 shall be added to the submittal. The design and color of all the proposed bicycle racks shall be demonstrated on the plan and shall be consistent with the color of the proposed buildings.
  - j. All pedestrian crosswalks are required to be a minimum of six feet in width. The submittal shall demonstrate the exact width for each pedestrian crosswalk or provide an illustration of a typical pedestrian crosswalk.
  - k. The width of all pedestrian walks adjacent to buildings shall be specified on the submittal. All pedestrian walkways shall meet the width requirements specified in Section 14-16-3-1 and Section 14-16-3-18 of the Comprehensive City Zoning Code.
  - l. The pedestrian walks adjacent to Buildings 6B2.4 & 6B2.7 shall meet the 8 foot width requirements specified in Section 14-16-3-1 and Section 14-16-3-18 of the Comprehensive City Zoning Code.
  - m. Businesses within the subject site shall comply with the Transportation Demand Management Plan specified in the site development plan for subdivision. In addition, the applicant shall meet with a representative from the Transit Department to determine the needs of the applicant and to determine if changes can be made to adjacent routes and schedules to reflect those needs.
7. The submittal shall demonstrate the location of light bollards or building mounted light fixtures as illustrated in the Site Development Plan for Subdivision. A notation shall be added on the submittal indicating that all light fixtures will meet Section, 14-16-3-9, Area Lighting Regulations of the *Comprehensive City Zoning Code*.
8. Landscaping:
- a. The Site Development Plan for Subdivision for the subject site requires sites to "identify and preserve Cottonwood trees, where feasible." The submittal shall demonstrate the location of any Cottonwood trees for the subject tract(s) and the feasibility of preserving such trees.
  - b. The submittal does not comply with the "Parking Area Setbacks" noted within the "Setback" section of the Design Regulations of the Site Development Plan for Subdivision, which indicates, "To allow for an appropriately sized landscaped buffer adjacent to roadways, parking areas shall be setback as follows: 15'." This buffer pertains to all roadways surrounding the subject site. The submittal shall contain a 15' wide landscape buffer in all parking areas adjacent to a roadway way.

9. Architectural/Signs:

- a. All of the buildings must comply with *Issue 4, Visual Impression and Urban Design Overlay Zone* of the *Coors Corridor Plan* that specifies, "In no event will the building height be permitted to penetrate above the view of the ridge line of the Sandia Mountains as seen from four feet above the east edge of the roadway. Also, in no event will more than one-third of the total building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane." The applicant shall ensure that all single story or multi-story buildings and towers comply with this requirement.
- b. The submittal shall contain detailed drawing of the stairs proposed between the subject site and Coors Blvd and demonstrate the materials and color to be used for the rails and steps. The material should be consistent with the special paving that is proposed throughout the site.
- c. The elevation drawings shown on page A002 and A003 are for buildings that are no longer part of this application. Sheet A002 shall be removed from the submittal.
- d. The following building facades shall contain architectural features no less than 50% of the entire length of the façade:

|          |           |               |
|----------|-----------|---------------|
| Building | 6B2.4     | Façade: West  |
| Building | 6B2.4     | Façade: South |
| Building | 6B2.5 & 6 | Façade: West  |
| Building | 6B2.9     | Façade: East  |
| Building | 6B2.8     | Façade: South |

In addition, these facades shall not contain a blank façade greater than 30 feet in length.

- e. The submittal shall specify the approximate location of the mechanical equipment for each building and shall specify the method used for screening. Screening shall be in compliance with Section 14-16-3-18 (C)(5) of the General Building & Site Design Standards for Non-Residential Uses.
- f. The submittal shall contain a note specifying the exact number and location of outdoor seating that demonstrates compliance of Section 14-16-3-19 of the *Comprehensive City Zoning Code*. The design of the outdoor seating shall be demonstrated on the submittal and shall be complimentary of the design and material of the proposed buildings. The use of plastic furniture shall be avoided.
- g. The notation utilized for the proposed freestanding sign regarding stone veneer wainscot shall be corrected to remain consistent with the illustration of the entire sign, which demonstrates an entire coverage of stone veneer.

- h. The illustration of the 27' high freestanding signs on the submittal shall be substituted by nine-foot high freestanding signs. The design and construction of the nine-foot high freestanding sign shall be similar to the design provided for the 6' 3" high freestanding sign. The site development plan for subdivision shall be amended to reflect to remove the last two bullets under "Signage" and the illustration of the 27' high freestanding sign.
10. The applicant must comply with the following conditions of approval as specified by the City Engineer, the Department of Municipal Development, The Public Works Department and the NM Department of Transportation:
- a. All the requirements of previous actions taken by the EPC and/or the DRB must be completed and /or provided for.
  - b. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan for building permit. Those improvements will include any additional right-of-way requirements, paving, curb and gutter, sidewalk and ADA accessible ramps that have not already been provided for. All public infrastructure constructed within public right-of-way or public easements shall be to City Standards. Those Standards will include but are not limited to sidewalks (std. dwg. 2430), driveways (std. dwg. 2425), private entrances (std. dwg. 2426) and wheel chair ramps (std. dwg. 2441).
  - c. Completion of the required TIS mitigation measures (when determined), per Transportation Development Staff. Transportation mitigation measures may be accomplished through a combination of Transportation Impact Fees, the Impact Fees Regulations and the TIS recommendations.
  - d. Street B shall intersect with Coors Blvd. at no less than an 80 degree skew. Every effort should be made to provide a connection at 90 degrees.
  - e. Dedicated right turn deceleration lanes will be required at site drives per DPM and/or TIS requirements. Left turn lanes required at site drives where permitted and as approved.
  - f. Existing Learning Rd. will need to intersect with New Street /Winterhaven Rd. at no less than an 80 degree skew. Every effort should be made to provide a connection at 90 degrees.
  - g. Roundabouts will need to meet design requirements of Publications FHWA-RD-00-067 and AASHTO.
  - h. Medians within 100' calming area (Street A) will need to be designed to accommodate left turning vehicles. Will also need to meet AASHTO and DPM criteria (site distance). Provide detail for this area.
  - i. Provide detail and location of bump outs.
  - j. Provide cross sections for Streets A, B and New Street/Winterhaven Rd.
  - k. 10' radius curb returns may not be allowed in high volume traffic areas or in truck circulation areas (includes emergency vehicles and solid waste).
  - l. Site plan shall comply and be designed per DPM Standards.

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- m. Platting must be a concurrent DRB action.
  - n. Dedication of an additional 6 feet of right-of-way along Coors Boulevard, as required by the City Engineer, to provide for on-street bicycle lanes as designated on the Long Range Bikeways System.
  - o. Construction of the northbound bicycle lane along Coors Boulevard, adjacent to the subject property, as designated on the Long Range Bikeways System.
  - p. Dedication of additional rights-of-way, as necessary, and construction of the fourth northbound travel lane on Coors Boulevard adjacent to the subject property consistent with the *Coors Corridor Plan* (see figure 6).
  - q. Approval of the proposed left-in access from southbound Coors Boulevard to Street "B" by the Metropolitan Transportation Board (MTB) of the Mid-Region Council of Governments.
  - r. Access at Montano and Winterhaven will be restricted to right turn in/right turn out and left in as approved by the Director of Municipal Development. Must be accompanied by a written agreement between the applicant and the City Of Albuquerque.
  - s. A notation shall be added on the submittal that reads, "When the future grade separation is constructed access will no longer be allowed to Montano Road from Winterhaven consistent with the Long Range Roadway System."
  - t. Access coordination is required with NMDOT.
- 11. Prior to making application for DRB review, the applicant shall meet with Planning Staff to review the conditions of approval.
  - 12. The applicant shall notice two officers of each affected neighborhood associations by certified mail approximately two weeks prior to the submittal of this application to the DRB.
  - 13. The concrete rear outfall proposed on the submittal shall be designed and constructed in conjunction with the Open Space Division.
  - 14. Enlarge the windows in the tower with the width being the same as between the bottom bases of the tower elements and heights being adjusted accordingly.
  - 15. The site plan shall be modified to accommodate 6 motorcycle parking spaces and shall not reduce any off street parking spaces from the submittal.

IF YOU WISH TO APPEAL/PROTEST THIS DECISION, YOU MUST DO SO BY JULY 1, 2005 IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED. IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC'S RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC'S DECISION.

4879 047 96

OFFICIAL NOTICE OF DECISION  
JUNE 16, 2005  
PROJECT #1003859  
PAGE 12 OF 12

Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).

Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC

Sincerely,

  
Richard Dineen  
Planning Director

RD/JG/ac

cc: Consensus Planning, Inc., 924 Park Ave. SW, Albuquerque, NM 87102  
Rae Perls, La Luz Landowners Assoc., 15 Tennis Court NW, Albuquerque, NM 87120  
Bruce Masson, La Luz Landowners Assoc., 13 Arco NW, Albuquerque, NM 87120  
Don MacComack, Taylor Ranch NA, 5300 Hattiesburg NW, Albuquerque, NM 87120  
Ceil vanBerkel, Taylor Ranch Na, 5716 Morgan Ln. NW, Albuquerque, NM 87120  
Bill Jack Rodgers, 8308 Cedar Creek Dr. NW, Albuquerque, NM 87120  
Lynn Perls, 500 4<sup>th</sup> St. NW, Ste 205, Albuquerque, NM 87102  
Frank Hale, 5 Tennis Court NW, Albuquerque, NM 87120  
Lois Sloan, 21 Tennis Court NW, Albuquerque, NM 87120  
Rene Horvath, 5515 Palomino Dr. NW, Albuquerque, NM 87120  
Susan Shotland-Rodriguez, 7224 Carson Trail NW, Albuquerque, NM 87120

# TIMOTHY V. FLYNN-O'BRIEN

Attorney at Law  
817 Gold Avenue SW  
Albuquerque, New Mexico 87102-3014  
Phone: 505-242-4088 / Fax: 866-428-7568

June 5, 2013

Mr. Jack Cloud, DRB Chairman  
City of Albuquerque  
Planning Department  
600 2nd Street NW  
Albuquerque, New Mexico 87102

RE: Project No. 1003859  
04EPC-01844  
DRB Signoff on 2005 plan

Dear Mr. Cloud:

I am sending this on behalf of Taylor Ranch Neighborhood Association. I understand that Silver Leaf or an agent is circulating to DRB what purports to be the above referenced site plan for building permit approved on June 16, 2005. See Official Notification of Decision dated June 17, 2005 (copy attached). This site plan has not, I understand, had a major amendment. In fact it is my understanding that the developer abandoned the plan. In any case, for the reasons set forth herein, I believe the plan has terminated and cannot now be signed-off by DRB.

If less than one-half of the approved square footage has been built, the Zoning Code provides that a site plan terminates "seven years after adoption or major amendment of the plan..." ZC 14-16-3-11(C). There has been no development pursuant to this site plan so the plan terminated seven years after approval, or on June 16, 2012, and cannot now receive sign-off. No signatures should be affixed to the plan at this time as there is, because of automatic termination, no current EPC approved plan. Any DRB signoff at this point (or signoff by other agencies) would be void and in violation of the Zoning Code.

I have heard rumors that some are claiming or asserting that the seven year termination does not begin to run until there is final DRB signoff. Section 14-16-3-11(C) states that plans terminate "seven years *after adoption*" of the plan. DRB does not adopt SU-1 site plans for building permits—that authority resides with the EPC so the words "after adoption" refer to EPC approval. Note also that the zoning code provides that a major amendment is an amendment *adopted by the EPC* indicating that the date referred to in §14-16-3-11(C) is the date of EPC adoption or amendment. Under the plain language of the ordinance the site plan terminated seven years after EPC approval. The assertion that the seven years does not start to run until DRB signs off is also inconsistent with the purpose of the ordinance. The purpose of §14-16-3-11(C) is to terminate site plans so that development is subject to current plans. To allow a



developer to obtain a "back pocket" extension by not submitting to DRB is contrary to the intent of the ordinance.

I also note that the EPC Notification of Decision from 2005 contains Conditions. Condition #12 states:

The applicant shall notice two officers of each affected neighborhood associations [sic] by certified mail approximately two weeks prior to the submittal of this application to the DRB.

TRNA and La Luz Associations only heard about the rumored circulation of the old plan from staff on May 29, 2013 at a meeting on another subject.<sup>1</sup> They have not received certified mail notice. I assume that DRB will not take action because the plan has terminated but, in any case, will ensure full compliance with Condition #12 before proceeding.

I reviewed all DRB agendas for 2013 and 04 EPC 01844 (Project 1003859) did not appear. I assume, therefore, there has been no DRB action.

I would appreciate an update on this matter so that we know if 04 EPC 01844 has been presented to DRB, if the City has taken a position on the site plan's termination etc. In addition, please notify TRNA, La Luz and me of any proposed action concerning this plan.

Thank you for your attention. If you have any questions, please let me know.

Very truly yours,



Timothy V. Flynn-O'Brien

TVFOB/mlg

Enclosure as stated

cc: Rene' Horvath  
Rae Pearls  
Kevin Curran  
Blake Whitcomb

---

<sup>1</sup> At the time we received informal notice we were told that all the signatures except Mr. Cloud's had been obtained. The copy of the site plan we obtained from planning on May 31, 2013, however, has only one DRB signature. That sign-off is from Solid Waste and is dated January 17, 2006. If there is another copy of the plan with additional signatures please provide a copy so that we can make a decision as to whether an appeal is necessary. Since the copy provided to us has no signatures after 2006 I am assuming that is the status quo.



# TIMOTHY V. FLYNN-O'BRIEN

Attorney at Law  
817 Gold Avenue SW  
Albuquerque, New Mexico 87102-3014  
Phone: 505-242-4088 / Fax: 866-428-7568

June 25, 2013

Ms. Suzanne Lubar, Planning Director  
City of Albuquerque Planning Department  
Plaza del Sol  
600 Second Street NW  
Albuquerque, New Mexico 87102

RE: Project No. 1003859  
04EPC-01844

Dear Ms. Lubar:

It is my understanding that you are considering issuing a determination as to when the seven (7) year time period for expiration of site plans begins to run under ZC §14-16-3-11. This issue arises because Silver Leaf is requesting final sign off on a 2005 site development plan for building permit despite the fact that the plan approval terminated because there has been no development for over seven (7) years. I expressed my opposition to sign off at this time in a letter to Mr. Jack Cloud dated June 5, 2013 (copy attached). It has now been suggested by some that the time for plan termination should not start until final DRB sign off instead of the date the plan was adopted by EPC. This "interpretation" is wrong under the plain language of the ordinance, is inconsistent with City Council policy and inconsistent with Planning's written notices in this and other cases.

The property in this case is zoned SU-1. Before issuing any determination, please consider:

1. The property is zoned SU-1.

The site development plan for building permit was approved by the EPC on June 16, 2005 (Notice of Decision dated June 17, 2005). On January 25, 2006 the Development Review Board gave final approval to the site plan for building permit. Both approval dates are more than seven (7) years ago. There had been no final sign off as of June 5, 2013, the date of my letter to Mr. Cloud so the developer failed to do anything for over seven (7) years.

2. The Planning Director is required to provide information concerning plan termination at the time an initial plan is approved. §14-16-3-11(C)(1)(a). That information was provided for the 2005 site plan in the June 17, 2005 Notice of Decision. See Notice of Decision ("Successful

applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated seven (7) years "after approval by the EPC." (Emphasis added) (copy attached). Thus it is clear that the Planning Department has historically interpreted the date of the EPC Decision as the start date for the seven (7) year plan termination. [Also attached hereto is another Notice of Decision for another case (2009) with the same statement that plan approval is terminated seven (7) years after approval by the EPC.]

3. The interpretation that the seven (7) years does not start until the final DRB sign off is inconsistent with the purpose of §14-16-3-11 which is to allow the City, after seven (7) years, to evaluate an undeveloped site plan under current adopted plans and current conditions, including current traffic conditions. See §14-16-3-11(C)(1)(c). It is my understanding that, for example, the 2005 site plan does not meet the View Preservation requirements of the Coors Corridor Plan as measured today under the current Coors configuration. This is precisely why the City Council adopted plan termination, that is, so that current plans and policies could be applied to development. The site plan can be resubmitted but then would be subject to a public hearing.

4. Silver Leaf submitted a new proposed site plan for this same site which constituted waiver, abandonment and withdrawal of the 2005 unsigned off plan.

5. Silver Leaf failed to obtain final sign off within six (6) months of DRB approval on January 25, 2006. The failure to obtain approval within a reasonable time constitutes waiver. See §14-16-4-1(C)(11). Since the permitted uses are recorded on the zone map (§14-16-2-22(A)(2)), §14-16-4-1(C)(11) applies.

6. Section 14-16-3-11 refers to the date of adoption. The EPC adopts site plans, not the City official who last signs the plan. In this case both the public hearings and decision by the EPC and DRB were more than seven years ago. There was no effort to obtain sign off for over seven (7) years and Silver Leaf abandoned the plan. The law implies a reasonable time in which to perform. *Western Commerce Bank v. Gillespie*, 108 NM 535, 775 P.2d 737, 739 (NM 1989).

The policy implications of latching onto a date over which the City has no control and which is inconsistent with City Council intent cannot be understated. If you chose the sign off date instead of the date of adoption by the EPC, some site plans for subdivision and building permit dating back to 1976 (which were long ago considered terminated) will be resurrected even through inconsistent with current area and sector plans.

Ms. Suzanne Lubar, Planning Director  
June 25, 2013  
Page 3 of 3

Please include this letter and attachments in the record of both in any decision on the site plan and any decision by the Planning Director or code enforcement or other official interpreting this. §14-16-3-11.

Very truly yours,



Timothy V. Flynn-O'Brien

TVFOB/mlg

Enclosures as stated

cc: Blake Whitcomb  
Kevin Curran  
Carmen Marrone  
Jenica Jacobi  
Brennan Williams  
Jim Strozier

Attachments:

- ✓1. My letter to Jack Cloud of June 5, 2013.
- ✓2. EPC Notice of Decision Project 1003859 (04EPC01544 Site Review Plan-Building Permit) June 17, 2005 ("Generally Planning approval is terminated 7 years after plan approved by EPC.")
- ✓3. DRB Minutes (Project #1003859 06DRB-00074 Site Development Plan Building Permit) January 25, 2006
- ✓4. EPC Notice of Decision Project 1000264 February 2, 2009 with language "Generally plan approval is terminated 7 years after approval by the EPC."
- ✓5. 2012 Staff Report Project 1003859 referring to the then proposed site development plan as replacing the 2005 EPC approved site development plan.
- ✓6. May 20, 2005 EPC Decision on Subdivision. This is attached (1) because it was suggested that permanent improvements to transportation facilities may have been required by the site plan for building permit not the subdivision plan. This indicates that the improvements were required by the site plan for subdivision. *See* condition No. 5. (2) Note also that the notice refers to plan termination *7 years after approval by the EPC.*



Tim

**DEVELOPMENT REVIEW BOARD MINUTES  
JANUARY 25, 2006**

The following are comments/recommendations and decisions made on requests scheduled for the January 25, 2006, Development Review Board meeting.

\*\*\*\*\*  
Item 1 was deferred at the agent's request to February 22, 2006.  
Item 2 was deferred at the agent's request to February 1, 2006.  
Item 12 was deferred at the agent's request to February 8, 2006.  
\*\*\*\*\*

**CASES WHICH REQUIRE PUBLIC NOTIFICATION INCLUDING MAJOR  
SUBDIVISIONS, VACATIONS, SIA EXTENSIONS AND SITE DEVELOPMENT PLANS**  
\*\*\*\*\*

- ~~1. **Project # 1000696**  
05DRB-01529 Major-Preliminary Plat Approval  
05DRB-01530 Minor-Sidewalk Waiver  
05DRB-01531 Minor-Temp Defer SDWK~~

~~MARK GOODWIN & ASSOCIATES agent(s) for ICDC LLC request(s) the above action(s) for all or a portion of Tract(s) C, LEE'S BOSQUE SUBDIVISION (to be known as **BOSQUECITO SUBDIVISION**) zoned RD, located on BOSQUE MEADOWS BLVD NW, between LA ORILLA NW and PASEO DEL NORTE containing approximately 7 acre(s). [Deferred from 10/26/05 & 11/9/05 & 11/23/05 & 11/30/05 & 1/4/06 & 1/25/06] (D-12)~~

~~Neither the applicant nor the agent were present.~~

~~The following action was taken:~~

~~The above request was deferred at the agent's request to February 22, 2006.~~

- ~~2. **Project # 1004282**  
05DRB-01061 Major Preliminary Plat Approval~~

~~GARCIA/KRAEMER & ASSOCIATES agent(s) for PAT MILLIGAN request(s) the above action(s) for all or a portion of Lots(s) A-1, B-1, C-1, D-1, E-1, F-1, H-1, J-1, K-1, **ALAMOSA ADDITION**, zoned R-T residential zone, located on TRUJILLO RD SW, between 62<sup>nd</sup> ST SW and BATAAN DR SW containing approximately 2 acre(s). [Deferred from 7/20/05 & 7/27/05 & 1/11/06 & 1/18/06 & 1/25/06] (K-11)~~

SURVEYS SOUTHWEST LTD agent(s) for PEGGY DASKALOS request(s) the above action(s) for all or a portion of Lot(s) 1-5, 28-32, Block(s) 21, Tract(s) A, NORTH ALBUQUERQUE ACRES - UNIT A, zoned SU-2 / Mixed Use, located on PASEO DEL NORTE NE, between WYOMING BLVD-NE and PALOMAS AVE NE containing approximately 6 acre(s). [REF: Z-98-141,AX-98-16] [Was Indef Deferred 7/31/02. [Indef deferred on 1/25/06] (D-19)

Infrastructure needs to be tied to the platting action in addition to the building permit. Where is the public roadway easement on the plat? Applicant needs to provide a copy of the MTB resolution granting the access from Paseo. Why is there a 10-foot asphalt path along Wyoming? This should be a 6-foot concrete sidewalk at the property line. Where is the public roadway easement infrastructure? The site plan requires an acceleration lane. Where is the infrastructure? Palomas should be a minimum of 24' wide. Sidewalk width needs to be listed on the infra. list. The throat width at Wyoming should be listed separately. Where are the medians on Palomas? Does the TIS identify any offsite measures?

An approved conceptual grading and drainage plan is required for site lan sign off by the City Engineer. An approved infrastructure list is required for preliminary plat and site plan approval.

The above request was indefinitely deferred at the agent's request.

**6. Project # 1003859**  
06DRB-00074 Minor-SiteDev Plan BldPermit/EPC

CONSENSUS PLANNING agent(s) for SILVERLEAF VENTURES LLC request(s) the above action(s) for all or a portion of Tract(s) 2 & 3, LANDS OF NORTH ANDALUCIA, zoned SU-1, 0-1, C-2 AND PRD, located on COORS BLVD NW, between MONTANO RD NW and LEARNING RD NW containing approximately 15 acre(s). [REF: 04EPC-01844] [Juanita Garcia, EPC Case Planner] (E-12/ F-12)

The decel lane on Montano is required and SHPO clearance is needed prior to approval. The ADA ramps need to be within a public sidewalk easement. Many of the aisle widths do not meet DPM criteria. It appears that the roundabouts will require additional dedication. Has the NMDOT approved the second (north) Coors access point? Radii need to meet DPM criteria.

See EPC Case Planner comments in the DRB case file.

The site plan for building permit was approved with final sign off delegated to Transportation Development to address comments and Planning for Juanita Garcia's initials, SHPO approval and 3 copies of the site plan.



City of Albuquerque  
Planning Department  
Development Review Division  
P.O. Box 1293  
Albuquerque, New Mexico 87103

Date: February 20, 2009

## OFFICIAL NOTIFICATION OF DECISION

FILE: Project # 1000264  
07EPC-40097 AMEND SITE DEVELOPMENT PLAN  
- BLD PRMT

West Bluff Center, L.L.C.  
6211 San Mateo NE, Ste. 130  
Albuquerque, NM 87109

LEGAL DESCRIPTION:  
TIM FLYNN-O'BRIEN, ESQUIRE agents for WEST  
BLUFF CENTER LLC requests the above actions for  
all or a portion of tracts 10-12, WEST BLUFF zoned  
C-2 located on COORS BLVD NW NORTH OF  
OURAY containing approximately 6 acres. (H-11)  
Carol Toffaleti, Staff Planner

On February 19, 2009 the Environmental Planning Commission voted to **APPROVE** Project 10001264/  
07EPC-40097, a Site Development Plan for Building Permit Amendment for all or a portion of tracts 10-12,  
WEST BLUFF zoned C-2, based on the following Findings and subject to the following Conditions:

### FINDINGS:

1. The request is to amend a site development plan for building permit for Tracts 10, 11 and 12, West Bluff Center, a site of approximately 6 acres located on Coors Blvd. NW north of Ouray Road zoned C-2 (SC). The applicant proposes to add a 52 ft bell-tower to an existing building and mount a sign on two facades of the tower, with sign faces of 125 sf each and a maximum height of 40 ft. An existing free-standing sign will be removed.
2. The applicant is requesting signs that are higher and larger than normally allowed so that they are visible from the section of Coors Blvd that is elevated above Ouray Road. The LED (light emitting diode) signs would be used to advertize shops and services in the shopping center, including businesses outside the subject site.
3. The subject site is in the Established Urban area of the Comprehensive Plan, within the boundaries of the West Side Strategic Plan (Rank II) and in Segment 2 of the Coors Corridor Sector Development Plan (Rank III).

**PROTEST: IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC'S RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC'S DECISION, WHICH IS BY MARCH 6, 2009.**


**APPEAL: IF YOU WISH TO APPEAL A FINAL DECISION, YOU MUST DO SO BY MARCH 6, 2009 IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED.**

**Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.**

**YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).**

**Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC.**

Sincerely,

  
For Richard Dineen  
Planning Director

RD/CT/ma





**Environmental  
Planning  
Commission**

**Agenda Number: 2  
Project Number: 1003859  
Case #: 11EPC-40067/40068 and  
04EPC-01845  
January 19, 2012**

**Staff Report**

|                          |                                                                                                                                                                                                                                                                                                                            |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Agent</b>             | Tierra West LLC                                                                                                                                                                                                                                                                                                            |
| <b>Applicants</b>        | Silver Leaf Ventures LLC                                                                                                                                                                                                                                                                                                   |
| <b>Requests</b>          | <ol style="list-style-type: none"> <li>1 5-year extension of a Site Development Plan for Subdivision, Tracts 1-9, North Andaluca at La Luz, 04EPC-01845</li> <li>2 Site Development Plan for Subdivision Amendment (approx. 24 acres)</li> <li>3 Site Development Plan for Building Permit (approx. 11.5 acres)</li> </ol> |
| <b>Legal Description</b> | Tracts 1-6, North Andaluca at La Luz<br>Tracts 1-3, North Andaluca at La Luz                                                                                                                                                                                                                                               |
| <b>Location</b>          | SE corner of Coors Blvd. NW and Montañño Rd.                                                                                                                                                                                                                                                                               |
| <b>Size</b>              | Approximately 60 acres                                                                                                                                                                                                                                                                                                     |
| <b>Zoning</b>            | SU-1 for C-2, O-1 Uses and PRD (20 dwelling units/acre)                                                                                                                                                                                                                                                                    |

**Staff Recommendation**

**APPROVAL of 04EPC-01845, to extend the life of a Site Development for Subdivision, based on the Findings beginning on p. 50.**

**DEFERRAL of 11EPC-40068, Site Development Plan for Subdivision Amendment, based on the Findings beginning on p. 51, for 60 days.**

**DEFERRAL of 11EPC-40067, Site Development Plan for Building Permit, based on the Findings beginning on p. 54, for 60 days.**

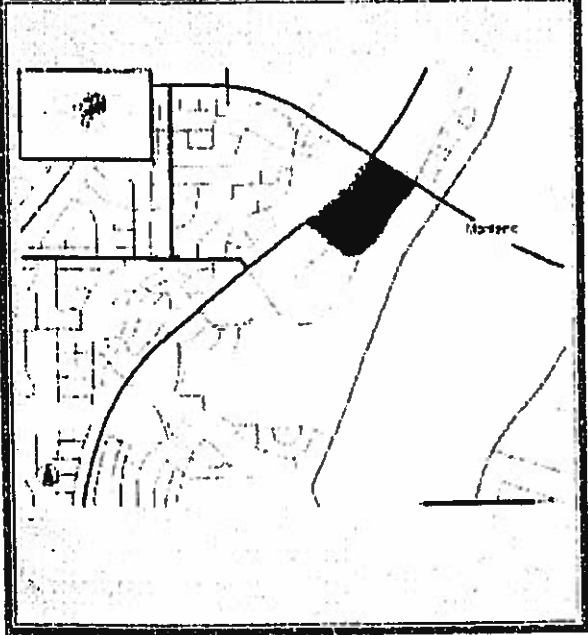
**Staff Planners  
Carmen Marrone, Current Planning Manager  
Catalina Lehner-AICP, Senior Planner**

**Summary of Analysis**

The proposal is for an extension of the North Andaluca at La Luz site development plan for subdivision, an amendment to it, and a site development plan for building permit for a Large Retail Facility (LRF). The zoning allows the proposed use.

The subject site is in the Established Urban and Developing Urban areas as designated by the Comprehensive Plan. The West Side Strategic Plan and the Coors Corridor Sector Development Plan apply. Overall, the proposal partially furthers applicable Goals and policies. The proposed LRF is required to comply with the North Andaluca at La Luz design standards and the LRF Regulations.

Two facilitated meetings were held. Neighborhood organizations are mostly opposed and concerned about traffic, environment, school proximity, views, design, crime, safety, and number of stores in the area. Staff recommends a 60 day deferral to address outstanding issues and comments, and to improve compliance with applicable policies, standards and regulations.



City Departments and other interested agencies reviewed this application from 10/29/11 to 11/9/11.  
Agency comments used in the preparation of this report begin on Page 59.

**I. AREA CHARACTERISTICS**

*Surrounding zoning, plan designations, and land uses:*

|              | <b>Zoning</b>                                                                                                                                       | <b>Comprehensive Plan Area;<br/>Applicable Rank II &amp; III Plans</b>                                                 | <b>Land Use</b>                                                                            |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| <b>Site</b>  | SU-1 for C-2, O-1 Uses and PRD (20 DU/ac)                                                                                                           | i) Established Urban & Developing Urban<br>ii) West Side Strategic Plan<br>iii) Coors Corridor Sector Development Plan | Vacant                                                                                     |
| <b>North</b> | C-2, C-2 (SC), SU-1 for C-1 Permissive & Conditional Uses & Full-Service Liquor within 500 feet of a Residential Zone                               | i) Established Urban & Developing Urban<br>ii) West Side Strategic Plan<br>iii) Coors Corridor Sector Development Plan | Commercial, shopping center                                                                |
| <b>South</b> | SU-1 for School & Related Facilities, SU-1 for School Recreation & Private Open Space, SU-1 for PRD (10DU/ac), SU-1 PRD                             | i) Established Urban & Developing Urban<br>ii) West Side Strategic Plan<br>iii) Coors Corridor Sector Development Plan | Vacant, school recreation facilities, single-family residential                            |
| <b>East</b>  | SU-1 for Major Public Open Space, SU-1 for Public Utility Facility, SU-1 for C-2, O-1 Uses and PRD (20 DU/ac), SU-1 for School & Related Facilities | i) Developing Urban<br>ii) West Side Strategic Plan<br>iii) Coors Corridor Sector Development Plan                     | School, school facilities, ponding area, open space, Bosque east across the Corrales Drain |
| <b>West</b>  | C-2, R-2, R-T, SU-1 PRD (10 DU/ac)                                                                                                                  | i) Established Urban<br>ii) West Side Strategic Plan<br>iii) Coors Corridor Sector Development Plan                    | Commercial<br>Multi-Family Residential<br>Single-Family Residential                        |

**II. INTRODUCTION**

**Proposal**

This is a three-part proposal for: 1) a five-year extension of the existing North Andalucia at La Luz site development plan for subdivision, Tracts 1-9 (Project #1003859, 04EPC-01845); 2) an amendment to this site development plan for subdivision, an approximately 60 acre site consisting of Tracts 1 – 6, North Andalucia at La Luz; and 3) a site development plan for building permit for a large retail facility (LRF, or “big box” retail) on the future Tract 2-A, an approximately 11.5 acre site (the “subject proposal”).

The applicant proposes to extend the existing site development plan for subdivision, which contains design standards, and amend it as follows: subdivide Tract 1 into four Tracts, subdivide Tract 2 into three tracts, and create a new Tract 3A to replace the existing Tract 3. The associated, proposed site development plan for building permit would allow development of a large retail facility (LRF) on the future Tract 2-A.

---

***Environmental Planning Commission (EPC) Role***

The EPC is the final approval body for the subject proposal, unless the EPC decision is appealed. The North Andalucia at La Luz Design Standards, contained in that site development plan for subdivision, state that subsequent site development plans for building permit must be consistent with the design standards and approved by the EPC. Major amendments are also required to go through the EPC process.

***Context***

The approximately 60 acre subject site is in the Established Urban Area (the western, approx. half) and the Developing Urban Area (the eastern, approx. half) of the Comprehensive Plan. The entire subject site is within the boundaries of the West Side Strategic Plan (WSSP) and the Coors Corridor Sector Development Plan (CCSDP). A portion of the subject site, mostly north of Mirandela St., is located in a designated Activity Center, the Montaño/Coors Community Activity Center. The subject site is not located in a Metropolitan Redevelopment Area (MRA).

The subject site consists of land at the SE corner of Coors Blvd. and Montaño Rd., from Montaño Rd. south to Mirandela St., and west of Mirandela St. Surrounding the subject site are a variety of uses, including: a shopping center and various commercial uses to the north, single-family residences to the north across Montaño Rd. and further south at the La Luz community, multi-family residences across Coors Blvd. A private school, ponding area and open space are located between Mirandela St. and the Corrales Drain, which is between these uses and the Bosque (the "forrest") to the east. The Bosque is designated Major Public Open Space (MPOS).

***Long Range Roadway System***

The Long Range Roadway System (LRRS) map, produced by the Mid-Region Council of Governments (MRCOG), identifies the functional classifications of roadways.

Coors Blvd. is a Principal Arterial with a right-of-way (ROW) of 156 ft. Montaño Rd. is an Urban Minor Arterial with a ROW of 106 ft. Mirandela Rd. and Learning Rd. are local streets.

The Albuquerque Bikeway Map (2011) indicates that Coors Blvd., Montaño Rd. and Mirandela St. are designated bicycle lane. Learning Rd. has a designated bicycle lane and a designated multi-use trail.

Transit: Albuquerque Ride Route #790-Rapid Ride Blue Line (westside to UNM), Route #155-Coors and Route #96-Crosstown commuter, pass the subject site on Coors Blvd. in the north-south direction. Route #157- Montaño/Uptown/Kirtland, runs west-east on Montaño Rd.

The Comprehensive Plan designates Coors Blvd. and Montaño Rd. as Enhanced Transit Corridors.

***Public Facilities/Community Services***

The subject site is close to several public and community facilities. A Fire Station and a Community Center are approx. 0.7 mile to the northwest. Two parks are near the fire station and a larger park is north of the community center. The Pueblo Montaño trailhead facility northeast of the site provides access to the Bosque. The Northwest Area Command, at 4051 Ellison Avenue NW (across from Cibola High School), provides police coverage.

**III. HISTORY**

***Annexation/Zoning***

The subject site was part of the Northwest Mesa Phase III annexation, which occurred in 1985 and consisted of approximately 1000 acres of Westside land (Z-85-138). Zoning was established as SU-1 for C-2 Uses, O-1 Uses and PRD (10 DU/acre).

In August 2003, the site was rezoned to SU-1 for C-2 (23.3 acres max.), O-1 (11.7 acres max.) and PRD (20 du/acre max.). The EPC found the increased residential density was appropriate given the proximity of the site to the Montañño/Coors Activity Center, at the north end of the site (Project #1000965, 03EPC-01102)

***Site Development Plan for Subdivision***

The subject site was originally part of a much larger site development plan for subdivision known as Andalucia at La Luz, approximately 228 acres extending from Montañño Rd. on the north to Namaste Rd. on the south, and from Coors Blvd. on the west to the Corrales Drain on the east. In February of 2001, the Environmental Planning Commission (EPC) approved a zone map amendment and a site development plan for subdivision, for the entire subdivision (Project #1000965, 00EPC-01743).

In January of 2005, the EPC approved a site development plan for subdivision to subdivide Andalucia at La Luz into two distinct subdivisions separated by Learning Road – Andalucia North and Andalucia South (Project #1003859, 04EPC-01845). Andalucia North was subdivided into 9 tracts. The La Luz Landowners Association appealed the EPC decision. On March 15, the Land Use Hearing Officer recommended that the City Council remand the case to the EPC to make a more complete record and findings. Another facilitated meeting was also recommended. The City Council voted unanimously to accept the LUHO recommendation. At the remand hearing on May 19, 2005, the EPC approved the request based on an improved set of findings (see attachment). The design standards approved in 2003 apply to development in Andalucia North and South.

The site development plan for subdivision received final sign-off by the Development Review Board (DRB) on September 16, 2005. Pursuant to §14-16-3-11(C) of the Zoning Code, if less than one-half of the site has been developed since approval of the site development plan, the site development plan for the undeveloped areas shall terminate automatically unless the property owners request in writing, through the Planning Director, that the EPC extend the plan's life an additional five years. The applicant is requesting a 5-year extension of the site development plan for subdivision for EPC approval (Project #1003859, 04EPC-01845) as part of the overall request.

***Site Development Plan for Subdivision Amendments***

The North Andalucia at La Luz Site development plan for Subdivision (Project #1003859, 04EPC-01845) has been amended twice since 2005. The September 2007 amendment was to create a roundabout at the intersection of Learning and Antequera Roads and to reflect the location of the archaeological sites, as field verified. The June 2008 amendment (Notice of Decision attached) was to remove Tracts 7, 8 and 9 from this site development plan for subdivision and consolidate the three tracts into the Bosque School site development plan for subdivision (Project #1000901, 08EPC-40051).

***Site Development Plan s for Building Permit at Andalucia North***

In June of 2005, the EPC approved a site development plan for building permit to include 140,000 square feet of commercial development on Tracts 2 and 3 of the subject site. The La Luz Landowners Association appealed the EPC decision; however, an agreement was reached with the Association and they withdrew the appeal prior to City Council action. The site development plan was submitted to the DRB but never received final sign-off. The current request for site development plan for building permit will replace the 2005 EPC approved site development plan for building permit and will update the Traffic Impact Study provided in 2007. ←

On November 17, 2005, the EPC unanimously approved a site development plan for building permit for multi-family residential development on Tracts 4 and 6, immediately south of the subject site. The La Luz Landowners Association appealed the EPC decision, however, prior to the scheduled hearing on the appeal, the Association withdrew the appeal based on an agreement between the applicant and the Association that resolved the outstanding issues in the case. The site development plan received final sign-off by the DRB in March of this year and the new property owner is planning to begin construction of apartments on Tract 6 in the spring of 2012.

On November 2011, the EPC approved a zone map amendment from SU-1/O-1 to SU-1/O-1 including Bank & Drive-up Service and a site development plan for building permit to allow development of a drive up bank on Tract 5, located at the northeast corner of Coors & Learning Road.

#### **IV. ANALYSIS- ZONING & GOVERNING SITE DEVELOPMENT PLAN FOR SUBDIVISION**

##### **ALBUQUERQUE COMPREHENSIVE ZONING CODE**

##### ***Definitions (§14-16-1-5)***

**Large Retail Facility (LRF).** A single tenant structure with at least 75,000 square feet of net leasable area for the purpose of retailing. A Shopping Center Site with a Main Structure of 75,000 square feet or more is a Large Retail Facility. Refer to §14-16-3-2 for Large Retail Facility Regulations.

**Pedestrian Plaza (Outdoor Courtyard).** An outdoor public space that contains seating and shade and is typically privately owned and maintained.

**Retail Suite Liner.** A retail suite connected to and extending from the front or side of a Main Structure for the purpose of screening.

**Shopping Center Site:** A premises containing five or more acres; zoned P, C-1, C-2, C-3, M-1, M-2, or a combination thereof; or a Large Retail Facility; but excluding premises used and proposed to be used only for manufacturing, assembling, treating, repairing, rebuilding, wholesaling, and warehousing. Shopping Center Sites are subject to the Shopping Center Regulations of the Zoning Code, 14-16-3-2.

**Site Development Plan for Subdivision:** An accurate plan at a scale of at least 1 inch to 100 feet which covers at least one lot and specifies the site, proposed use, pedestrian and vehicular ingress and egress, any internal circulation requirements and, for each lot, maximum building height, minimum building setback, and maximum total dwelling units and/or nonresidential uses' maximum floor area ratio.

##### ***Zoning***





City of Albuquerque  
Planning Department  
Development Review Division  
P.O. Box 1293  
Albuquerque, New Mexico 87103

Date: May 20, 2005

**OFFICIAL NOTIFICATION OF DECISION**

FILE: Project # 1003859  
04EPC-01845 EPC Site Development Plan-  
Subdivision

Silverleaf Ventures, LLC  
5351 Menaul Blvd NE  
Albuquerque, NM 87110

**LEGAL DESCRIPTION:** for all or a portion of Tract(s) A & 6B, Lands of Ray Graham III, Ovenwest Corp., zoned SU-1, O-1, C-2 and PRD, located on COORS BLVD. NW, between MONTANO ROAD NW and LEARNING ROAD NW, containing approximately 70 acre(s).  
(E-12) Juanita Garcia, Staff Planner

On May 19, 2005 the Environmental Planning Commission voted to approve Project 1003859/#04EPC-01845, a Site Development Plan for Subdivision, based on the following Findings and subject to the following Conditions:

**FINDINGS:**

1. This is a request for a site development plan for subdivision for Tracts 6B & A, Lands of Ray Graham III, Ovenwest Corp., and COA. The site is located on Coors Blvd, south of Montano, zoned SU-1 C-2 Use (23.3 Acres Max), O-1 Uses (11.7 acres max) and PRD (20 DU/Acre) and contains approximately 70 acres.
2. The site was originally part of a larger site development plan (Project 1000965) known as Andalucia, but the applicant has requested to be separated from that larger site development plan to create a new site development plan (Project 1003859). A new name has been provided for the subject site, which will be identified as "North Andalucia at La Luz."
3. The applicant is proposing to re-plat the two separate tracts into nine new tracts and no zone map amendments are proposed with this request. The applicant is proposing design guidelines within the site development plan for subdivision that will help guide for consistency and a quality that is complementary of the subject site area.
4. The applicant's submittal demonstrates that future Tracts 6B-1 and 6B-2 will contain C-2 uses; Tracts 6B-3 and 6B-5 will contain O-1 uses and Tracts 6B-4, 6B-6, 6B-7, 6B-8 and 6B-9 will

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contain PRD uses. Based on the information that has been provided on the submittal, it appears that the applicant will have 22.51 acres of C-2 uses, 5.05 acres of O-1 uses and 34.98 acres of PRD uses.

5. This case was heard by EPC at the January 20, 2005 all day EPC hearing and was approved with findings and conditions but was appealed by the La Luz Landowners Association and was heard by the Land Use Hearing Officer (LUHO) who recommended that this application be remanded back to EPC to allow for a more "a more thorough record and make findings regarding the proposed streets and traffic flows and patterns." The recommendation was approved by City Council; therefore, this case has been remanded back to the EPC.
6. Since the January 20, 2005 EPC hearing, comments made by the Department of Municipal Development (DMD) have been separated from the consolidated comments provided by the Traffic Engineer. While the DMD recommended a deferral, the negotiations regarding traffic mitigation measures are more appropriately performed prior to Development Review Board (DRB) sign-off of the Site Development Plan for Subdivision.
7. The subject site is located in the area designated Established Urban and Developing Urban by the *Comprehensive Plan*. The submittal meets the goals of these areas by creating a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work area and life styles, while creating a visually pleasing built environment. The submittal furthers the policies of the *Comprehensive Plan* as follows:
  - a. The location, intensity and design of this development respects existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural or recreational concern (Policy 5d, *Comprehensive Plan*). The proposed plan will not have deleterious impacts on surrounding uses, established neighborhoods, or community amenities.
  - b. This request proposes to locate employment and service uses to complement residential areas and to site the development in a way that minimizes adverse effects of noise, lighting pollution, and traffic on residential environments (Policy 51, *Comprehensive Plan*).
  - c. This request constitutes new growth that will be accommodated through development in an area where vacant land is contiguous to existing or programmed facilities and services and where the integrity of existing neighborhoods can be ensured. (Policy 5e, *Comprehensive Plan*). This request represents new commercial development and is located in an existing commercially zoned areas (Policy 5j, *Comprehensive Plan*).
  - d. The subject site is adjacent to arterial streets and is planned to minimize harmful effects of traffic, livability and safety of established residential neighborhoods (Policy 5k, *Comprehensive Plan*).

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- e. The site plan represents a quality and innovative design which is appropriate to the plan area (Policy 51, *Comprehensive Plan*).
  - f. This request represents redevelopment and rehabilitation of an older neighborhood in the Established Area (Policy 50, *Comprehensive Plan*).
8. This request is within a Community Activity Center as designated by the Centers and Corridors section of the *Albuquerque/Bernalillo County Comprehensive Plan*. The submittal furthers the Polices of the Community Activity Center designation as follows:
- a. The request helps to shape an urban form in a sustainable development pattern that helps to promote transit and pedestrian access both to and within the center, and maximizes cost-effectiveness of City services (*Comprehensive Plan*, Policy II. B. 7. a).
  - b. This request will assist in the development of a Community Activity Center as defined by the *Comprehensive Plan* by providing the primary focus for the entire community sub-area with a higher concentration and greater variety of commercial and entertainment uses in conjunction with community-wide services, employment, and the most intense land uses within the community sub-area.
  - c. This request will also assist in the development of a Community Activity Center as defined by the *Comprehensive Plan* by allowing the location of land uses typical of a low-rise office, educational facilities, medium density residential, senior housing and other similar uses.
  - d. This request meets the policies of the *Comprehensive Plan* by providing moderate floor area ratios and urban land uses and pedestrian connections between buildings and sidewalks, buildings separating off-street parking from streets and public plaza and open space (*Comprehensive Plan*, Activity Center Goal, Policy A, Community Activity Centers).
  - e. The subject site contains high-density residential property. The *Comprehensive Plan* is furthered in that the most intense activity centers uses are proposed to be located away from any nearby low-density residential development and is buffered from those residential uses by a transition area of less intensive development (Policy II. B. 7. f.).
9. **Transportation:**
- a. A Traffic Impact Study (TIS) was completed by the applicant in October of 2004 and has been reviewed by the Planning Department (Transportation Development) and the Department of Municipal Development (DMD). The study was conducted in accordance with the scoping letter and procedures cited in the City's Development Process Manual.
  - b. In addition, in March of 2005, a Supplemental Traffic Analysis was provided by the applicant to support the access approved at the intersection of Street B and Montano Road.
  - c. Coors Boulevard is a limited access, principal arterial with proposed bicycle lanes as designated on the Long Range Roadway System and Long Range Bikeways System.



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- d. The City Engineer may require up to six (6) additional feet of right-of-way on Coors Boulevard to accommodate the designated bicycle lane.
  - e. The ultimate cross-section for Coors Boulevard adjacent to the proposed site includes 4 northbound travel lanes consistent with the Coors Corridor Plan (see figure 6).
  - f. Consistent with the Coors Corridor Plan intersection access policy (see policy 5), access approximately midway between Montano Road and Dellyne Avenue at Street "B" is right-in, right-out only.
  - g. Exceptions to the access policy to allow for the proposed left-in access from southbound Coors Boulevard to Street "B" will require the approval of the Metropolitan Transportation Board (MTB) of the Mid-Region Council of Governments. The City Of Albuquerque has indicated that it will support this request to the Council of Governments based upon the TIS and demonstration that the addition of this left-in access will have beneficial impacts to the Coors/Dellyne/Learning Road intersection.
  - h. Montano Road is a limited access, minor arterial with a proposed grade separation at Winterhaven Road as designated on the Long Range Roadway System and on the Coors Corridor Plan. However, no grade separated intersection has been planned, designed or programmed as of this date.
  - i. In the future, if a grade separation is constructed, north-south traffic at Winterhaven will be able to pass under Montano, but no connection will be allowed between Montano and Winterhaven Road. However, in the interim, the City Engineer and the Director of the Department of Municipal Development have allowed for a right-in, right-out and left in at the intersection of Street B and Montano Road.
  - j. Learning Road will serve as both a public and private road. The areas designated as public or private are identified on the site development plan and the subdivision plat. The portion of Learning Road east of the existing City right-of-way is designated to remain a private road, which will provide access to Bosque School and the City Lift Station Access Road only.
  - k. In order to minimize adverse impacts to the Learning Road/La Luz Connector Road intersection and the Coors/Learning Road intersection, Bosque School has agreed to open access from the school to Street B during the morning and afternoon peaks and during special events.
10. The subject site will be subject to and will need to comply with the Impact Fees Ordinance and the Impact Fees Regulations that are currently in process of being finalized.
11. The proposed request meets the Transportation and Transit provision of the *Albuquerque/Bernalillo County Comprehensive Plan* with a goal to "provide a balanced circulation system through efficient placement of employment and services, and encouragement of bicycling, walking, and use of transit/ paratransit as alternatives to automobile travel, while

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providing sufficient roadway capacity to meet mobility and access needs." The submittal furthers the Polices of the Transportation and Transit provision as follows:

- a. The subject site has been reviewed for street design, transit service and development form consistent with Transportation Corridors and Activity Center polices established in the *Comprehensive Plan*.
  - b. The site is adjacent to Coors Blvd and Montano Road, both designated as Enhanced Transit Corridors as identified in the *Comprehensive Plan's* Activity Centers and Transportation Corridors Map.
  - c. The subject site will contain some access control along Coors Blvd and Montano Road.
  - d. Enhanced Transit Corridors are to operate at a Level of Service (LOS) of "D" or better. The City may allow for lower LOS at an intersection by substituting transit improvements which facilitate transit vehicles bypassing congestion at the intersection for auto improvements; or may be allowed to substitute transit improvements, employee travel demand strategies, and mixed use developments which lower overall trip generation in place of auto based improvements in order to mitigate traffic impacts of a development. The Design Guidelines for the subject site includes a Transportation Demand Management (TDM) plan that will encourage alternative modes of transportation in place of auto based improvements in order to mitigate traffic impacts of this development.
  - e. All intersections near the subject site have transit emergency vehicle signal preemption, the capability of a selected lane for transit and will contain right turn lanes along Coors Blvd.
  - f. The subject site will contain pedestrian circulation that will maximize pedestrian connections to transit stops and between developments.
  - g. The subject site will contain public sidewalks adjacent to the site between 6-8 feet in width.
  - h. Dedicated Bicycle lanes are dedicated along Coors Blvd and Montano Road.
  - i. The submittal includes a network of internal bike lanes that will provide connections from the site to adjacent facilities on Coors and Montano.
12. The subject site is within the Taylor Ranch Community as identified in the *West Side Strategic Plan* and is within the community's Community Activity Center. The proposed development will include retail, office and multi-family residential uses that are appropriate for the Taylor Ranch Community Center (Policy 3.16, WSSP) and will respect the existing neighborhood values as required in Policy 5d, Established Urban, *Comprehensive Plan*. In addition, the site is an appropriate location for continued growth due to its contiguous location to the rest of the City and efficient location for receiving City services. (Policy 3.12, WSSP)
13. A remaining intact portion of the "Montano Pueblo" lies within the northern boundary of this site. Two smaller archeological sites are also identified with the site. The affected sites will need to comply with all the goals and policies under *Issue 2, Policy 6, Archeological Sites*, of the *Coors Corridor Plan*, which states, "development within an identified archeological site shall obtain

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clearance and guidance from the State Historic Preservation Office before actual development begins."

14. The applicant has obtained clearance from the State Historic Preservation Office with the preferred method of mitigation to contain the burial sites in place and fill the sites with sterile soil to create a sloped surface. The approved mitigation plan also included a commitment to redesign the parking area and leave a portion of the Montano Pueblo site undeveloped, provide for a "protective covenant", and provide materials for public interpretation such as information signs. At this point, the applicant is not proposing any development in the area that contains the "Montano Pueblo" therefore; this issue can be finalized at a later date.
15. If transportation mitigation is required along Montano Road, adjacent to the subject site, and it is determined there may be encroachment in the archeological site, then further review and approval from the State Historic Preservation Officer may be required.
16. The subject site contains an area of habitat for the Tawny Bellied Rat. An agreement was reached between the applicant, the City Of Albuquerque Open Space Division and the abutting Bosque School to relocate the Tawny Bellied Rat to suitable sites.
17. During the review and approval of this application in January of 2005 a preliminary Air Quality Impact Analysis(AQIA) was not required. However, policy has changed within the Planning Department that now requires a preliminary AQIA. The applicant has submitted a preliminary AQIA and has been reviewed and approved by the Environmental Health Department in accordance with Section 14-16-3-14 of the Comprehensive City Zoning Code.
18. The submitted site plan meets the applicable general policies, site planning and architecture policies, view preservation policies, and signage policies contained in the *Coors Corridor Plan*.
19. The site plan contains the information required by the *Comprehensive City Zoning Code*. It presents the site, the proposed uses, pedestrian and vehicular ingress and egress, internal circulation requirements and the maximum building heights allowed, and the nonresidential uses' maximum floor area ratio.
20. There have been two facilitated meetings between the applicant and the affected neighborhood associations and one non-facilitated meeting to discuss the issues related to the subject request and in accordance with the Land Use Hearing Officer's (LUHO) recommendation. As an agreement during these meetings, the applicant will not allow for any drive-through restaurants or gas stations on the subject site.
21. The applicant intends to assess the "grove of cottonwood trees" on the subject site by an arborist to determine the health of the trees.
22. Based on the review of the traffic studies and related testimony the EPC recognizes that significant long-range traffic solutions in the Coors and Montano area require a major redesign and reconstruction of the Coors/Montano intersection. Consequently, the EPC urges that the City

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Council place the redesign/reconstruction of the Coors/Montano intersection on the TCIP or CIP as quickly as possible.

**CONDITIONS:**

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals.
2. The Site Development Plan for Subdivision shall be amended to include a note that states: Fast Food Restaurants with drive-up windows and gas stations shall not be permitted.
3. If transportation mitigation requires an encroachment of the existing archeological site adjacent to Montano Road, further review and approval will be required from the State Historic Preservation Officer.
4. In order to minimize adverse impacts to the Learning Road/La Luz Connector Road intersection and the Coors/Learning Road intersection, Bosque School has agreed to open access from the school to Street B during the morning and afternoon peaks and during special events. A gate and appropriate signage shall be provided along Learning Road by the developer of the commercial tract in conjunction with Phase One.
5. The applicant must comply with the following conditions of approval as specified by the City Engineer, the Department of Municipal Development, The Public Works Department and the NM Department of Transportation:
  - a. All the requirements of previous actions taken by the EPC and/or the DRB must be completed and /or provided for.
  - b. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan for building permit. Those improvements will include any additional right-of-way requirements, paving, curb and gutter, sidewalk and ADA accessible ramps that have not already been provided for. All public infrastructure constructed within public right-of-way or public easements shall be to City Standards. Those Standards will include but are not limited to sidewalks (std. dwg. 2430), driveways (std. dwg. 2425), private entrances (std. dwg. 2426) and wheel chair ramps (std. dwg. 2441).
  - c. Completion of the required TIS mitigation measures (when determined), per Transportation Development Staff. Transportation mitigation measures may be accomplished through a combination of Transportation Impact Fees, the Impact Fees Regulations and the TIS recommendations.

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- d. Street B shall intersect with Coors Blvd. at no less than an 80 degree skew. Every effort should be made to provide a connection at 90 degrees.
- e. Dedicated right turn deceleration lanes will be required at site drives per DPM and/or TIS requirements. Left turn lanes required at site drives where permitted and as approved.
- f. Existing Learning Rd. will need to intersect with New Street /Winterhaven Rd. at no less than an 80 degree skew. Every effort should be made to provide a connection at 90 degrees.
- g. Roundabouts will need to meet design requirements of Publications FHWA-RD-00-067 and AASHTO.
- h. Medians within 100' calming area (Street A) will need to be designed to accommodate left turning vehicles. Will also need to meet AASHTO and DPM criteria (site distance). Provide detail for this area.
- i. Provide detail and location of bump outs.
- j. Provide cross sections for Streets A, B and New Street/Winterhaven Rd.
- k. 10' radius curb returns may not be allowed in high volume traffic areas or in truck circulation areas (includes emergency vehicles and solid waste).
- l. Site plan shall comply and be designed per DPM Standards.
- m. Platting must be a concurrent DRB action.
- n. Dedication of an additional 6 feet of right-of-way along Coors Boulevard, as required by the City Engineer, to provide for on-street bicycle lanes as designated on the Long Range Bikeways System.
- o. Construction of the northbound bicycle lane along Coors Boulevard, adjacent to the subject property, as designated on the Long Range Bikeways System.
- p. Dedication of additional rights-of-way, as necessary, and construction of the fourth northbound travel lane on Coors Boulevard adjacent to the subject property consistent with the *Coors Corridor Plan* (see figure 6).
- q. Approval of the proposed left-in access from southbound Coors Boulevard to Street "B" by the Metropolitan Transportation Board (MTB) of the Mid-Region Council of Governments.
- r. Access at Montano and Winterhaven will be restricted to right turn in/right turn out and left in as approved by the Director of Municipal Development. Must be accompanied by a written agreement between the applicant and the City Of Albuquerque.
- s. A notation shall be added on the submittal that reads, "When the future grade separation is constructed access will no longer be allowed to Montano Road from Winterhaven consistent with the Long Range Roadway System."
- t. Access coordination is required with NMDOT.

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6. The existing median on Learning Road just east of Coors Boulevard is well landscaped with native plants. The proposed development will require modification to the intersection of Learning Road and the La Luz access road including the median. The applicant has agreed to rebuild the median and re-vegetate it to the pre-modification level of landscaping.

**IF YOU WISH TO APPEAL/PROTEST THIS DECISION, YOU MUST DO SO BY JUNE 3, 2005 IN THE MANNER DESCRIBED BELOW. A NON-REFUNDABLE FILING FEE WILL BE CALCULATED AT THE LAND DEVELOPMENT COORDINATION COUNTER AND IS REQUIRED AT THE TIME THE APPEAL IS FILED. IT IS NOT POSSIBLE TO APPEAL EPC RECOMMENDATIONS TO CITY COUNCIL; RATHER, A FORMAL PROTEST OF THE EPC'S RECOMMENDATION CAN BE FILED WITHIN THE 15 DAY PERIOD FOLLOWING THE EPC'S DECISION.**

**Appeal to the City Council: Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.**

**YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).**

**Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC**

Sincerely,

  
for Richard Dineen  
Planning Director

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**RD//ac**

**cc: Consensus Planning, Inc., 924 Park Ave SW 87102**  
**Rae Perls, La Luz Landowners Assoc., 15 Tennis Ct NW 87120**  
**Bruce Masson, La Luz Landowners Assoc., 13 Arco NW 87120**  
**Don MacCornack, Taylor Ranch NA, 5300 Hattiesburg NW 87120**  
**Ceil VanBerkel, Taylor Ranch NA, 5716 Morgan Ln NW 87120**  
**Lynn Perls, 18 Berm NW 87120**  
**Lois S. Sloan, 21 Tennis Ct NW 87120**  
**Gail Brownfield, 9 Arco NW 87120**  
**Jo Allen, 1 Tumbleweed NW 87120**  
**Andrew Wooden, 8 Arco NW 87120**  
**Dana Asbury, 1509 Stanford Dr NE 87106**  
**Frank W. Ikle, 5 Tennis Ct NW 87120**  
**Joanne G. Kimmey, 6 Link NW 87120**  
**Bennett King, 10 Arco NW 87120**  
**Robert Peters, 10 Tumbleweed NW 87120**



# SILVERLEAF VENTURES, LLC

July 3, 2013

Ms. Suzanne Lubar, Planning Director  
City of Albuquerque Planning Department  
3<sup>rd</sup> Floor, Plaza del Sol Building  
600 N. 2<sup>nd</sup> Street NW  
Albuquerque, NM 87102

Dear Ms. Lubar,

The purpose of this letter is to respond to the letter that has been submitted by Tim Flynn-O'Brien and the meeting last week. First of all, we appreciate you and your staff taking the time to meet with us and discuss these important issues.

In contrast to the letter dated June 25, 2013, I would like to present the following:

1. **Consistency:** The impression is that the City staff has been flip flopping on the question of when the 7 year clock starts. To be clear, in its dealing with us and our consultants, the direction from the City staff has been clear and consistent – that the clock does not start until the last signature is obtained by the DRB.
2. **Activity:**
  - a. **Infrastructure:** The opponents would have you believe that the owners of the property have failed to do anything for over 7 years. This is simply not true, as part of the project detailed engineering was required along with the construction of approximately \$6M in infrastructure improvement to serve the property. These included coordination on Coors Boulevard and the addition of the fourth through lane which benefits all west side residents. The infrastructure improvements were not signed off until April of 2010. Currently, the owners have been working cooperatively with the City and the adjoining property owners to make improvements to the drainage pond and provide for updated easements.
  - b. **Archeology:** There has also been work on the archeological sites and obtaining clearance from the SHPO.
3. **Coors Corridor Plan:** The idea that by making the required improvements to Coors Boulevard (adding the fourth driving lane) that we have made ourselves non-compliant with the view requirements is not consistent with the intent of the planning and development process.
4. **Existing Approval:**

5319 Menaul Blvd NE, Albuquerque, NM 87110  
505.883.4131  
505.883.4134 (fax)



- a. Appeals: The opponents fail to recognize or remember that the existing site plan was completely vetted through the appeal process with La Luz and Taylor Ranch being active participants in the process.
- b. View Regulations: The primary subject of the appeal was adherence to the Coors Corridor Plan view regulations.
- c. The rules and regulations upon which the previous plan was reviewed, have not changed.
- d. Sector and Area Plans: The site plan is consistent with all existing Sector and Areas plans that effect the property.

It is unclear as to the opponent's intent regarding their position. It appears that it is merely another attempt to delay any activity on the property. The property is zoned for Community Commercial (C-2), is part of a 23 acre commercial development. The current site plan meets all City regulations and the Site Plan for Subdivision. There is no purpose or value to be gained by the City reversing their previously stated position that the Site Plan is still valid.

We have a significant investment in this property and have relied on the stated position of the City staff in their efforts to date. We have constructed significant improvements (as required by the City) that have not only benefited this property, but the entire west side of Albuquerque. We urge you to confirm the City's position and allow the final DRB signatures on the Site Development Plan to allow the project to move forward and be an asset to the community by providing needed services.

Thank you for your consideration.



Dete Daskalos

Silver Leaf Ventures, LLC

5319 Menaul Blvd NE, Albuquerque, NM 87110  
505.883.4131  
505.883.4134 (fax)

# TIMOTHY V. FLYNN-O'BRIEN

Attorney at Law  
817 Gold Avenue SW  
Albuquerque, New Mexico 87102-3014  
Phone: 505-242-4088 / Fax: 866-428-7568

July 3, 2013

Mr. Jack Cloud, DRB Chairman  
City of Albuquerque  
Planning Department  
600 2nd Street NW  
Albuquerque, New Mexico 87102

RE: Project No. 1003859  
04EPC-01844  
06DRB-00074

Dear Mr. Cloud:

This letter follow up my letter to you of June 5, 2013 concerning plan termination which you forwarded to the Planning Director, Ms. Suzanne Lubar, my letter to Ms. Lubar of June 25, 2013 and meetings with Planning Staff on June 19, 2013 and June 28, 2013.

The purpose of this letter is to alert you to the fact that Mr. Daskalos stated that he proposes to locate a grocery store in the 45,720 s.f. retail building nearest Coors. Unless I am mistaken I do not see that shopping cart corrals have been provided. The EPC in Condition No. 6g required that if shopping carts will be stored in off-street parking areas the calculation for off-street parking shall be modified to reflect the existence of such storage units and that the exact location of shopping cart storage units shall be identified. (EPC Decision p. 8 of 12, No. 6 g and h).

I do not see on the plans provided to me shopping cart corrals nor were the parking spaces that will be eliminated to provide shopping cart corrals identified.<sup>1</sup>

In this respect it is important to note that required parking is 555 spaces reduced by 10% to 500. The provided parking is 500 so there are no surplus parking spaces for locating shopping cart corrals. Any modification to provide for shopping cart corrals cannot come from parking since there is no surplus. The EPC conditions did not envision eliminating other plan elements such as landscaping. See Condition No. 6.

---

<sup>1</sup> Despite an email request to Mr. Strozer on June 21, 2013 and an oral request on June 28, 2013 I have not been provided a copy of the Mylar with current signatures or an electronic version so I am using the copy I was provided by Planning dated 1/17/2005.

Regardless of any decision by the Planning Director as to plan termination it is my position that given the knowledge that a grocery store is planned that sign off cannot occur inasmuch as condition no. 6 has not been met. Any modification to meet the condition will require a new hearing.

You were not at the meeting on June 28, 2013 which focused on plan termination under the code. I want to take this opportunity to comment on an assertion made at the meeting. Mr. Daskalos claimed that he could not have obtained final plan sign off until 2010 when he received acceptance of transportation improvements. I believe this is incorrect because (1) there was sign off in 2005 on the site plan for subdivision which also required the transportation improvements; and (2) it is my understanding the improvements were guaranteed by a letter of credit. While I do not believe that the zoning code provisions on site plan termination depend on the date required improvements were completed I mention the above to correct any misapprehension by those at the meeting on June 28 as to the earliest possible date final DRB sign off could have been obtained.

Very truly yours,



Timothy V. Flynn-O'Brien

TVFOB/mlg

Enclosure as stated

cc: Kevin Curran  
Blake Whitcomb  
Carmen Marrone  
Jenica Jacobi  
Brennan Williams  
Jim Strozier  
Suzanne Lubar  
Rene' Horvath  
Rae Pearls

## Whitcomb, Blake

---

**From:** Tim Flynn-O'Brien <tim@flynnobrien.com>  
**Sent:** Wednesday, July 17, 2013 2:05 PM  
**To:** Cloud, Jack W.; Bailey, Amy; Curran, Kevin J.; Whitcomb, Blake; Lubar, Suzanne G.; Marrone, Carmen M.  
**Cc:** ray shortridge; Rene Horvath; Jolene Wolfley  
**Subject:** Re: Andalucia Site Plan for Building Permit-(Project# 1003859) - Inspection of Public Records Request #2

Dear Ms. Bailey, Ms. Lubar and Mr. Cloud:

This email combines some questions for Planning concerning the Planning Department's analysis of the Coors Corridor view plane for this project, a request for public records concerning the view plane analysis, and a request for basic data required for the analysis. Since Planning must review proposed projects for compliance with the view plane regulations I am assuming the Planning Department can answer the questions and respond to the document request. If the documents are filed elsewhere I am copying Ms Bailey so she can obtain the information/documents from the appropriate department.

As you all know we have pointed out that the site plan for building permit approval from 2005 terminated pursuant to the zoning code. We have also raised concerns with the Coors Corridor Plan View Plane analysis under both the 2005 and current Coors alignment. We have reviewed the 2005 analysis at page 10 (VC-001) dated 06/08/05 and as a result have the following document request and questions.

### 1. Document Request. Tract 6a CCP View Plane Analysis-

(a) REQUEST FOR DOCUMENTS OF VIEW PLANE ANALYSIS. Please provide a copy of all documents comprising the developer's or Planning's analysis or review of any analysis of the view plane for this site plan for building permit using (1) the 2005 Coors alignment and/or (2) the current Coors alignment.

(b) REQUEST FOR COORS ELEVATION Documents. To do our own analysis we need grade levels of Coors between Learning Road and Mirandela and particularly for 200' south of Mirandela. These measurements or elevations should be from the road surface at the eastern edge of the easternmost northbound through lane. Please provide documents containing this information.

COMMENTS AND CONCERNS RE DEVELOPER'S 2005 VIEW PLANE ANALYSIS. The 2005 submittal appears to be inconsistent in basic data.

In the 2005 submittal (VC-001) sight line #14 is shown with a Coors elevation of 5000.0 in the section view but 5001.0 in the chart. Why the discrepancy? Which is it? Has Staff performed it's own analysis or resolved the discrepancy? If the elevation is 5000.0 none of the buildings comply. Moreover, the sight line used for Building 6B2.9 should have a view point on Coors 175' further South than used.

As we have pointed out the City Council adopted site plan termination so current rules were applied to site plans when the developer has not completed over 50% of the development. Given the that the 2005 view plane analysis is inconsistent, incorrect, and does not follow the Coors Corridor Plan there should be no DRB sign-off regardless of the plan's termination. (It is my understanding that the city maintains that when it has approved a project in error it has a duty to correct that error. That certainly should apply to the CCP view plane) I am

requesting the information and documents described above so that, if Planning proceeds to sign-off on the site plan despite plan termination and the CCP view plane issues, we have basic view plane information which we contend should have been part of the record and which we believe the City Council will request.

Thank you. If you have any questions please let me know.

--

Timothy Flynn-O'Brien  
817 Gold Ave. S.W.  
Albuquerque, N.M. 87102  
Work: 505 242-4088  
Cell: 505 228-1477  
Fax 866 428-7568

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**City of Albuquerque**

printable  
version

Legislative File ID **AC-05-11**

Type: **Appeal** Status: **Accept**

Title: **N. Lynn Perls, Agent for La Luz Landowner's Association, Appeals the EPC's Approval of a Site Development Plan for Building Permit, Zoned SU-1, O-1, C-2 and PRD - Located on Coors Blvd NW Between Montano Road NW and**

Introduced: **8/17/2005** Version: **1**

Final Action: Contact:

Enactment Date: Enactment Number:

Name:

Requester:

Sponsors:

Attachments: **Legislative File Text  
AC-05-11.doc**

Next Meeting:

**Legislative History**

| Date      | Acting Body  | Action Taken                                                            | Motion     |
|-----------|--------------|-------------------------------------------------------------------------|------------|
| 8/1/2005  | President    | Referred to the Land Use Hearing Officer due on 8/24/2005.              |            |
| 8/1/2005  | City Council | Received and Referred to the Land Use Hearing Officer due on 8/24/2005. |            |
| 9/19/2005 | City Council | To Accept the Land Use Hearing Officer Recommendation                   | Pass (9:0) |

Last Updated On: 9/16/2005 3:58:21 PM

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1                                   **LAND USE HEARING OFFICER'S RECOMMENDATION**

2  
3   **APPEAL NO. AC-05-11: (04EPC-01844, Project No. 10003859)**

4  
5   **La Luz Land Owners' Association,**

6  
7                                   **Appellants,**

8   **v.**

9  
10   **Silverleaf Ventures, LLC,**

11  
12                                   **Party Opponents.**

13  
14  
15   **I.       PROCEDURAL BACKGROUND**

16                   This is an appeal of a decision of the Environmental Planning Commission (EPC)  
17 approving the application of Silverleaf Ventures, LLC (Silverleaf) of a site development plan for  
18 a building permit to construct eleven commercial buildings on approximately 15 acres of land  
19 located on Coors Blvd. Between Montano Road and Learning Road, N.W. In its June 17, 2005  
20 decision, the EPC enumerated nineteen written findings and set fifteen conditions of approval.  
21

22                   On June 30, 2005, the La Luz Land Owners Association, (La Luz), an association  
23 recognized by City Ordinance Section 14-16-4-4(B)(2)(C) of the City of Albuquerque  
24 Comprehensive City Zoning Code, filed their timely appeal on June 30, 2005.  
25

26                   As the proposed project is located within 600 feet of the subject site, the La Luz Land  
27 Owners' Association has standing to appeal the decision of the EPC. The Party Opponents to  
28 this appeal is Silverleaf Ventures, LLC, the owners of the subject 15 acres of land. The record in  
29 this appeal was supplemented with additional evidence submitted by Silverleaf Ventures, LLC,  
30 which includes a report from Mr. Chris Gunning, Silverleaf's architect.  
31

32                   An appeal hearing on the record was held on August 24, 2005, before this Land Use  
33 Hearing Officer. La Luz and Silverleaf were represented by counsel at the hearing. The parties  
34 entered into a proposed stipulation to resolve the appeal and the proposed stipulation was  
35 introduced on the record. Counsel for the City of Albuquerque approved the proposed stipulated  
36 agreement.  
37

38  
39   **II.       ISSUES PRESENTED BY LA LUZ**

40                   La Luz essentially takes issue with many of the alleged memorialized findings of the  
41 EPC's final decision. La Luz disagreed that the proposed project will ever satisfy the standards  
42 of the Visual Impression and urban Design Overlay Zone contained in the Coors Corridor Plan  
43 (CCP). La Luz also believes that the proposed buildings as depicted in the site plans, do not  
44 meet the height, bulk and setback policies of the CCP.  
45

1 III. STANDARD OF REVIEW

2 A review of an appeal is a whole record review to determine if the EPC erred:

- 3  
4  
5 1. In applying adopted city plans, policies, and ordinances in arriving at the decision;  
6 2. In the appealed action or decision, including its stated facts;  
7 3. In acting arbitrary, capriciously or manifestly abusive of discretion.  
8

9 The decision and record must be supported by a preponderance of the evidence to be  
10 upheld. *Whether the evidence is, or is not supported by a preponderance of the evidence in the*  
11 *record, the Land Use Hearing Officer may not substitute his judgment for that of the EPC.* The  
12 Land Use Hearing Officer's opinion is advisory to the City Council. The Hearing Officer may  
13 recommend that the Council "grant, in whole or in part, an appeal, deny, in whole or in part, an  
14 appeal, or remand an appeal for reconsideration if the remand is necessary to clarify or  
15 supplement the record, or if the remand would expeditiously dispose of the matter."<sup>1</sup> Decisions  
16 of the City are presumably valid and the burden of proving otherwise rests upon a party seeking  
17 to void such decision.  
18

19  
20 IV. DISCUSSION

21  
22 As stated above the parties to this appeal offered a proposed resolution to this appeal, a  
23 resolution supported by the City Planning Staff and their counsel—a resolution they propose I  
24 recommend that the City Council approve. All parties, including counsel for the City, have  
25 stipulated on the record that EPC Finding Number 16 was erroneous or misleading and should be  
26 replaced with the following finding:

27  
28 "That the proposed buildings did not meet the height, bulk and setback  
29 requirements of the view preservation policies within the Coors Corridor  
30 Plan."  
31

32 After reviewing the record, I find that it cannot be clearly demonstrated in the site plan for  
33 building permit that the height, bulk and setbacks of some of the proposed buildings will satisfy  
34 the requirements of the CCP. Accordingly, I find that the preponderance of the evidence in the  
35 record supports the proposed stipulated Finding Number 16.  
36

37 Second, the Parties, Planning Staff, and Counsel for the City stipulate that EPC Condition  
38 Number 9.a. should be clarified to state:

39  
40 "All buildings must comply with all the requirements of Issue 4, Visual  
41 Impression and Urban Design Overlay Zone of the Coors Corridor Plan

---

1 See Rules of the Land Use Hearing Officer adopted by the City Council, February 18,  
2004. Bill No. F/S OC-04-6.



1 including, but not limited to the portion in Section C, View Preservation  
2 for Corridor Segments 3 and 4, Policy 1 View Preservation, Section B.1  
3 and 2 Height, Bulk, and Massing that specified, "In no event will the  
4 building height be permitted to penetrate above the view of the ridge line  
5 of the Sandia Mountains as seen from four feet above the east edge of the  
6 roadway. Also, in No event will more than one-third of the total building  
7 height outside of the setback area for multi-story buildings be permitted to  
8 penetrate through the view plane. Not more than 50% of the view area  
9 shall be obscured by the bulk of the buildings(s) placed on the parcel."  
10 The applicant shall ensure that all single story or multi-story buildings and  
11 towers comply with this requirement." The submitted site development  
12 plan will be required to meet the view preservation policies contained in  
13 the Coors Corridor Plan.  
14

15 The proposed modification of EPC Condition 9.a. is only a restatement of the existing  
16 Condition 9.a. with the specificity of the applicable CCP policies that were supported by the  
17 record before the EPC. I find that the additional language only clarifies the design of the CCP  
18 and the objectives of the EPC in the June 16, 2005 hearing. It is supported by the record.  
19

20 Finally, much of the disagreement regarding whether or not the buildings will thwart the  
21 view preservation policies of the CCP stem from the exact location measurements of the view  
22 plane. Final resolution of this significant detail is conspicuously absent in the EPC Decision.  
23

24 The Parties and the City Planning Staff ask that I recommend an additional condition for  
25 approval by the City Council:

26  
27 "Measurement for the view plane on Coors Boulevard shall be taken from  
28 the east edge of the east driving lane as it exists today."  
29

30 City Planning Staff maintain that the view plane on Coors Blvd. should be taken from the  
31 east edge of the east driving lane as the road currently exists. The parties now are in agreement  
32 with the City on this location for these very important measurements. The City and the Parties  
33 ask that I recommend that the location for measurements be included in my recommendation to  
34 the City Council.  
35

36 I find that to accurately and consistently calculate the view plane as required by the CCP,  
37 the location to take measurements should be clarified because the location of Coors Blvd. may  
38 change in the future. I also find that because the location is susceptible to change in the future,  
39 the EPC should have specified the location. I find no good reason to deviate from the  
40 recommendations of the City Planning Staff and the parties to this appeal.  
41  
42  
43  
44  
45

1 V. FINDINGS AND RECOMMENDATION

2  
3 I find that the proposed stipulations proffered by the parties and the City are well taken.  
4 Each of the proposed findings and conditions are supported by the record and the EPC's decision  
5 approving the site plan should be supplemented to include the three modifications as delineated  
6 in this opinion.

7  
8 I therefore recommend to the City Council that it grant the appeal and:

9  
10 1. Approve the stipulated proposed Finding Number 16 in place of the existing EPC  
11 Finding Number 16;

12  
13 2. Approve the stipulated Condition Number 9.a. in place of the existing Condition  
14 9.a;

15  
16 3. To add clarity to the EPC's decision, approve the parties' stipulation with the City  
17 Planning Staff regarding the location where the measurements should be taken of the view plane  
18 on Coors Blvd.

19  
20  
21  
22  
23 August 31, 2005

24 Steven M. Chavez, Esq.  
25 Land Use Hearing Officer  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36



Mayor Martín J. Chávez

# CITY OF ALBUQUERQUE

Albuquerque, New Mexico  
Office of the Mayor

## INTER-OFFICE MEMORANDUM

July 28, 2005

**TO:** Brad Winter, President, City Council

**FROM:** Richard Dineen, Planning Director

**SUBJECT:** AC-05-11 – 04EPC-01844 Project #1003859 – N. Lynn Perls, agent for La Luz Landowner's Association, appeals the decision of the Environmental Planning Commission to approve a Site Development Plan for Building Permit for all or a portion of Tract 6B, Lands of Ray Graham III, Ovenwest Corp., zoned SU-1, O-1, C-2 and PRD, located on Coors Blvd NW, between Montano Road NW and Learning Road NW, containing approximately 15 acre(s). Juanita Garcia, Staff Planner. (E-12)

This is an appeal of the Environmental Planning Commission's (EPC) June 16, 2005 decision to approve a site development plan for building permit. The site is a portion of Tract 6B, Lands of Ray Graham III, Ovenwest Corp., and COA and contains approximately 15 acres and zoned SU-1 for O-1 (11.7 acres max), C-2 (23.3 acres max), and PRD (Max 20/DU/Acre). The site is located on Coors Blvd and is between Montano Road NW and Learning Road NW and is currently undeveloped. The plans, policies, goals and regulations of the Comprehensive Plan, the West Side Strategic Plan, and the Coors Corridor Plan apply to the subject site.

The applicant is proposing to construct 11 buildings that range from 4,500 to 45,720 square feet. The buildings will contain retail and restaurant uses. The overall site is surrounded by public streets on three sides and will be served by an internal vehicular entrance on the north side. Two roundabouts are proposed, one on each side of the proposed development. The subject site will also contain off-street parking, landscaping, signage and pedestrian connections.

The Planning Department recommended approval of the request and the EPC approved the request by a unanimous vote.

In summary, the EPC approved a site development plan for building permit for the construction of 11 buildings. Most of the appellant arguments relate to View Preservation Policies of the Coors Corridor Plan and how they apply to the proposed buildings. In addition, the appellant is opposed to some of the findings that have been adopted with the approval of the site development plan. The appellant provides 31 points of contention. Points 1 through 24 and 28 through 30 are related to building heights, the remaining are related to separate arguments. The following is a response to the appellants arguments.

## **View Preservation Regulations of the Coors Corridor Plan**

In general, the appellant states that the approval of the subject site development plan for building permit is in violation of the view preservation regulations of the Coors Corridor Plan. The subject site is within Segment 3 as identified in the Coors Corridor Plan and the building heights are subject to the design guidelines that are intended to protect the unique views of the natural terrain, the Bosque, the Rio Grande, the river valley, the east mesa, and the Sandia Mountains. (Coors Corridor Plan, page 103).

The Environmental Planning Commission has delegated the review of all the buildings to the Planning Department staff for a final determination of compliance with the Coors Corridor Plan. It is not uncommon for the EPC to delegate matters to the staff to ensure that a particular policy or regulation is met. The appellant presented arguments to the EPC on June 16, 2005 alleging that the proposed building heights were not in compliance with the Coors Corridor Plan. The Planning Department agreed that the submitted plans appeared to be, at least to some extent, in violation of the Coors Corridor design standards. This issue was discussed in the staff report (Pages 13-14). In response to these concerns, the EPC carefully considered the view preservation standards when reviewing the subject request. The EPC emphasized that the building heights on the subject site must comply with the view preservation standards in the Coors Corridor Plan. EPC Condition number 9a articulates the EPC's determination: "*All of the buildings must comply with Issue 1, Visual Impression and Urban Design Overlay Zone of the Coors Corridor Plan that specifies, "In no event will the building height be permitted to penetrate above the view of the ridge line of the Sandia Mountain as seen from four feet above the east edge of the roadway. Also, in no event will more than one-third of the total building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane."* In response to related issues raised at the public hearing, the Planning Commission supplemented the condition with the following language, "*The applicant shall ensure that all single story or multi-story buildings and towers comply with this requirement.*" In light of EPC's determination, the Planning Department believes that the portion of the appeal alleging noncompliance with the Coors Corridor Plan design standards is premature, since a final determination has not been made.

In order to ensure that all parties of interest are aware of the final building heights and have opportunity to review the final plan documents, the EPC established an additional condition which reads as follows: "*the applicant is required to notify two officers of each affected neighborhood associations by certified mail approximately two weeks prior to the submittal of this application to the DRB.*" (see condition number 12).

The Planning Department has been working with the applicant and with the appellant to discuss the proposed building heights and their relationship to the Coors Corridor Plan. Each party's interpretation and understanding of the complicated method of determining compliance with the View Preservation policies within the Coors Corridor Plan will be taken into consideration by Planning staff. It is the hope of the Planning Department to have a clearer understanding of the proposed buildings heights by the time this matter is heard by the Land Use Hearing Officer.

### **Finding Number 16**

The appellant believes that the subject application should be denied because the EPC adopted the following finding: *"The submitted plan meets the applicable general policies, site planning and architecture policies, view preservation policies, and signage policies contained in the Coors Corridor Plan."* The appellant is opposed to this language because the plans that have been submitted prior to the EPC hearing did not meet the policies of the Coors Corridor Plan. However, the Planning Department contends that this finding would apply to the final version of the site development plan that will be finally approved by the DRB and must be in compliance with the standards of the Coors Corridor Plan. As stated in the opening paragraph of the Official Notification of Decision, the approval is based on the findings and subject to all of the conditions. It is assumed that findings pertain to the application once the conditions have been satisfied.

### **Finding number 17**

The appellant is opposed to finding number 17, which reads, *"The site plan contains the information required by the Comprehensive City Zoning Code for a site development plan for building permit. The submittal presents the exact structure locations (including signs), structure elevations and dimensions, parking facilities, any energy conservation features of the plan (e.g. appropriate landscaping, building heights, and siting for solar access, provision for non-auto transportation, or energy conservational building construction), and the proposed schedule for development."* The appellant states that the building setbacks should have been clearly identified on the plan. It is believed that the appellant is concerned that the all buildings will not meet the 35' setback requirement from the Coors right-of-way line. The submittal does contain an illustration of the 35' setback area and its relation to the proposed buildings. As indicated in the staff report, it did appear as if one of the buildings was projecting into this 35' setback area. Therefore, a condition of approval was adopted that requires all the buildings to comply with the 35' setback area (See condition 4).

### **Finding number 18**

The appellant states that finding number 18 is not accurate because there was only one non-facilitated meeting with the applicant to discuss the site plan for building permit purposes and that the prior three meetings pertained to the site development plan for subdivision. Finding number 18 specifically states, *"There have been two facilitated meetings between the applicant and the affected neighborhood associations and two non-facilitated meeting to discuss the issues related to the subject request. As an agreement during these meetings, the applicant will not allow for any drive-through restaurants or gas stations on the subject site."* A Planning Department staff member was in attendance at both facilitated meetings and believes that there was discussion regarding the site development plan for building permit at both meetings. Discussions included a potential site occupant known as "Kohls". There was also discussion regarding building heights and signage, both of which pertain to the site development plan for

building permit. Therefore, Planning staff does not believe that the EPC was incorrect to adopt this particular finding.

Overall, the appeal is premature in that the final determination of building heights has been delegated to the DRB by the EPC. Should the appellant (or other party) disagree with an eventual DRB decision, the option for appeal is available.

For these reasons, the Planning Department recommends that this appeal be denied.

APPROVED:

A handwritten signature in black ink that reads "Bob Paulsen" followed by a stylized monogram or initials "KB".

Bob Paulsen, Manager  
Development Review Division  
Planning Department

La Luz Landowner's Association  
**Reason for Appeal**  
Project #1003859, 04 EPC 01844

This is an appeal of the approval of a Site Plan for Building Permit approved by the EPC on June 16, 2005. Under Section 14-16-4-4(A)(2) the jurisdiction for this appeal is to the City Council through the Land Use Hearing Officer.

**Basis of Standing:** Appellant, La Luz Landowner's Association (LLLA), is a recognized Neighborhood Association in good standing with the Office of Neighborhood Coordination acting through the President of its Board of Directors, who is authorized to pursue this appeal under the bylaws of the association. Appellant is an aggrieved party and has standing to appeal this decision based upon Section 14-16-4-4(B)(2)C, since their boundaries are within 600 feet of the subject site.

**Justification:** A duly authorized representative of Appellant appeared at the EPC public hearing and raised the following specific, legitimate concerns about approval of the project:

1. The buildings as designed and submitted to the EPC violate the view preservation regulations of the Coors Corridor Plan (hereinafter CCP).
2. The subject site lies within the area designated as Segment 3, which is subject to the policy and design guidelines which apply specifically to Segments 3 and 4 from Coors Boulevard east to the boundary of the corridor.
3. "Unique views within and beyond the Coors Corridor area in Segments 3 and 4 east of Coors Boulevard should be protected and enhanced in accordance with the additional design guidelines for this portion of the corridor." CCP at p. 103. "Views of the natural terrain, the Bosque, the Rio Grande, the river valley, the east mesa, and the Sandia Mountains are particularly unique and attractive east of Coors Boulevard in the corridor Segments 3 and 4. Site planning and design in this area should be especially sensitive to protection and enhancement of these views. *Id.*
4. The CCP defines the view plane as a horizontal line to be established "four (4) feet above the elevation at the east edge of the east driving lane. The view plane extends horizontally at 90 degrees to the easterly boundary of the corridor." CCP at 103.
5. The view area is a rectangle (or series of rectangular views as you travel north along Coors) created by "the Coors Boulevard grade level as the bottom of the view frame, the highest point of the ridge line of the Sandia Mountains as the top of the view frame." CCP at 103. The north and south edges are created by the property boundaries.
6. Words and sentences must be construed in their common sense meaning.

7. Common sense interpretation would be that the intention of the CCP is for views within the view area to be protected.
8. Based upon one sketch submitted by the applicant, it appears that the applicant has taken the position that single story buildings can obliterate the view area, and are only (perhaps) restricted in height by the ridge line of the Sandia mountains. Appellants were not provided a copy of the architect's sketch in which he demonstrated an example of one building reaching to the top of the view area, as if such height conforms to the view preservation requirements.
9. The applicant repeatedly led the EPC to believe that determining the view plain and view preservation window is a difficult matter. Appellants are not architects, and could not refute that assertion at the hearing, but did present repeated explanations and examples of how the proposed building heights clearly violate the height and view preservation restrictions, even without understanding how to calculate the tangent of the angle as it relates to the ridge line of the mountain.
10. In fact, Appellants pointed out to the EPC that the Applicant's buildings are shown on the plans to have a floor grade elevation of 4988. According to Applicant, the grade of the eastern edge of Coors Boulevard ranges between 5000 and 5002 along the edge of the subject tract. For illustration purposes, we can presume that the eastern edge of Coors Boulevard is 5001. There is no dispute but that the view plane is a measurement from floor grade up to four (4) feet above the Coors Boulevard grade. In the case of the four buildings along Coors Boulevard, this means that  $5001 - 4988 = 13 + 4 = 17$  feet. In this illustration, any parts of the building 17' and below are at or under the view plane.
11. It is Appellant's position that it is the intention of the CCP that single story buildings shall not exceed the view plane. This would limit all of the buildings in Applicant's plan to a total building height of the difference between the eastern edge of Coors, minus the floor grade, plus 4 feet. In other words, limiting buildings that are constructed at a floor grade of 4988 to between 16 and 18 feet in height (before the view area building bulk restrictions are analysed).
12. All of Applicant's buildings along Coors road are at a minimum 24 feet tall, the larger building 6B2.5 and 6B2.6 is 26' feet at its lowest, and both buildings have various towers and parapets that range from 30' to 44'8".
13. Drawings in the CCP clearly limit single story building height to that not exceeding the view plane. There is little further discussion of single story building height in the CCP, although view area building bulk restrictions are discussed without regard to the number of stories.
14. There is significant discussion and sample drawings limiting the building height of multi-story buildings such that "in no event will more than one-third of the total



building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane." CCP at 109.

15. It is Appellant's position that single story building height is limited by the view plane. Nevertheless, should single story buildings be allowed to breach the view plane and enter into the view window, there is no evidence that the CCP would allow a large single story building to obliterate the view window where a multi-story building would clearly be limited in both its height and bulk.
16. Applicant's buildings 6B2.4, 5, 6 and 7 all penetrate through the view plane. Back to the illustration: if the distance between the floor grade and 4' above Coors is 17', and if no more than one-third of the building can exceed the view plane, then the total height of the building (before taking into account the view window bulk restrictions) would be limited to 25.5 feet. Thus all of the towers and parapets, as well as a foot or two of the body of the middle buildings would have to be removed.
17. The view window is not calculated at only one or two set points along Coors Boulevard, but rather is a continuous window of views as you travel along the road. Applicant has been disingenuous in calculating its "slices" of view window at the lowest locations on the buildings, and have totally excluded consideration of their many parapets, raised building height sections and towers.
18. Finally, the calculation of the view window requires the applicant provide the distance between the eastern edge of Coors Boulevard as it will be built, and the wall of each building. These dimensions have not been included on the plans. For this reason alone, the plans should fail, in that compliance with the CCP is impossible to calculate without that dimension.
19. Based upon a scaled ruler measurement from the blueprints, the buildings appear to range from 30 to 60 feet from the edge of the roadway. The architect testified at the hearing that the building measurement for view preservation purposes was 75 feet. Further, the architect testified that the angle of rise between the view plane and the ridge of the Sandias is 4 degrees. According to the Applicant's submitted plans, the angle is 4 degrees 22'.
20. No buildings shall violate the View Plane Building Bulk, which is defined as "not more than 50% of the view area, for any parcel of land on the east side of Coors Boulevard in corridor Segments 3 and 4 shall be obscured by the bulk of the building(s) placed on the parcel." CCP at 109. Remember, the view area runs from Coors road grade at the bottom to the line of site to the mountain at the top, which creates the view window.
21. In order to calculate the height of the view window, we must use the tangent trigonometry formula:  $\text{tangent of Angle A} \times \text{the length of adjacent side} = \text{length of opposite side}$ . In this example, the tangent of 4 degrees = .0699. The

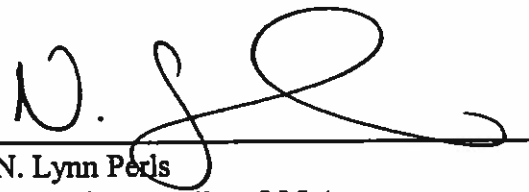
length of the horizontal distance is the distance between the edge of Coors boulevard and the building. If, as the applicant testified (but is not expressly called out on the plans) the building is 75' from the edge of Coors, the view window is:  $.0699 \times 75 = 5.24'$ . That means that the view frame to be preserved is 5.24' from the bottom of Coors road grade. *see definitions at CCP at 103*. The view plane is 4' above Coors road grade. Thus, even if a single story building could exceed the view plane, the 5.24' view window or view frame is only 1.24' above the view plane. Since no building can block more than 50% of the view window, the sample building, which is 17' above floor grade up to the view plane, should not extend more than 2.26' above the bottom of the view window, which is the Coors road grade – thus those buildings with floor grades 12' below Coors grade and 75 feet away from the edge of Coors, are limited to a height not greater than 14.26 feet.

22. All four of Applicant's buildings close to Coors Boulevard violate the CCP view preservation requirements. All of the four buildings violate the view plane, as well as the view window. All of the towers and extended wall parapets violate both the view window and the penetrate the ridge line.
23. It appears (and without specific measurements on the plans as drawn, no certain calculation can be made) that the basic 26 foot body of the buildings further from Coors do not violate the view preservation requirements, however, many of the towers and extended parapets do seem to violate the requirement that the height above the view plane not exceed more than one-third of the building height. For example, the building 6B2.10-13 is to be built at a floor grade of 4983. If Coors road is at 5001, and the 4' horizontal view plane at 5005, then no more than one third of the building height can exceed  $5005 - 4983 = 22 + 11 = 33$  feet. Portions of the towers on the lower buildings (those further from Coors) exceed 46 feet.
24. That the taller buildings further from Coors Boulevard appear to be closer to compliance with the CCP view preservation requirements fits with concepts behind the CCP regulation that "projects containing several buildings should provide variety in building size and massing. A transition from low buildings on roadway frontages to larger and taller structures on the interior of the property is generally encouraged." CCP at 110.
25. Appellant objects to EPC finding No 16 in that it states that the plan as submitted complies with the CCP view preservation requirements, and the plan does not so comply.
26. Appellant objects to finding No. 17 in that the measurements from the east edge of Coors Boulevard to the building edges are not specifically called out in the plans, which should be required.

27. Appellant objects to finding No. 18 in that there was only one non-facilitated meeting with the applicant to discuss the site plan for building purposes; the prior three meetings were regarding the site plan for subdivision purposes.
28. Appellant objects to condition No. 9a which appears to allow single story buildings to penetrate the view plane in conflict with the Coors Corridor Plan. Further, there is no mention in this condition of the requirement that the View Plane Building Bulk be limited to 50 percent of the view area.
29. Appellant objects to the EPC rejection of its proposed findings and conclusions, submitted at the June 16, 2005 hearing, a copy of which is attached hereto as Exhibit A. Appellant restates by reference all requested findings as issues in dispute in this matter.
30. The West Side Strategic Plan clearly states that "Protection and preservation of the Bosque is critical. Development east of Coors Boulevard should be sensitive to this community asset." at p. 55.
31. The site offers one of the last untouched natural large expanses of Bosque view remaining on the overdeveloped West side of the city. To ignore this in order to place large ordinary structures surrounded by the usual vast parking spaces is to ignore the beauty, history, and potential of this property. No sensitivity is being shown for flora and fauna nor for humans who live and function in the immediate neighborhood. La Luz was superbly designed by award winning architect, Antoine Predock, to integrate the life of a school into the life of the Bosque with a view to protecting that extraordinary resource. It has always been the intent that any commercial development would add to the village atmosphere and be sensitive to the preservation of the natural surroundings. What is being proposed violates the minimum view preservation requirements, and does not in any way address the unique qualities of this environment.

WHEREFORE, Appellants ask that the EPC approval of the above-referenced action be overturned and denied.

LAW OFFICE OF LYNN PERLS

By   
N. Lynn Perls  
Agent for Appellant LLLA  
500 Fourth Street NW, Suite 205  
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La Luz Landowner's Association  
**PROPOSED FINDINGS AND CONDITIONS**  
Silverleaf Ventures  
Site Plan for Building Permit  
Project #1003859, 04 EPC 01844

June 16, 2005

Environmental Planning Commission  
Mr. Jens Deichmann, Chair  
c/o Juanita Garcia, Staff Planner  
600 2<sup>nd</sup> Street NW, #300  
Albuquerque, NM 87102

**HAND DELIVERED**

Finding: The building heights and mass violate and do not conform to the Coors Corridor Plan (hereinafter CCP) view preservation requirements.

Condition: The site plan for building permit be deferred for 60 days to allow the developer time to redesign the buildings to a lower scale to conform to the plan requirements.

Alternative Condition: That all buildings meet the Coors corridor plan view restrictions, including without limitation that all buildings, whether single or multi story, meet the same conditions and requirements, and all buildings located close to Coors Blvd. (6B2.4, 6B2.5, 6B2.6 and 6b2.7) not exceed 14 feet in height, with ground level at least 10 feet below grade of the adjacent Coors Boulevard, per the Coors Corridor Standards. In addition, no more than 1/3 of the building height may exceed the horizontal view plane 4' above the Coors Road grade, including without limitation all porticos, parapets & towers. Further, no more than 50% of the view area may be encroached upon by the height and mass of the buildings.

Finding: The plan as drafted does not specify each building level grade in relationship to the east edge of Coors Boulevard, which prohibits evaluation of compliance with CCP.

Condition: Elevations showing measurements of the buildings, ground level grade of each building and its relationship to the east edge of Coors Boulevard must be provided for review of view plane and view area compliance.

**Finding:** The intention of the CCP when drafted in 1984 conceived of single story buildings as built at the time to heights between 12' and 16'. Twenty-six foot, single story buildings were not contemplated at the time the CCP was drafted, and placing such buildings close to Coors Boulevard violates both the letter and the intent of the plan.

**Finding:** Projects containing several buildings should provide variety in building size and massing. A transition from low buildings on roadway frontages to larger and taller structures on the interior of the property is generally encouraged. p. 110 CCP. The subject proposal does not provide any transition in heights. The buildings, while single story, are all as high as muliti story buildings, both close to Coors road, as well as towards the interior. The buildings close to Coors road should be of much lower stature.

**Condition:** Deferral, to redesign and illustrate elevations in relationship to bosque and mountains.

**Finding:** The CCP requires a minimum 15' landscaped street yard along the entire frontage of properties adjacent to Coors Boulevard, and a 35' setback. The current plan does not show measurements from the edge of the ROW to the buildings, but appear to be much less than a 35' setback.

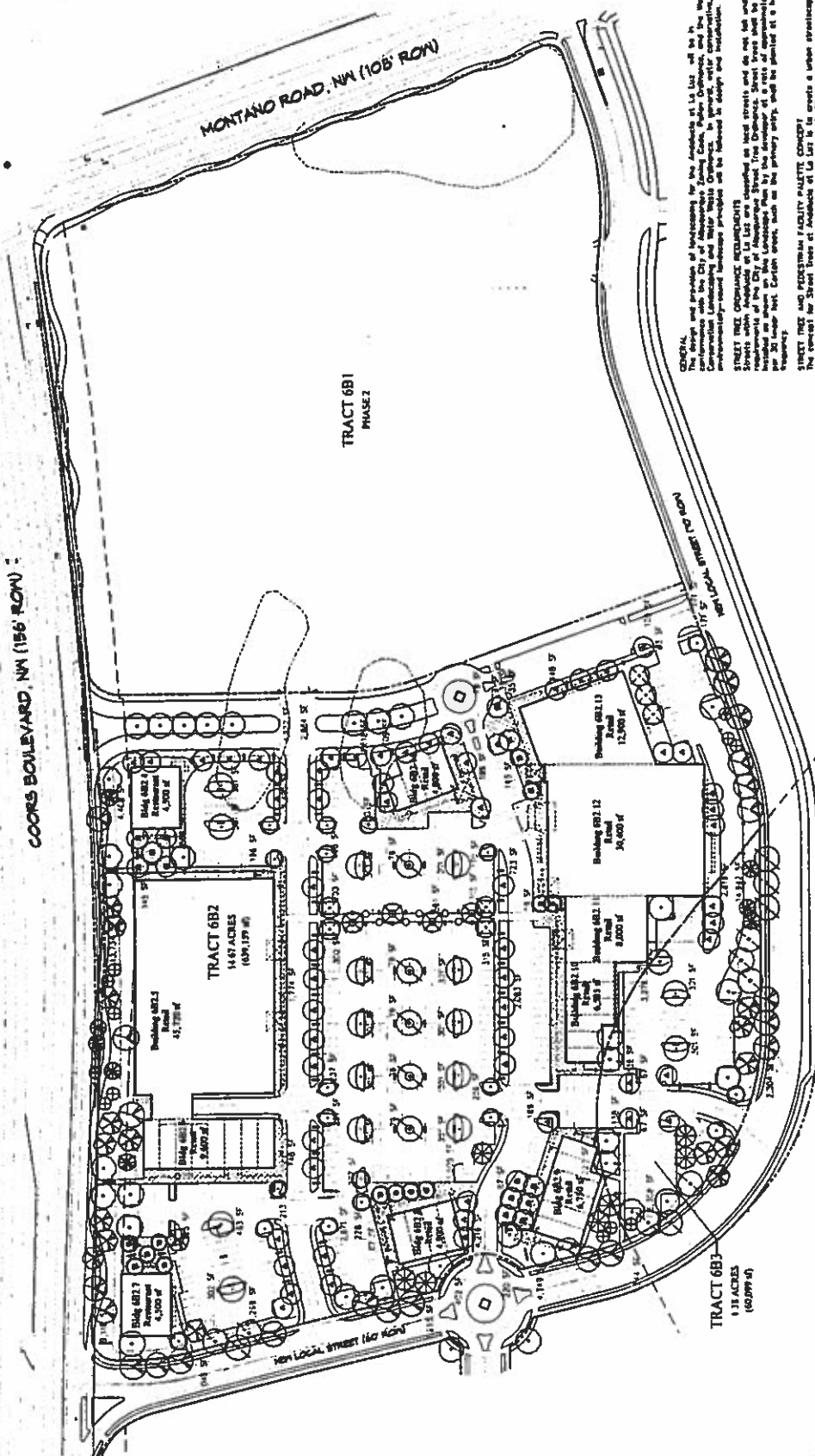
**Condition:** Add dimensions to plan to reflect at least 15' minimum street-scape and 35' setback widths along Coors.





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 Sabatini  
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 Albuquerque, NM 87102  
 505 243-1111  
 info@dsai.com

Andaluçia Tract 6B  
 Site Development Plan  
 Coors and Montana, SEC  
 Albuquerque, New Mexico



**GENERAL**  
 The siting and provision of landscaping for the Andaluçia Tract 6B shall be in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, and the City of Albuquerque Ordinance 12-1-2012, as amended, which require that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**STREET TREE PLANTING REQUIREMENTS**  
 Streets within Andaluçia Tract 6B shall be landscaped with trees and shrubs in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**STREET TREE AND PLANTING FACILITY PALETTE CONCEPT**  
 The City of Albuquerque Ordinance 12-1-2012, as amended, requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**MAINTENANCE RESPONSIBILITY**  
 The City of Albuquerque Ordinance 12-1-2012, as amended, requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**IRIGATION SYSTEM**  
 The City of Albuquerque Ordinance 12-1-2012, as amended, requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**LANDSCAPE RESPONSIBILITY**  
 The City of Albuquerque Ordinance 12-1-2012, as amended, requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

**STATEMENT OF WATER USAGE**  
 The City of Albuquerque Ordinance 12-1-2012, as amended, requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction. Landscaping shall be provided for all new construction in accordance with the City of Albuquerque Ordinance 12-1-2012, as amended, which requires that landscaping be provided for all new construction.

688,228 SF  
 126,253 SF  
 562,701 SF  
 14,102 SF  
 (283) 11,743 SF

**LANDSCAPE REQUIREMENTS**  
 Site Area: 18,000 sqm  
 Building Footprint: 14,102 sqm  
 Required Landscaping: 2  
 Landscaping Area: 14,102 sqm  
 Landscaping Area Provided: (283) 11,743 SF

**PLANT LEGEND**

| Symbol | Scientific Name | Common Name | Size     | Included Size   | Native Use |
|--------|-----------------|-------------|----------|-----------------|------------|
| ⊗      | Chamaecyparis   | Juniper     | 15'-Col. | 8" Ht. x 6" Wd. | Low        |
| ⊕      | Quercus         | White Oak   | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |
| ⊙      | Pinus           | Pinus       | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |
| ⊖      | Thuja           | Green Cedar | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |
| ⊗      | Chamaecyparis   | Juniper     | 15'-Col. | 8" Ht. x 6" Wd. | Low        |
| ⊕      | Quercus         | White Oak   | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |
| ⊙      | Pinus           | Pinus       | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |
| ⊖      | Thuja           | Green Cedar | 15'-Col. | 8" Ht. x 6" Wd. | Medium     |

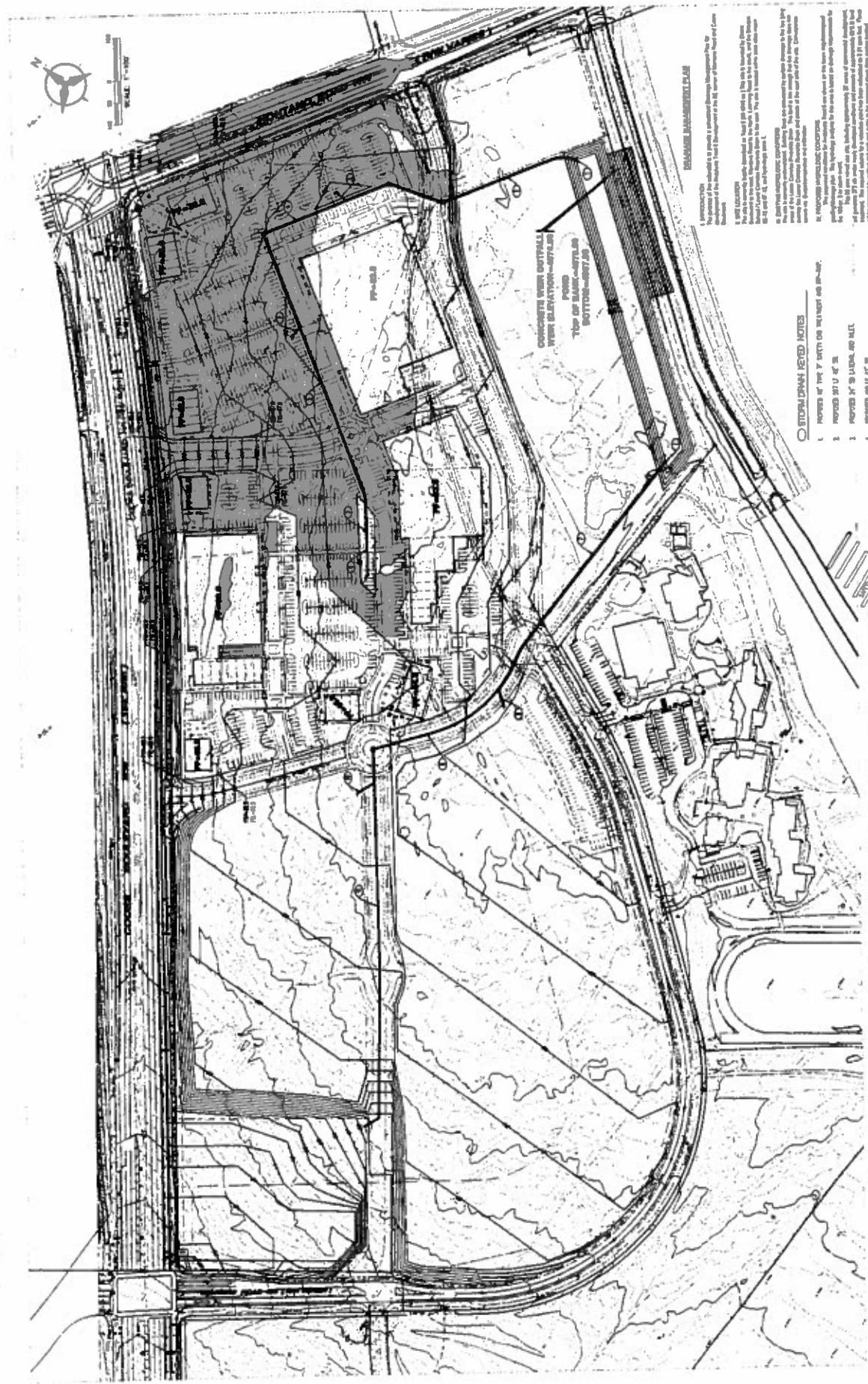


CONSERVIS PLANNING, INC.  
 214 Park / Landscape Architects  
 Albuquerque, NM 87102  
 (505) 761-9001 Fax: 505-761-9192  
 www.conservisplanning.com

NOTE: Due to the size of the drawing, symbols have not been shown. See Detailed Plans on sheet L-002 for specific landscape treatment.







**PERFORMANCE MANAGEMENT PLAN**

**1. INTRODUCTION**  
 The purpose of this plan is to provide a performance management plan for the site. The plan is intended to be used as a guide for the design and construction of the site. The plan is intended to be used as a guide for the design and construction of the site.

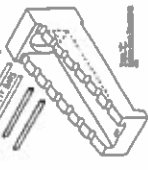
**2. SITE LOCATION**  
 The site is located in the City of Albuquerque, New Mexico. The site is bounded by the Coors and Montano, SEC. The site is bounded by the Coors and Montano, SEC. The site is bounded by the Coors and Montano, SEC.

**3. PROJECT GOALS**  
 The project goals are to provide a high quality site that meets the needs of the community. The project goals are to provide a high quality site that meets the needs of the community. The project goals are to provide a high quality site that meets the needs of the community.

**4. CONCLUSIONS**  
 The conclusions are that the site is suitable for the proposed development. The conclusions are that the site is suitable for the proposed development. The conclusions are that the site is suitable for the proposed development.

**STORM DRAIN DETENT NOTES**

- 1. PROPOSED 10' x 7' DETENT ON WEST SIDE OF 20'-WIDE
- 2. PROPOSED 10' x 7' DETENT
- 3. PROPOSED 10' x 10' DETENT AND INLET
- 4. PROPOSED 10' x 7' DETENT
- 5. PROPOSED 10' x 7' DETENT
- 6. PROPOSED 10' x 10' DETENT ON WEST SIDE OF 20'-WIDE
- 7. PROPOSED 10' x 10' DETENT ON WEST SIDE OF 20'-WIDE
- 8. PROPOSED 10' x 7' DETENT ON WEST SIDE OF 20'-WIDE

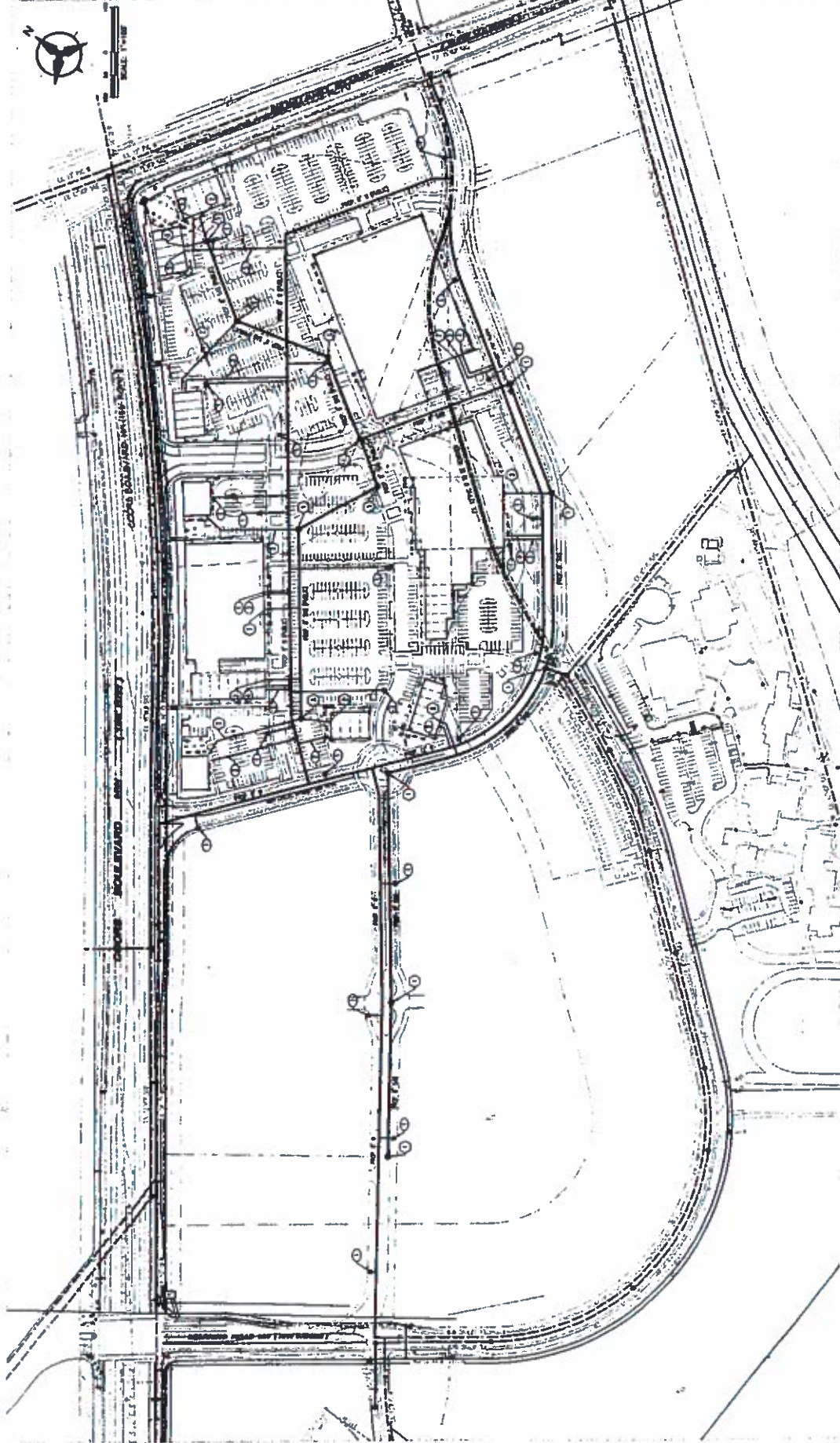


**APPROXIMATE SITE AREA CALCULATION**

| Area         | Total Area   |                | Total Area   |                | Total Area   |                | Total Area   |                |
|--------------|--------------|----------------|--------------|----------------|--------------|----------------|--------------|----------------|
|              | Acres        | Sq. Ft.        | Acres        | Sq. Ft.        | Acres        | Sq. Ft.        | Acres        | Sq. Ft.        |
| Site Area    | 10.00        | 435,600        | 10.00        | 435,600        | 10.00        | 435,600        | 10.00        | 435,600        |
| Water        | 0.00         | 0              | 0.00         | 0              | 0.00         | 0              | 0.00         | 0              |
| Other        | 0.00         | 0              | 0.00         | 0              | 0.00         | 0              | 0.00         | 0              |
| <b>TOTAL</b> | <b>10.00</b> | <b>435,600</b> | <b>10.00</b> | <b>435,600</b> | <b>10.00</b> | <b>435,600</b> | <b>10.00</b> | <b>435,600</b> |

**Dekker Perich Sabatini**  
 CONSULTING ENGINEERS AND ARCHITECTS  
 1001 CALIFORNIA ST. SUITE 1000  
 SAN FRANCISCO, CA 94109  
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utilities  
 building  
 parking  
 landscape  
 site plan

**Beker**  
**Perich**  
**Sabatini**

1000 Wilshire St.  
 Houston, TX 77002  
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**Andaluia Tract 6B**  
**Sports and Montano, SEC**  
 Houston, New Mexico

|      |         |
|------|---------|
| DATE | 1/11/01 |
| BY   | JTB     |
| DATE | 1/11/01 |
| BY   | JTB     |
| DATE | 1/11/01 |
| BY   | JTB     |

PRELIMINARY  
 UTILITY PLAN

0002

**○ SANITARY SEWER REVED NOTES**

1. REVED 1' DIA. SANITARY SEWER.
2. REVED 1' DIA. SANITARY SEWER.
3. SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH. ALL SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH. ALL SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH.
4. SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH. ALL SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH.
5. SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH. ALL SANITARY SEWER LINES ARE TO BE 1' DIA. AND 4' DEPTH.

**○ WATERLINE REVED NOTES**

1. REVED 1' DIA. WATERLINE.
2. REVED 1' DIA. WATERLINE.
3. WATERLINE LINES ARE TO BE 1' DIA. AND 4' DEPTH. ALL WATERLINE LINES ARE TO BE 1' DIA. AND 4' DEPTH.
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**Bobertman & Houston**  
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 Houston, TX 77002  
 Tel: 713/526-1111  
 Fax: 713/526-1112

Prepared by: [Name]  
 Date: 1/11/01

Architects  
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 Perich  
 Sabatini  
 1000 JEFFERSON ST  
 ALBUQUERQUE, NM 87102  
 TEL: 253-1111  
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 WWW.DPKPSA.COM

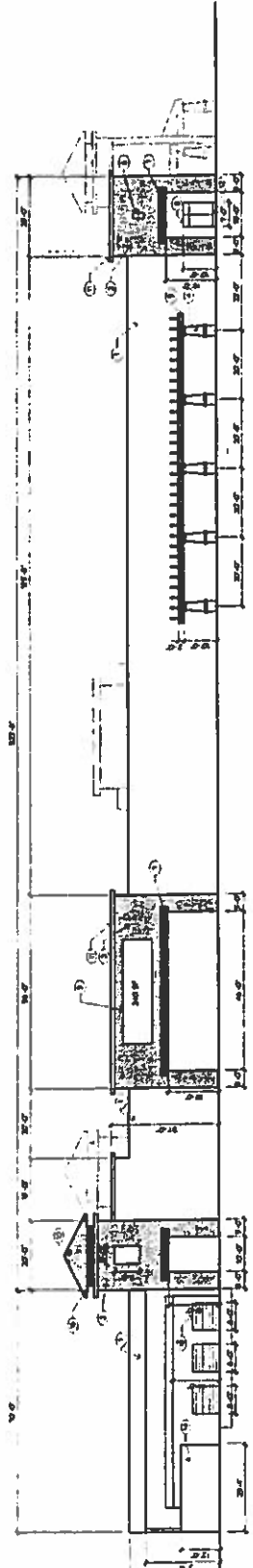
**KEY NOTES**  
 1. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 2. FINISHES ARE TO BE SHOWN IN ALL ELEVATIONS.  
 3. MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 4. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 5. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 6. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 7. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 8. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 9. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.  
 10. ALL MATERIALS AND FINISHES TO BE SHOWN IN ALL ELEVATIONS.

**COLOR AND MATERIAL SCHEDULE**

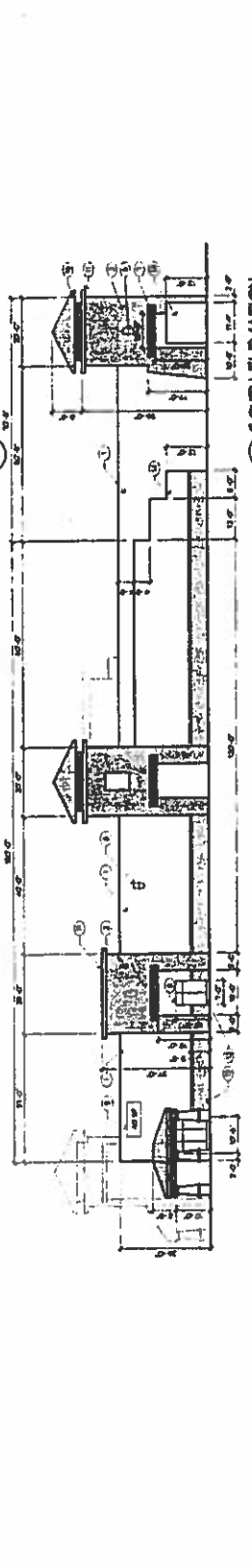
|    |            |
|----|------------|
| 1  | BRICK      |
| 2  | CONCRETE   |
| 3  | WOOD       |
| 4  | GLASS      |
| 5  | STEEL      |
| 6  | ALUMINUM   |
| 7  | PAINT      |
| 8  | ROOFING    |
| 9  | LANDSCAPE  |
| 10 | MECHANICAL |
| 11 | ELECTRICAL |
| 12 | PLUMBING   |
| 13 | HEATING    |
| 14 | Cooling    |
| 15 | Other      |

Andalucia Tract 6B  
 Mrs Blvd. and Montano Rd, SEC  
 Albuquerque, New Mexico

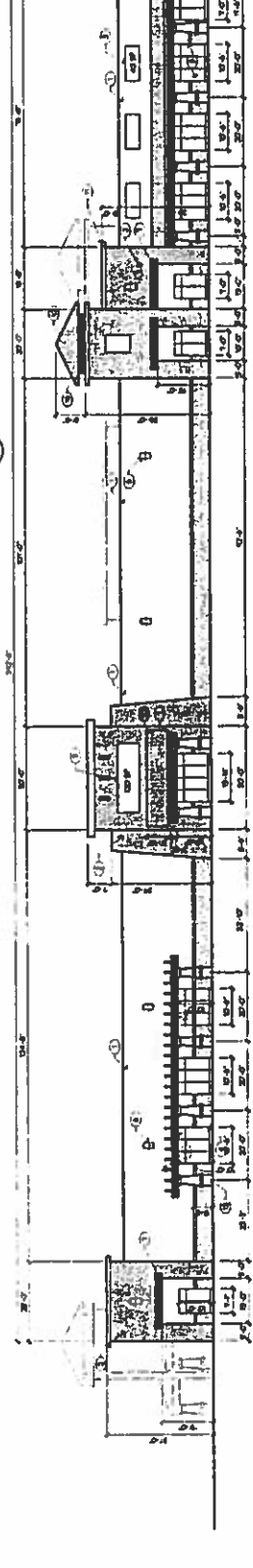
PROJECT NO. 000000  
 SHEET NO. 000000  
 DATE 00/00/00  
 DRAWN BY 000000  
 CHECKED BY 000000  
 PROJECT NO. 000000  
 DRAWING NO. 000000  
 BUILDING 000000  
 000000  
 ELEVATIONS



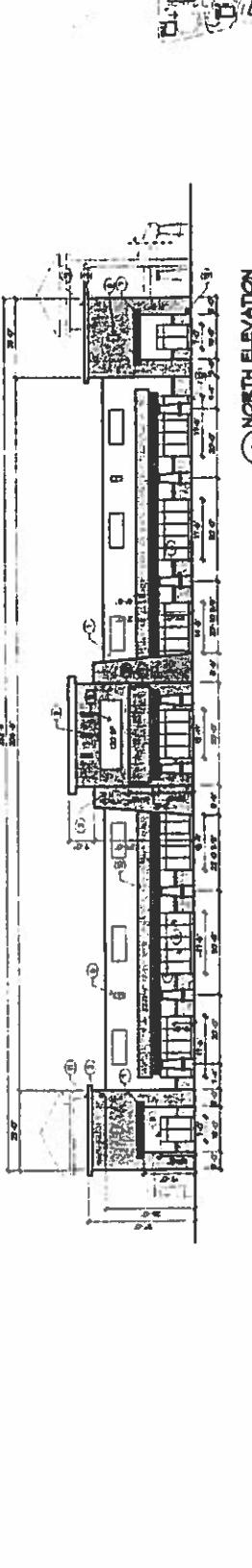
4 EAST ELEVATION



3 SOUTH ELEVATION



2 WEST ELEVATION



1 NORTH ELEVATION



KEY PLAN

A002  
 6 of 11

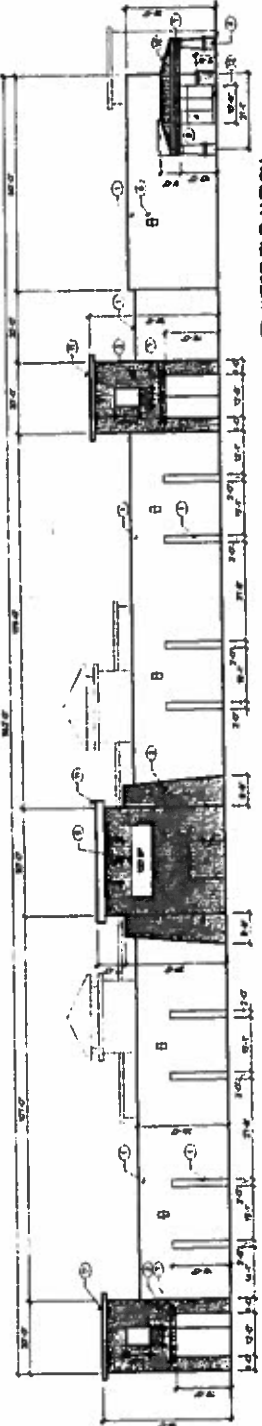


**KEY NOTES**

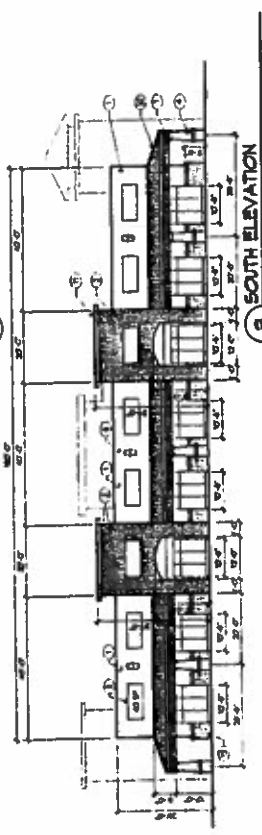
- 1. ALL EXTERIOR WALLS TO BE FINISHED WITH STUCCO
- 2. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 3. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 4. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 5. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 6. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 7. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
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- 13. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 14. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
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- 18. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 19. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS
- 20. STUCCO TO BE APPLIED TO ALL EXTERIOR WALLS

**COLOR AND MATERIAL SCHEDULE**

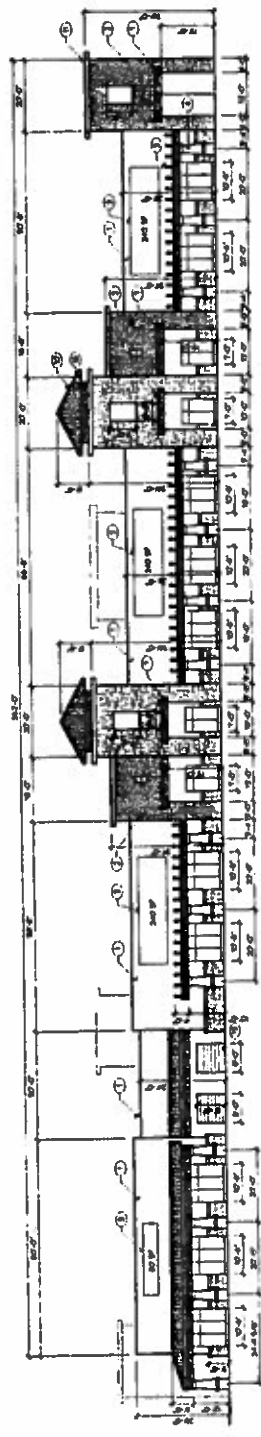
- 1. STUCCO - LIGHT TONE
- 2. STUCCO - MEDIUM TONE
- 3. STUCCO - DARK TONE
- 4. STUCCO - VERY DARK TONE
- 5. STUCCO - BLACK TONE
- 6. STUCCO - RED TONE
- 7. STUCCO - BLUE TONE
- 8. STUCCO - GREEN TONE
- 9. STUCCO - PURPLE TONE
- 10. STUCCO - BROWN TONE
- 11. STUCCO - GREY TONE
- 12. STUCCO - WHITE TONE
- 13. STUCCO - BLACK TONE
- 14. STUCCO - RED TONE
- 15. STUCCO - BLUE TONE
- 16. STUCCO - GREEN TONE
- 17. STUCCO - PURPLE TONE
- 18. STUCCO - BROWN TONE
- 19. STUCCO - GREY TONE
- 20. STUCCO - WHITE TONE



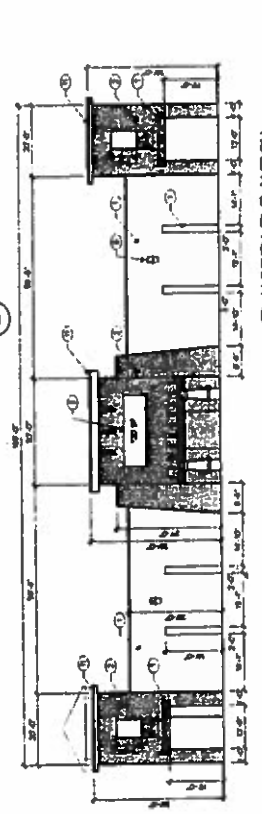
4 WEST ELEVATION



5 SOUTH ELEVATION



2 EAST ELEVATION



1 NORTH ELEVATION

Andalucia Tract 6B  
Mrs Blvd. and Montano Rd., SEC



KEY PLAN



AOE



**KEY NOTES**

1. FINISHES TO BE SHOWN ON DRAWING
2. FINISHES TO BE SHOWN ON DRAWING
3. FINISHES TO BE SHOWN ON DRAWING
4. FINISHES TO BE SHOWN ON DRAWING
5. FINISHES TO BE SHOWN ON DRAWING
6. FINISHES TO BE SHOWN ON DRAWING
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16. FINISHES TO BE SHOWN ON DRAWING
17. FINISHES TO BE SHOWN ON DRAWING
18. FINISHES TO BE SHOWN ON DRAWING
19. FINISHES TO BE SHOWN ON DRAWING
20. FINISHES TO BE SHOWN ON DRAWING

**COLOR AND MATERIAL SCHEDULE**

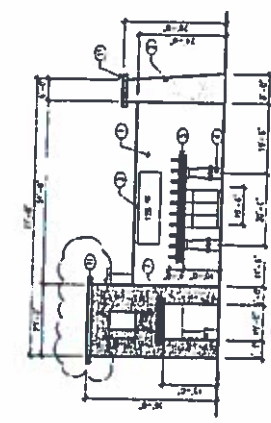
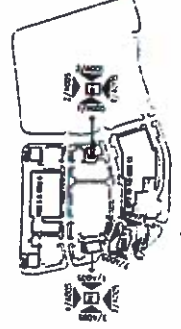
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|-----|-------------|-------------|
| 1   | PAINT       | WHITE       |
| 2   | PAINT       | BLACK       |
| 3   | PAINT       | RED         |
| 4   | PAINT       | GREEN       |
| 5   | PAINT       | BLUE        |
| 6   | PAINT       | BROWN       |
| 7   | PAINT       | YELLOW      |
| 8   | PAINT       | PINK        |
| 9   | PAINT       | ORANGE      |
| 10  | PAINT       | PURPLE      |
| 11  | PAINT       | GREY        |
| 12  | PAINT       | TEAL        |
| 13  | PAINT       | LAVENDER    |
| 14  | PAINT       | SLATE       |
| 15  | PAINT       | NAVY        |
| 16  | PAINT       | COBALT      |
| 17  | PAINT       | ULTRAMARINE |
| 18  | PAINT       | PRUSSIAN    |
| 19  | PAINT       | EMERALD     |
| 20  | PAINT       | VERDURE     |

**Andalucia Tract 6B**

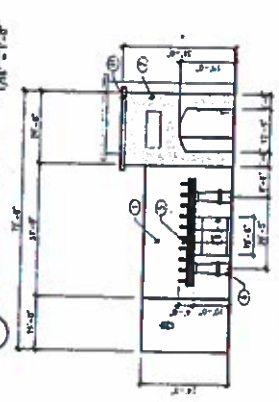
DATE: 10/1/54  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 PROJECT NO.: [Number]  
 BUILDING NAME: [Name]  
 BUILDINGS: 6803 & 6802  
 ELEVATIONS

SCALE: 1/8" = 1'-0"

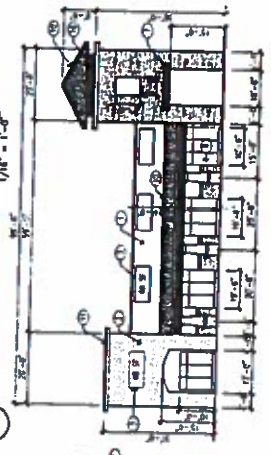
**KEY PLAN**



7 SOUTH ELEVATION



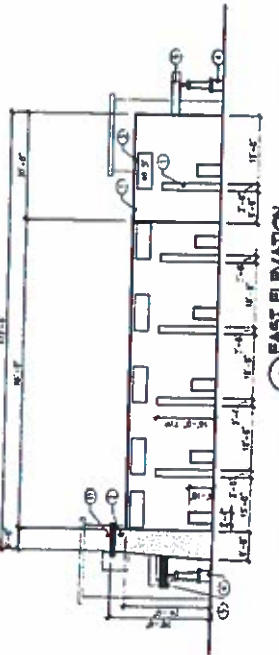
5 NORTH ELEVATION



1 NORTH ELEVATION



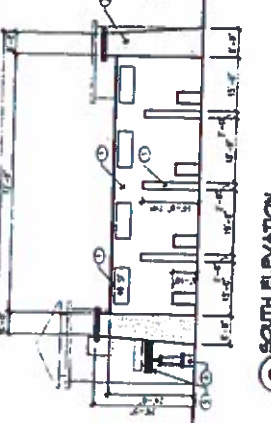
8 WEST ELEVATION



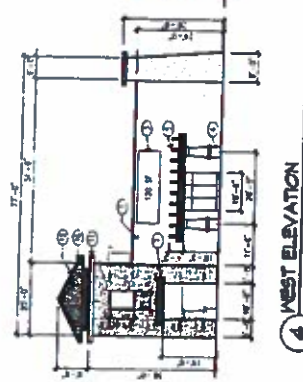
6 EAST ELEVATION



2 EAST ELEVATION



3 SOUTH ELEVATION

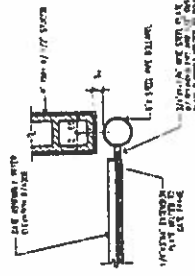


4 WEST ELEVATION

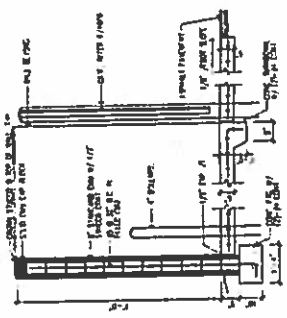


1/8" = 1'-0"

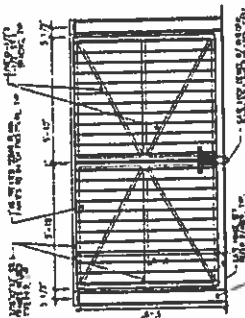




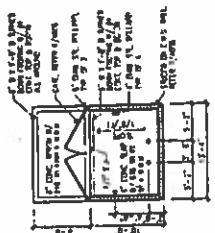
**8 GATE HINGE DETAIL**  
1/8" = 1'-0"



**7 ENCLOSURE SECTION**  
1/8" = 1'-0"



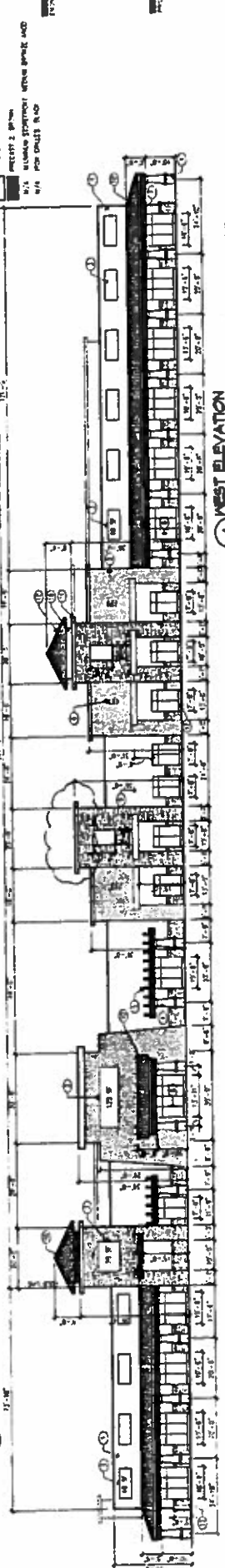
**6 GATE ELEVATION**  
1/8" = 1'-0"



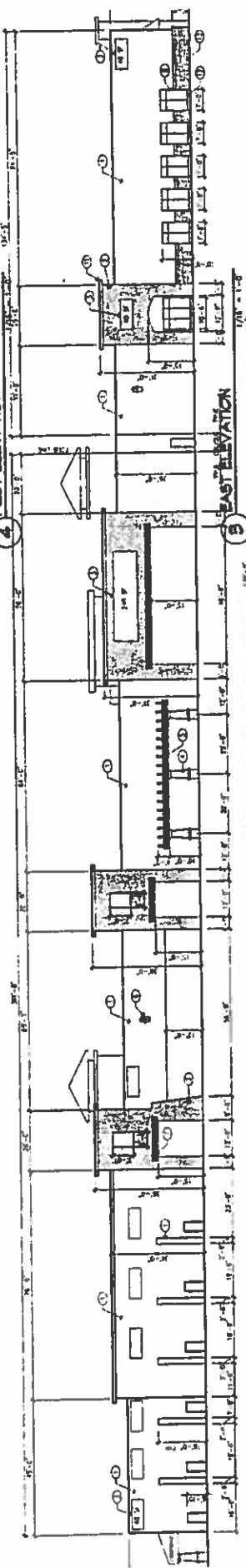
**5 SINGLE REPAIR ENCLOSURE**  
1/8" = 1'-0"

**COLOR AND MATERIAL SCHEDULE**

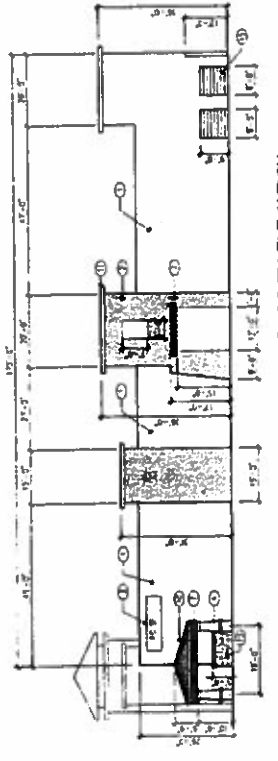
- 1. PAINT: ALL INTERIORS AND EXTERIORS TO BE PAINTED WITH A HIGH QUALITY, WATER-BASED, MILDew RESISTANT PAINT.
- 2. METAL: ALL METALWORK TO BE GALVANNEAL STEEL.
- 3. WOOD: ALL WOODWORK TO BE DRY KILN DRIED LUMBER.
- 4. GLASS: ALL GLASS TO BE CLEAR, UNLEADED.
- 5. CONCRETE: ALL CONCRETE TO BE 3000 PSI STRENGTH.
- 6. FINISHES: ALL FINISHES TO BE AS SHOWN ON THE DRAWINGS.



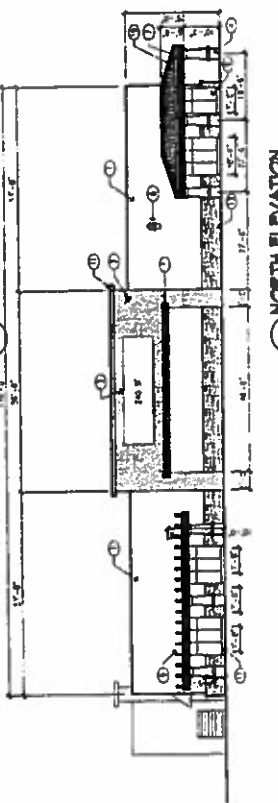
**4 WEST ELEVATION**  
1/8" = 1'-0"



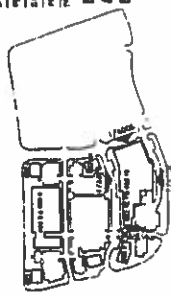
**3 EAST ELEVATION**  
1/8" = 1'-0"



**2 SOUTH ELEVATION**  
1/8" = 1'-0"



**1 NORTH ELEVATION**  
1/8" = 1'-0"



**KEY PLAN**  
1/8" = 1'-0"

Andalucia Tract 6B  
Agricultural New Mexico  
3000 Blvd. and Montano Rd., SEC

DATE BY  
DRAWN BY  
PROJECT NO.  
PLANNING DATE  
BUILDINGS  
662.10 TO 662.1  
ELEVATIONS

SCALE  
A00  
10' = 1"



HUNT &  
DAVIS, P.C.  
ATTORNEYS AT LAW

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JULIE J. VARGAS  
CHRIS W. PIERCE

♦ Also Member of California Bar

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E-mail: [cathy@huntedavislaw.com](mailto:cathy@huntedavislaw.com)

Please refer to: 5453.007

November 6, 2013

Mr. Hugh Floyd, PE  
Chair-Environmental Planning Commission  
c/o City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

also sent by e-mail to: [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov)  
Carmen Marrone

Re: Project No. 1003859  
04EPC - 01844

Dear Mr. Floyd:

I represent Silverleaf Ventures, LLC (hereinafter, "Silverleaf"). Mr. Bryan Wolfe, on behalf of Jack Cloud, the Chairman of the Development Review Board, requested a clarification by the Environmental Planning Commission (the "EPC") on an issue related to EPC Project No. 1003859. Mr. Wolfe requested a clarification from the EPC regarding: "At what point did the EPC intend that the Plan be adopted or approved so as to start the Zoning Code seven (7) year time period for plan expiration?". This request will be heard at the EPC meeting scheduled for November 14, 2013.

Section 14-16-3-11 (C)(1)(a) R.O. Albuquerque 1994 provides: "If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically. . . seven (7) years after adoption or major amendment of a plan".

On June 16, 2005, the EPC voted to approve Project No. 1003859-04EPC-01844, a Site Development Plan - Building Permit (the "Plan"). The Official Notice of Decision states as Condition 1:

1. The EPC delegates final sign-off authority of this site development

plan to the Development Review Board ("DRB"). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this Site Plan, including before or after DRB final sign-off, may result in forfeiture of approvals."

It is Silverleaf's position that the EPC delegated final sign-off authority to DRB, therefore the Plan's adoption date is not until DRB sign-off. In this instance, the Plan was conditionally approved at a DRB hearing with final sign-off further delegated to individual DRB board members. Silverleaf submitted the Plan to the individual DRB board members for final sign-off and has received all but one signature. It is Silverleaf's understanding that the one remaining signature for sign-off was imminent until the Taylor Ranch Neighborhood Association objected.


The infrastructure on the site has been fully constructed. Silverleaf has spent in excess of \$6,500,000.00 constructing the infrastructure. Silverleaf has relied on Condition I set forth in the Official Notice of Decision, that final sign-off authority of the site development plan was delegated by the EPC to the DRB. Silverleaf has also relied on a letter dated April 13, 2010 from Richard Dourte, PE, City Engineer, wherein Mr. Duarte stated, "Please be advised that Certificate of Completion and Acceptance shall only become effective on final site approval and filing in the Bernalillo County Clerk's Office." In addition, it has been the understanding and practice of the Planning Department that the seven (7) year termination date begins to run from the DRB sign-off. In reliance on these representations, Silverleaf spent in excess of \$6,500,000 completing the infrastructure.

Silverleaf will be submitting questions to the Chair of the EPC, to question City Planning Officials regarding the City's policy on the termination date commencement. Silverleaf will send a request to Ms. Suzanne Lubar to have several City Planning Department personnel present at the EPC hearing for questioning.

The EPC delegated final sign-off authority to the DRB. The Planning Department has considered the seven year termination date to commence running from DRB's final sign-off. To find otherwise and apply it retroactively, contrary to the City's past practice, would greatly damage my client.

Sincerely,

HUNT & DAVIS, P.C.

  
Catherine F. Davis

CFD:ja

Enclosures

c: Silverleaf Ventures (via e-mail)  
Blake Whitcomb (via e-mail)  
Kevin Curran (via e-mail)  
Carmen Marrone (via e-mail)  
Jim Strozier (via e-mail)  
Tim Flynn O'Brien (via e-mail)

HUNT &  
DAVIS, P.C.  
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E-mail: [cathy@huntanddavislaw.com](mailto:cathy@huntanddavislaw.com)

Please refer to: 5453.007

October 9, 2013

*via e-mail*

Mr. Hugh Floyd  
Chairman Environmental Planning Commission  
City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

**Re: Planning Department's Request for Interpretation of EPC Hearing  
on October 10, 2013 - Project No. 1003859-04EPC - 01844**


Dear Chairman Floyd:

I represent Silverleaf Ventures, LLC. I spoke with Tim Flynn-O'Brien, the attorney for the Taylor Ranch Neighborhood Association on October 7, 2013. Mr. Flynn-O'Brien informed me that he concurred with the deferral of the matter before the EPC scheduled for October 10, 2013. In addition, I spoke with Blake Whitcomb of the City Attorney's Office on October 8, 2013. It was his understanding that City Planning has requested a deferral.

Thank you for your attention to this matter.

Sincerely,

HUNT & DAVIS, P.C.



Catherine F. Davis

CFD:ja

c: Silverleaf Ventures (*via e-mail*)  
Blake Whitcomb (*via e-mail*)  
Kevin Curran (*via e-mail*)  
Carmen Marrone (*regular mail*)  
James Strozier (*via e-mail*)  
Tim Flynn- O'Brien (*via e-mail*)  
Laura Mason (*via e-mail*)

**H**UNT &  
**D**AVIS, P.C.  
ATTORNEYS AT LAW

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Telefax: (505) 881-4255

E-mail: [cathy@huntedavislaw.com](mailto:cathy@huntedavislaw.com)

**Please refer to: 5453.007**

October 4, 2013

Mr. Hugh Floyd  
Chairman Environmental Planning Commission  
City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

**Re: Planning Department's Request for Interpretation of EPC Hearing  
on October 10, 2013 - Project No. 1003859-04EPC - 01844**

Dear Chairman Floyd and Members of Environmental Planning Commission:

I represent Silverleaf Ventures, LLC, the owners of the property known as Tract 6B, Lands of Ray Graham III, located on Coors Boulevard NW between Montano Road NW and Learning Road NW containing approximately 15 acres (hereinafter, "the Property"). Silverleaf Ventures recently retained me to represent it at the EPC hearing scheduled for October 10, 2013. This letter is a request for a deferral of this matter from the EPC hearing on October 10, 2013. The reasons for the request for deferral are as follows:

1. Because I was recently retained, I will need more time to adequately prepare for the hearing;
2. I am scheduled for jury duty through October 10, 2013 and I am not advised as to whether I need to appear until the prior evening;
3. Upon information and belief, there are other properties and property owners, with site plans that may be affected by a determination by the EPC as to what constitutes termination under ZC §14-16-3-11. Those property owners, whose rights may be impacted, have not been sent a notice of the EPC hearing; and
4. It is my client's position that the issue of whether the site plan approved by the EPC on June 16, 2005 has been terminated pursuant to ZC §14-16-3-11 is not properly before the EPC.



HUNT & DAVIS, P.C.

October 4, 2013

Page 2

Based on the above, Silverleaf Ventures, LLC respectfully requests that this matter be deferred from the October 10, 2013 EPC hearing. I attempted to contact Mr. Tim Flynn-O'Brien, the attorney for the Taylor Ranch Neighborhood Association and was informed he would not be available until Monday, October 7, 2013.

Thank you for your attention to this matter.

Sincerely,

HUNT & DAVIS, P.C.



Catherine F. Davis

CFD:ja

c: Silverleaf Ventures (*via e-mail*)  
Blake Whitcomb (*via e-mail*)  
Kevin Curran (*via e-mail*)  
Carmen Marrone (*regular mail*)  
James Strozier (*via e-mail*)  
Tim Flynn- O'Brien (*via e-mail*)  
Laura Mason (*via e-mail*)

# TIMOTHY V. FLYNN-O'BRIEN

Attorney at Law  
817 Gold Avenue SW  
Albuquerque, New Mexico 87102-3014  
Phone: 505-242-4088 / Fax: 866-428-7568

September 30, 2013

## HAND-DELIVERED

Hugh Floyd, Chairman  
Environmental Planning Commission  
City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, New Mexico 87102

RE: Planning Department's Request for Interpretation  
EPC Hearing October 10, 2013  
Project No. 1003859/04EPC-01844

Dear Chairman Floyd and Members of the Environmental Planning Commission,

This concerns the request from Planning Department for an interpretation of the "start date" for site plan termination under ZC §14-16-3-11(C). I represent Taylor Ranch Neighborhood Association. Section 14-16-3-11(C) is entitled "Site Development Plan Approval Requirements; Possible Plan Termination." This section requires termination of a of site plan for the undeveloped portion of the site plan if less than one-half of the approved square footage of a Site Development Plan has been built or developed. If the site plan is less than one half developed the plan terminates "seven years after adoption or major amendment of the plan ...." Therefore when less than one half of the site development plan has been built the plan terminates seven years after the adoption by the EPC unless the plan has been extended by the EPC.

As applied to this case, the issue is whether the site plan approved by the EPC on June 16, 2005 has terminated pursuant to ZC §14-16-3-11(C). The relevant undisputed facts are:

1. The EPC approved a Site Development Plan for Building Permit on June 16, 2005 in Project No. 1003859-04EPC 01844.
2. Final sign off was delegated to the DRB to ensure compliance with EPC conditions and that City's plan requirements were met.
3. The DRB approved the Site Development Plan for Building Permit on January 26, 2006 with final signoff delegated to Transportation and to Planning.

4. The developer did not develop any portion of the site within seven (7) years. In fact, the developer did not obtain DRB sign off within seven (7) years of EPC adoption (June 16, 2005 plus 7 years = June 15, 2012). Final sign off also did not occur within seven years of DRB approval. (January 26, 2006 plus 7 years = January 25, 2013.)<sup>1</sup>

These regulations concerning the site plan termination are contained in the regulations governing site plan approval and site plan amendment *by the EPC*. The seven year time period for termination (unless an extension is granted) begins with EPC approval.

It has been argued by some in Planning and apparently by Silver Leaf that the “clock” for site plan termination should start with final DRB sign off. The argument that the time clock should only start after final DRB signoff would allow site plans to have an infinite life if the developer, as in this case, does not obtain sign off. This is inconsistent with the plain language, legislative purpose, legislative history and the City’s written interpretation of §14-16-3-11.

The start date for site plan termination is the date of EPC approval (or at the latest DRB approval). It should be noted that with regard to its site plan for subdivision Silver Leaf did request an extension and receive one. There was no request for an extension for the site plan for building permit.

1. The seven year period for plan termination was enacted by a 1994 amendment to the Zoning Code. *See C/S O-23 Enactment 43-1994* (copy attached as Exhibit A). Since adoption the written interpretation by the City and EPC has been that plans terminate seven years after EPC approval. Several notices of decision are included in your packet and they all describe plan approval as terminating “7 years *after approval by the EPC.*” (Emphasis added) In fact this is the exact language on the 2005 site plan for building permit approved in this case. Exhibit B. *See also February 20, 2009 and January 19, 2012 Notices of Decision in the record.*<sup>2</sup>

2. The purpose of plan termination is to terminate plans which have not been substantially completed so the City can consider and apply current policy. This includes sector plans adopted in the interim, current zoning requirements, and current traffic conditions. *See §14-16-3-11(C)(1)(c)*. Allowing a developer to choose to not get one signature and thereby totally avoid site plan termination frustrates the purpose of the site plan termination ordinance. Why should a developer who promptly gets DRB approval and sign off and builds 49% of site have less rights than a developer who never gets DRB approval or who fails to get sign off after DRB approval? Can that developer who has invested nothing then play his “trump” card and claim

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<sup>1</sup> While not relevant here in calculating the seven (7) years, I have assumed that “within seven years” means at least by the day before the 7<sup>th</sup> anniversary.

<sup>2</sup> It has been reported that the Planning Department recently changed the Notice of Decision language that has been universal since 1994. Perhaps this change is an attempt to promote the revisionist interpretation now advocated by some in the department. Any new interpretation inconsistent with the clear written interpretation published for years is not entitled to any weight. *See High Ridge Hinkle Jt. Venture v City of Albuquerque*, 119 NM 29, 888 P.2d 471, 485 (Ct. App. 1994) (Hinkle I) (Court should not defer to agency that interprets ordinance on basis of what it now believes to be best policy). *See also Hinkle III* (court should not defer to current interpretations inconsistent with past interpretation).

vested rights based on a site plan inconsistent with the current sector plan and/or which would create a traffic problem? Certainly that was not the intent of the City Council. The ordinance gives the developer seven years of entitlement with the option for extension. The City Council did not intend that the do-nothing developer should have more rights than one who has developed 49% of the site. The intent is clear – termination is measured from EPC approval not from final sign off.

3. Section 14-16-3-11 concerns the Site Development Plan approval *by the EPC* not DRB sign off. The termination date is “seven years after adoption or major amendment.” Amendment is by the Planning Commission (“a major amendment of a Site Development Plan is an amendment adopted *by the Planning Commission ....*” §14-16-3-11(C)(2)(c)) (emphasis added). Site Development Plans for Building Permit are adopted by the EPC. The DRB’s rule is to review for compliance with EPC conditions. The context of the ordinance makes it clear that it is adoption of a plan *or* an amendment *by the EPC* that triggers the seven year period.

4. The site plan termination provisions were added to the Zoning Code in 1994 after a Site Plan Quality Task Force Report. The task force was mandated by 88-1993 (R-238) with the objective that “new developments subject to site development plans should fit into their site’s neighborhood .... [and] the design of site development plan should not damage existing development in the vicinity.” The task force recommended site plan termination to accomplish this objective. By requiring termination after seven years, the City had the option of denying renewal to plans that might damage existing development or no longer fit into the neighborhood without modification. Obviously if a site plan never terminates because the developer does not get sign off, the goal would not be achieved. (See attached Exhibit C).

5. The Planning Director is required to provide information concerning plan termination at the time an initial plan is approved. §14-16-3-11(C)(1)(a). That information was provided for the 2005 site plan in the June 17, 2005 Notice of Decision (Exhibit B; see No. 1 above). *See* Notice of Decision (“Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated seven (7) years “*after approval by the EPC.*”) (emphasis added). Thus it is clear that the Planning Department has historically interpreted the date of the EPC Decision as the start date for the seven (7) year plan termination. Silver Leaf did not appeal this interpretation in 2005.

6. As set forth above the seven years starts from EPC approval so that current conditions are considered after seven years. This also allows current residents a voice. In this case, it is my understanding that, for example, the 2005 site plan does not meet the View Preservation requirements of the Coors Corridor Plan as measured today under the current Coors configuration.<sup>3</sup> This is precisely why the City Council adopted plan termination, that is, so that current plans and policies could be applied to development. The site plan can be resubmitted but

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<sup>3</sup> There is also an issue as to whether the 2005 plan met Coors View Plane requirements under the condition as amended by the City Council in 2005.

then would be subject to a public hearing. This also allows residents who were not parties in 2005 or who have moved to the area since 2005 to have a voice.

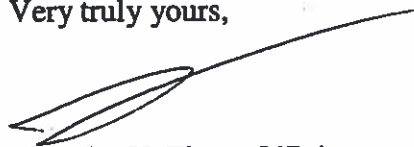
7. Silver Leaf failed to obtain final sign off within six (6) months of DRB approval on January 25, 2006. Since the permitted uses in the SU-1 zone are recorded on the zone map (see §14-16-2-22(A)(2)) final sign off was required within six (6) months. §14-16-4-1(C)(11). Section 14-16-4-1(C)(11) requires certification of the zone map amendment site development plan within six months of City approval. Silver Leaf's failure to obtain approval or sign off within six months makes the prior approval void. ("If such requirements are not met within six months after the date final City approval is voted the approval is void...") §14-16-4-1(C)(11)(b). The failure to obtain approval within a reasonable time also constitutes waiver. There was no effort to obtain sign off for over seven (7) years and Silver Leaf abandoned the plan. The law implies a reasonable time in which to perform. *Western Commerce Bank v. Gillespie*, 108 NM 535, 775 P.2d 737, 739 (NM 1989).

8. Silver Leaf submitted a new proposed site plan for this same site in a separate proceeding which constitutes waiver, abandonment and withdrawal of the 2005 unsigned off plan.

9. Procedurally even the 2006 DRB approval was improper. That becomes an issue if the City does not enforce the automatic termination but is not an issue if the seven year rule is applied. The procedural irregularity is that the DRB "approval" occurred after the City Council adopted amended findings. The City failed to issue an amended Notice of Decision and the applicant failed to demonstrate compliance with the amended conditions.

The policy implications of latching onto a date – sign off – over which the City has no control and which is inconsistent with City Council intent cannot be understated. As demonstrated by the notice in EPC decisions the EPC approval date has been the recognized date from which termination has been measured since 1994. If you chose the DRB sign off date instead of the date of adoption by the EPC, some site plans for subdivision and building permit dating back as far as 1976 (which were long ago considered terminated) will be resurrected even through inconsistent with current area and sector plans.

Very truly yours,



Timothy V. Flynn-O'Brien

TVFOB/mlg

Enclosure as stated

cc: Blake Whitcomb  
Kevin Curran  
Carmen Marrone  
Jenica Jacobi  
Jim Strozier

**Attachments:**

**Exhibit A: C/S 0-23 Enactment 43-1994**

**Exhibit B: June 17, 2005 Notice of Decision**

**Exhibit C: R-23B Enactment 88-1993**

CITY OF ALBUQUERQUE  
ALBUQUERQUE, NEW MEXICO

*Side Copy*

INTER-OFFICE CORRESPONDENCE

July 22, 1994

REF: HPPPLN4/15573-21

TO: Alar B. Armijo, President City Council

FROM: Martin J. Chavez, Mayor *[Signature]*

SUBJECT: TA-94-3 (O-23) - The Environmental Planning Commission recommends, and Councilor Vickie S. Perea requests, approval of a request to amend Sections 7-15-30.A and 7-14-40.K R.O. 1974 of the Comprehensive City Zoning Code concerning Site Development Plan Procedures and Possible Plan Termination. (SUSAN CONNORS, STAFF PLANNER)

TO BE HEARD BY THE LAND USE, PLANNING, AND ZONING COMMITTEE ON AUGUST 10, 1994.

This is an amendment to the Comprehensive City Zoning Code concerning site development plan procedures and providing for a mechanism to allow for plan termination when sites are not developed.

This text amendment was reviewed by NAJOP and their input, along with staff's and the EPC's, has been incorporated into the amended ordinance as recommended by the EPC.

Submitted with this package is the Bill as amended and recommended by the EPC. Attached to the staff report are the original bill (O-23) and the draft bill prepared by staff for the July 7, 1994 EPC public hearing. It was this last draft that was further amended at the July 7 public hearing and is recommended to City Council for approval.

This amendment is the result of recommendations from the Site Plan Quality Task Force report.

Staff supports the EPC's recommendation for approval of the substitute bill.

RECOMMENDED BY: *[Signature]*

*[Signature]*  
Rex King, Acting Director  
Planning Department

RECOMMENDED BY:

*[Signature]*  
Lawrence Rael  
Chief Administrative Officer

EXHIBIT NO. A



CITY of ALBUQUERQUE  
ELEVENTH COUNCIL

COUNCIL BILL NO. C/S O-23

ENACTMENT NO. 43-1994

SPONSORED BY: Vickie S. Perea

ORDINANCE

AMENDING SECTIONS 14-16-2-22 AND 14-16-3-11 ROA 1994, PARTS OF  
THE ZONING CODE, CONCERNING SITE DEVELOPMENT PLAN PROCEDURES AND  
POSSIBLE PLAN TERMINATION.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF  
ALBUQUERQUE:

Section 1. Section 14-16-2-22(A) ROA 1994, a part of the section on the  
SU-1 Special Use Zone, is amended to read:

(A) Procedure.

(1) Development within the SU-1 zone may only occur in  
conformance with an approved Site Development Plan. An application for a  
change to SU-1 zoning shall state the proposed use and must be accompanied by a  
plan including, at a minimum, all the elements of a Site Development Plan for  
Subdivision Purposes. As part of the zone amendment action, a Site Development  
Plan may be approved; alternatively a plan may be approved later. If an approved  
Site Development Plan is a specified condition of zone change approval, such plan  
must be approved within the time period specified in Section 14-16-4-1(C)(10) of  
this Zoning Code. No building permit shall be approved unless it is consistent with  
a complete site development plan for building permit and landscaping plan for the  
lot in question, approved by the Planning Commission or its designee; at the  
Planning Commission's discretion, approval of detailed plans may be required for  
the entire SU-1 zone area prior to issuing a building permit.

(2) A decision implementing a change to the zone map to  
SU-1 zoning shall designate the specific use permitted, and a building permit shall  
be issued only for the specific use and in accordance with an approved Site  
Development Plan. The specific use shall be recorded on the zone map.

1 (3) In approving an application, the Planning Commission  
2 may impose requirements as may be necessary to implement the purpose of this  
3 Zoning Code.

4 (4) A certified copy of the Site Development Plan shall be  
5 kept in the Planning Department records so that it may be reviewed against an  
6 application for a building permit for any part or all of a special use.

7 (5) Approved Site Development Plans may be terminated if  
8 not completely built in a timely manner; see Section 14-16-3-11 of this Zoning  
9 Code.

10 (6) The Planning Director may approve minor changes to an  
11 approved Site Development Plan or Landscaping Plan if it is consistent with the use  
12 and other written requirements approved by the Planning Commission, if the  
13 buildings are of the same general configuration, if the total building square footage  
14 is not greater than 10% than the approved plan, the vehicular circulation is similar  
15 in its effect on adjacent property and streets, and the approving official finds that  
16 neither the city nor any person will be substantially aggrieved by the altered plan.  
17 If the Planning Director believes there might be a person substantially aggrieved by  
18 the altered plan or if the total building square footage would be increased more  
19 than 2%, he shall give mailed notice of the proposed change to owners of adjacent  
20 property and to neighborhood associations entitled to notice of zone change  
21 proposals there.

22 Section 2. Section 14-16-3-11 ROA 1994 is amended to read:

23 Section 14-16-3-11 SITE DEVELOPMENT PLAN APPROVAL REQUIREMENTS;  
24 POSSIBLE PLAN TERMINATION.

25 (A) Site Development Plan approval for either subdivision or building  
26 purposes may include:

27 (1) Imposition of relevant requirements contained within or  
28 authorized by the City's Subdivision Ordinance, including but not limited to  
29 dedication of rights of way and assurances for required infrastructure  
30 improvements both on site and off site.

31 (2) Submission of an air quality impact assessment pursuant  
32 to Section 14-16-3-14 of this Zoning Code.

33 (3) Imposition of other requirements of other City ordinances.

(B) Site Development Plans, especially plans for unbuilt areas, are ~~not~~ changed so that developers can better respond to changing market ~~conditions~~. Amendment of Site Development Plans does not require meeting the ~~criteria~~ which must be met to justify changing zones or changing written ~~specifications~~ imposed by Sector Development Plans or by terms of approval of a ~~zone~~ such as SU-1. Site Development Plans are expected to meet the requirements ~~of~~ adopted City policies and procedures.

(C) Possible Termination of Site Development Plans for Sites Which ~~Have Not~~ Been Fully Developed.

(1) If less than one-half of the approved square footage of a ~~Site Development~~ Plan has been built or less than one-half of the site has been ~~developed~~, the plan for the undeveloped areas shall terminate automatically when ~~specified~~ below unless extended as provided below:

(a) Seven years after adoption or major amendment of ~~the plan~~ within six months prior to the seven-year deadline, the owners of the ~~property~~ shall request in writing through the Planning Director that the Planning ~~Commission~~ extend the plan's life an additional five years. At an advertised public ~~hearing~~ the Planning Commission shall be grant approval if it deems that the Site ~~Development~~ Plan remains appropriate and the owner intends to fully develop the ~~site~~ according to the plan concept. The Planning Commission shall be less likely to ~~terminate~~ a site plan if there is little flexibility in how the site can be developed or if ~~there~~ is a strong architectural or landscaping character on the site which should be ~~preserved~~.

(b) Subsequently, upon similar requests, the Planning ~~Commission~~ may grant requests for additional five-year extensions of the plan, ~~using~~ the same criteria and process.

(c) If a Site Development Plan is approved for any ~~additional~~ five-year period by the Planning Commission, an updated Transportation ~~Impact~~ Study (TIS) shall be required to determine if there are off-site improvements ~~needed~~ that were not previously required.

(2) For the purposes of this Subsection C:

(a) Hereafter, the Planning Director shall provide a ~~copy~~ of these Provisions for Plan Termination to the applicant at the time such an

major plan or a major plan amendment is approved;

(b) For Site Development Plans approved prior to the effective date of this subsection, the Planning Director shall as soon as possible provide a copy of these Provisions for Plan Termination to the current owner(s) of a site covered by a Site Development Plan. For previously approved Site Development Plans, the time periods specified in this Subsection C shall be deemed to run from the date this subsection becomes effective.

(c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by Section 14-16-2-22(A)(6) of this Zoning Code.

(d) If an approved Site Development Plan indicates stages of development, that is most often an adequate basis for City extension of the life of the Site Development Plan for the later phases. When the first phase has been built, extension of the plan for later phases may be granted by the Planning Director on behalf of the Planning Commission upon a finding that the plan as previously approved is likely to be built in the future. Appeal of a decision of the Planning Director is to the Planning Commission as provided in Section 14-16-4 of this Zoning Code.

(e) If an approved Site Development Plan has been partially completed, the termination of the plan shall not adversely effect or impose additional requirements upon the developed parcels.

(f) Termination of all or part of a Site Development Plan under the terms of this subsection does not preclude approval of a similar plan at a later date.

(g) If a Site Development Plan is terminated, the City shall release the owner from any pending subdivision improvements agreements and financial guarantees for public infrastructure required to be constructed as a condition of approval of the Site Development Plan.

(3) Fee. A filing fee of \$50 to cover reasonable expenses shall accompany each request for plan extension.

Section 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence, word, or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect

the validity of the remaining provisions of this ordinance. The Council hereby certifies that it would have passed this ordinance and each section, paragraph, sentence, clause, word, or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

**Section 4. COMPILATION.** This ordinance shall be incorporated in and compiled as part of the Revised Ordinances of Albuquerque 1994.

**Section 5. EFFECTIVE DATE.** This ordinance shall take effect five days after publication in full.



PASSED AND ADOPTED THIS 17th DAY OF OCTOBER, 1994.

BY A VOTE OF 8 FOR AND 0 AGAINST.

Yes: 8

Excused: Robbins

Alan B. Armijo  
Alan B. Armijo, President  
City Council

APPROVED THIS 25th DAY OF October, 1994.

[Signature]  
Martin J. Chavez, Mayor  
City of Albuquerque

ATTEST:

[Signature]  
City Clerk



City of Albuquerque  
Planning Department  
Development Review Division  
P.O. Box 1293  
Albuquerque, New Mexico 87103

Date: June 17, 2005

**OFFICIAL NOTIFICATION OF DECISION**

FILE: Project # 1003859  
04EPC-01844 EPC Site Development Plan-  
Building Permit

Silverleaf Ventures, LLC  
5351 Menaul Blvd. NE  
Albuq. NM 87110

**LEGAL DESCRIPTION:** for all or a portion of Tract 6B, Lands of Ray Graham III, Overwest Corp., zoned SU-1, O-1, C-2 and PRD, located on COORS BLVD. NW, between MONTANO ROAD NW and LEARNING ROAD NW, containing approximately 15 acres. (E-12)  
Juanita Garcia, Staff Planner

On June 16, 2005 the Environmental Planning Commission voted to approve Project 1003859/ 04EPC 04EPC 01844, a Site Development Plan for Building Permit, for a portion of Tract 6B, Lands of Ray Graham III, Overwest Corp., and COA, zoned SU-1 for C-2 Uses, O-1 Uses and PRD (Max 20 DU/Acre) located on Coors Blvd between Montano RD NW and Learning RD NW, containing approximately 15 acres, based on the following Findings and subject to the following Conditions:

**FINDINGS:**

1. This is a request for a site development plan for Building Permit for a portion of Tract 6B, Lands of Ray Graham III, Overwest Corp., and COA. The site is located on Coors Blvd, south of Montano, zoned SU-1 C-2 Use (23.3 Acres Max), O-1 Uses (11.7 acres max) and PRD (20 DU/Acre) and contains approximately 15 acres.
2. The applicant is proposing to construct 11 buildings within eight building envelopes that range in size from 4,500 to 45,720 square feet. The applicant proposes two freestanding restaurant buildings and the remaining buildings are proposed to be used as retail. The overall site will be surrounded by public streets on three sides and an internal vehicular entrance on the north side; two roundabouts will exist, one the south and north end of the subject site. The subject site will also contain off-street parking, landscaping, signage and pedestrian connections.

EXHIBIT NO. 6



**OFFICIAL NOTICE OF DECISION**  
**JUNE 16, 2005**  
**PROJECT #1003859**  
**PAGE 12 OF 12**

**Appeal to the City Council:** Persons aggrieved with any determination of the Environmental Planning Commission acting under this ordinance and who have legal standing as defined in Section 14-16-4-4.B.2 of the City of Albuquerque Comprehensive Zoning Code may file an appeal to the City Council by submitting written application on the Planning Department form to the Planning Department within 15 days of the Planning Commission's decision. The date the determination in question is issued is not included in the 15-day period for filing an appeal, and if the fifteenth day falls on a Saturday, Sunday or holiday as listed in the Merit System Ordinance, the next working day is considered as the deadline for filing the appeal. The City Council may decline to hear the appeal if it finds that all City plans, policies and ordinances have been properly followed. If they decide that all City plans, policies and ordinances have not been properly followed, they shall hear the appeal. Such appeal, if heard, shall be heard within 45 days of its filing.

**YOU WILL RECEIVE NOTIFICATION IF ANY PERSON FILES AN APPEAL. IF THERE IS NO APPEAL, YOU CAN RECEIVE BUILDING PERMITS AT ANY TIME AFTER THE APPEAL DEADLINE QUOTED ABOVE, PROVIDED ALL CONDITIONS IMPOSED AT THE TIME OF APPROVAL HAVE BEEN MET. SUCCESSFUL APPLICANTS ARE REMINDED THAT OTHER REGULATIONS OF THE CITY MUST BE COMPLIED WITH, EVEN AFTER APPROVAL OF THE REFERENCED APPLICATION(S).**

**Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally plan approval is terminated 7 years after approval by the EPC**

Sincerely,

  
Richard Dineen  
Planning Director

RD/JG/ac

cc: Consensus Planning, Inc., 924 Park Ave. SW, Albuquerque, NM 87102  
Rae Perlis, La Luz Landowners Assoc., 15 Tennis Court NW, Albuquerque, NM 87120  
Bruce Masson, La Luz Landowners Assoc., 13 Arco NW, Albuquerque, NM 87120  
Don MacCornack, Taylor Ranch NA, 5300 Hattiesburg NW, Albuquerque, NM 87120  
Ceil vanBerkel, Taylor Ranch Na, 5716 Morgan Ln. NW, Albuquerque, NM 87120  
Bill Jack Rodgers, 8308 Cedar Creek Dr. NW, Albuquerque, NM 87120  
Lynn Perlis, 500 4<sup>th</sup> St. NW, Ste 205, Albuquerque, NM 87102  
Frank Hale, 5 Tennis Court NW, Albuquerque, NM 87120  
Lois Sloan, 21 Tennis Court NW, Albuquerque, NM 87120  
Rene Horvath, 5515 Palomino Dr. NW, Albuquerque, NM 87120  
Susan Shotland-Rodriguez, 7224 Carson Trail NW, Albuquerque, NM 87120

CITY of ALBUQUERQUE  
TENTH COUNCIL

COUNCIL BILL NO. R-235 ENACTMENT NO. 88-1913

SPONSORED BY: Paulino K. Gubbels

RESOLUTION

1  
2 MANDATING HIGH QUALITY IN SITE DEVELOPMENT TYPE PLANS  
3 APPROVED BY THE CITY; CREATING PANEL; REQUIRING REPORT.

4 WHEREAS, while the quality that the City has been requiring in site  
5 development plans under the Zoning Code has gradually been improving, the  
6 City has sometimes approved plans which do not meet good standards of  
7 design; and

8 WHEREAS, even though the quality of plans has tended to improve  
9 over the last several years, the City's standards for quality and completeness  
10 appear to be in some doubt; and

11 WHEREAS, it is appropriate for the City to now clearly indicate that it  
12 desires and expects quality site plans and to indicate what that means with  
13 reasonable clarity; and

14 WHEREAS, high quality design and site development need not be more  
15 expensive to construct than mediocre plans.

16 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY  
17 OF ALBUQUERQUE, THAT:

18 Section 1. It is the policy of the City that new developments subject to  
19 site development plans should fit into their sites' neighborhoods attractively,  
20 to the extent that those surroundings allow such a fit; the design of site  
21 development plans should not damage existing development in the vicinity.

22 Section 2. It is the policy of the City that in undeveloped areas, good  
23 quality design is expected in site development plans; such developments are  
24 likely to set the character of development which follows in the area.

25 Section 3. It is the policy of the City that sub-parts of one area under a  
26 site development plan - whether SU-1, shopping center, or some other

Underlined Material - New  
[Bracketed Material] - Deletion

EXHIBIT NO. C

Underground Standards - Nantz  
[Bracketed Material] - Deletion

1        mandstery beds - shall have an internal circulation plan, land use plan, and design  
2        plan which operates as one coordinated whole.

3                Section 4. It is the policy of the City that grades est for now the  
4        development plan areas must blend the development into the adjacent environment  
5        with a minimum of sudden grade change and be sensitive to the topography of the  
6        area.

7                Section 5. Master development plans of sites which are not "site  
8        development plans" should also observe the above policies to the extent they apply.

9                Section 6. Complete site development plans for premises are usually  
10        preferable to partial plans resulting in the premises being divided into sub-parts by  
11        site development plan for subdivision purposes.

12                Section 7. In order to give more clarity and detail to the City's policies on  
13        quality of site development plans, a Site Plan Quality Task Force shall be created  
14        immediately by the Development Process Steering Committee. The charge of the  
15        task force is to draft more detailed policies on site developments consistent with  
16        the general provisions of this resolution. In evaluating and recommending proper  
17        City policies, the task force should wherever possible avoid recommendations  
18        which will require a lengthening of the City's approval process or materially  
19        increase in the cost of constructing developments.

20                A. The task force shall consist of nine members, consisting of one  
21        staff member of the City's Current Planning Division of the Planning Department,  
22        one member of the City Council staff and members of the private sector as follows:  
23        one architect, one landscape architect, two builders or developers, two active  
24        members of neighborhood associations and one member of the Environmental  
25        Planning Commission. The staff member of the City Current Planning Division shall  
26        be the Chairman of the Task Force.

27                B. The task force shall make a report to the Steering Committee, the  
28        Environmental Planning Commission, the Mayor and the City Council within six  
29        months.

30  
31  
32  
33

Underscored Material - May  
[Bracketed Material] - Deletion

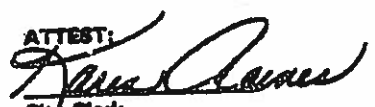
1 PASSED AND ADOPTED THIS 21<sup>st</sup> DAY OF JUNE, 1993.  
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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Vincent E. Grigo, President  
City Council

APPROVED THIS 30<sup>th</sup> DAY OF JUNE, 1993.

  
Louis E. Saavedra, Mayor  
City of Albuquerque

ATTEST:  
  
City Clerk

November 7, 2013

Environmental Planning Commission  
Plaza del Sol  
PO Box 1293  
600 Second Street NW  
Albuquerque, NM 87102  
Sent Electronically Via E-Mail

RE: Site Plan Termination Question

Dear Chairman Floyd and Members of the Commission:

The Vista del Norte Alliance Neighborhood Association is requesting The Zoning Code 14-16-3-11-C-1\* be followed exactly as written, e.g., that the site plans automatically expire seven years after EPC adoption or major amendment. It is not in the best interest of the City of Albuquerque to have site plans valid indefinitely because the Design Review Board signatures were not acquired in a timely fashion.

Sincerely,



Rod Crawley  
Vice President  
Vista del Norte Alliance  
P.O. Box 6270  
Albuquerque, NM 87197

cc/file

\*(C) Possible Termination of Site Development Plans for Sites Which Have Not Been Fully Developed.

(1) If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:

(a) Seven years after adoption or major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.

(b) Subsequently, upon similar requests, the Planning Commission may grant requests for additional five-year extensions of the plan, using the same criteria and process.

(c) If a Site Development Plan is approved for any additional five-year period by the Planning Commission, an updated Transportation Impact Study (TIS) shall be required to determine if there are off-site improvements needed that were not previously required.

The logo for Tuscany Landscape Association features the word "TUSCANY" in a large, stylized, serif font. To the left of the "T" is a small graphic of a plant with leaves and a stem. Below "TUSCANY" is a wavy horizontal line. Underneath the wavy line, the words "Landscape Association" are written in a smaller, elegant, cursive-style font.

**TUSCANY**  
*Landscape Association*

**PO Box 6270 / ABQ, NM 87197**  
**Tel [505] 344-0822 / Fax [505] 345-6033**  
**Email: [tuscanylandscape@me.com](mailto:tuscanylandscape@me.com)**

November 7, 2013

Chairman Hugh Floyd  
Environmental Planning Committee  
*Transmitted via email to City Planning*

Dear Mr. Floyd,

As you are well aware, our neighborhood is surrounded by multiple undeveloped land tracts. Our Neighborhood Association is very involved in the Westside Coalition of Neighborhoods, with TNA President Harry Hendriksen presently serving as an officer for the Coalition. As NA Board, our Directors have been carefully following yet another westside landmark decision that will impact communities city-wide. It was, in fact a topic of conversation at our joint Annual Meeting held on October 22<sup>nd</sup>.

Our community has been the recipient of multiple decisions handed down by the Design Review Board through the years. Each Decision Document is specific as to when the site plan expires, and the Decision / Approval itself, not the date it was physically executed, should be the precedent. As we interpret the Zoning Code, there is a written provision for a site plan to terminate automatically seven years after the adoption by the DRB.

Our Board feels that the Zoning Code should be followed. This decision does not just affect Taylor Ranch and the Coors / Montano parcel; we here in Tuscany have similar commercial tracts of DRB approved site plans yet to be developed for one reason or another – they too need to be held to this same standard for expiration in accordance with existing Zoning Code.

Respectfully Submitted,

TLA / TNA Board of Directors

**WEST SIDE COALITION OF NEIGHBORHOOD ASSOCIATIONS**  
**P. O. Box 67511**  
**Albuquerque, New Mexico 87193**  
**E-mail: wsconamembers@gmail.com**

November 5, 2013

Mr. Hugh Floyd, Chairman  
Environmental Planning Commission  
City of Albuquerque  
600 Second Street NW  
Albuquerque, New Mexico 87102

**Re: Coors and Montano 2005 site plan expiration – Project #1003859/04EPC-01844**

Dear Chairman Floyd, and Commissioners,

The Westside Coalition of Neighborhood Associations (WSCONA) stands with The Taylor Ranch Neighborhood in **opposition** to the 2005 Site Plan to continue for more than seven (7) years after the Environmental Planning Commission (EPC) Notice of Decision was issued.

The West Side Coalition of Neighborhood Associations believes that the seven (7) year time line begins when the Environmental Planning Commission (EPC) adopts the site plan. This is in accordance with Zoning Code 14-16-3-11-C-1;

*“If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically.....seven years after adoption or major amendment of the plan.”*

It has always been our understanding that the site plan expires seven (7) years after EPC approval. This is stated on the EPC Notice of Decision and also in the Zoning Code. It has been more than seven (7) years since the EPC approved the 2005 Coors and Montano site plan and that it has expired. This is not in the city and neighborhood best interest because changes have occurred in the surrounding environment and regulations have changed over time - plans need to be reviewed and updated.

We do not believe that this was the intent of the City Council when they approved a seven (7) year time limit on site plans in the mid 1990's. We believe that the City Council intended that the seven (7) year time-limit for the site plan begins at the time of the EPC approval, not after Development Review Board final sign off.

Thank you,

Candy Patterson, President  
West Side Coalition of Neighborhood Associations  
Cell#: 505/321-1761



## **Marrone, Carmen M.**

---

**From:** Marianne Barlow <mombeeluz@comcast.net>  
**Sent:** Sunday, October 06, 2013 5:09 PM  
**To:** Marrone, Carmen M.  
**Subject:** EPC meeting on Oct. 10

Dear Ms. Marrone,

This e-mail is in reference to zoning code 14-16-3-11C-1 regarding site-plan termination pertaining to the Silver Leaf disputed parcel East of Coors Blvd. and South of Montano. The building permit for this site was approved in 2005 by the EPC and sent to the DRB. My understanding is that not all of the DRB members signed off on the permit because not all conditions were met, the developers went no further and the approval was not completed. And, an extension was never filed. NOW the developers want to obtain another signature, take advantage of the original partially approved plan and start building.

A Problem: according to zoning laws, a site plan terminates after 7 years. There is a reason for this; after this length of time, roads change, neighborhoods change, needs change, environment changes etc. A whole new understanding of an area needs to be assessed before developing a NEW plan which needs to go through proper channels including public input and traffic and environmental studies. By not upholding this rule, the city is in effect saying that a developer has unlimited time to develop without taking into consideration changing circumstances.

I am a member of the La Luz Homeowner's community just South of the referenced site. We here, as well as our neighbors, see this area as a vitally important small part of the Bosque environment. Since this area was sold, there have been many changes including increased use of the Bosque trails, a picnic entry area to the Bosque, greater understanding of the Bosque environment as fostered by the school/city programs, an ad hoc balloon landing site and neighborhood interest in developing small businesses which enrich and cater to this environmentally sensitive place. The City has an opportunity here to foster something a little different from the endless fast food strip malls along Coors. We support upholding the law and requiring the developer to begin again with a plan for this site.

Very Sincerely,  
Marianne Barlow

[mombeeluz@comcast.net](mailto:mombeeluz@comcast.net)

(505) 898-5716

**Marrone, Carmen M.**

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**From:** David Roth <dsroth@mac.com>  
**Sent:** Saturday, October 05, 2013 9:09 AM  
**To:** Marrone, Carmen M.; Carruthers, Madeline M.  
**Subject:** EPC Meeting Oct. 10, 2013

Carmen and Madeline,

Regarding the site plan termination question that is before the board at the upcoming October 10th meeting please consider the opinion of many Albuquerque residents including myself.

The Zoning Code should be followed exactly as written, e.g., that site plans automatically expire 7 years after EPC adoption or major amendment. It is not in the best interest of the City to have site plans valid indefinitely because Design Review Board signatures were not acquired in a timely way.

Please pass this on to all EPC board members for their review. Thank you.

Sincerely,

David Roth

**Marrone, Carmen M.**

---

**From:** Anne Salopek <annesalopek@yahoo.com>  
**Sent:** Friday, October 04, 2013 11:37 AM  
**To:** Marrone, Carmen M.; Carruthers, Madeline M.  
**Cc:** BOSQUE Barb Gorham; BOSQUE Bhanu Harrison; BOSQUE Phyllis Kennedy; BOSQUE Tara Cunnings; Regina Granat; Sylvia Bailey  
**Subject:** Site plan termination question for EPC Oct. 10th

To Whom It May Concern,

I believe that it is critical that the EPC should follow the Zoning Code as it is written, specifically that site plans expire 7 years after adoption or major amendment. It is not in the best interest of the city, or the neighborhoods, for site plans to be valid indefinitely. Coors and Montano is a major intersection which has seen changes to the area in the last 7 years. Not the least of which is a new development that has just begun clearing ground adjacent to the proposed Walmart Neighborhood Market site. This particular area near Coors and Montano is a contentious one. The public must be allowed to give input. Design Review Board signatures must be acquired in a timely manner.

As you know, previously, the big box Walmart proposal for the same site, made by the same developer, Silver Leaf, was unanimously defeated by the City Council after a long, protracted battle. Although this is a different proposal, the site remains the same, and key City Ordinances still apply, but the area has changed. The developer must not be allowed to bypass the public process of approval. It would appear they are trying to do just that by looking for some loophole technicality to enable them to use an old site plan which was never fully approved because conditions were not met and signature not acquired. This is a deceitful way for Silver Leaf to avoid the public process. It is an obvious attempt at trying to dodge addressing all the issues which led the City Council to deny the previous proposal.

The EPC cannot in good faith give carte blanche to a developer on an outdated proposal, which was never a slam dunk in the first place, for such a controversial area of town. The EPC has a duty to the citizens of Albuquerque to not take short cuts, nor to allow developers to take short cuts.

Anne Salopek  
Resident of Northwest Albuquerque

**Marrone, Carmen M.**

---

**From:** queengf <queengf@gmail.com>  
**Sent:** Thursday, October 03, 2013 8:34 AM  
**To:** Marrone, Carmen M.  
**Subject:** walmart market

i am opposed to putting a walmart market at coors and montano!

please respect the wishes of the neighborhood and others who use the bosque and keep large stores out of the area.

thank you,

gayle finch

6915 rim rock circle nw  
abq 87120

**Marrone, Carmen M.**

---

**From:** Megan Cochrane <megandcochrane@gmail.com>  
**Sent:** Thursday, October 03, 2013 10:33 AM  
**To:** Marrone, Carmen M.; Carruthers, Madeline M.  
**Subject:** RE: Wal-Mart Store at Montano and Coors

The Zoning Code should be followed exactly as written, e.g., that site plans automatically expire 7 years after EPC adoption or major amendment. It is not in the best interest of the City to have site plans valid indefinitely because Design Review Board signatures were not acquired in a timely way.

Please keep the Rio grand and prevent this project from continuing. The beauty of that intersection, the lovely drive that is Montano would be sullied and destroyed by the addition of this store and the massive influx of traffic.

Respectfully,  
Megan Cochrane

**Marrone, Carmen M.**

---

**From:** Rae Perls <raeperls@aol.com>  
**Sent:** Monday, September 23, 2013 6:47 PM  
**To:** Marrone, Carmen M.  
**Subject:** Note for Record for EPC Hearing on October 10, 2013

La Luz Landowners Association is always concerned when developers attempt to circumvent the process that is in place for both community and EPC review of projects. We strongly feel that a site plan created more than seven years ago needs public review since there are changed conditions. On Coors near Montano much has changed in the time since the Silverleaf proposal was partly approved by the EPC in 2005. We think it is important for the plan currently in question to be corrected and redesigned to meet current regulations under the Coors Corridor Plan, and to require additional careful review by the City Planning Dept before being sent to EPC for formal approval. We want a facilitated meeting to offer opportunities for neighborhood input on the plan. Going directly to DRB under the present circumstances appears to be a way to back-door an approval of a site plan for building permit that is flawed.

Carmen: As always your attention is appreciated. Sincerely, Rae Perls



## City of Albuquerque

P.O. Box 1293, Albuquerque, NM 87103

September 5, 2013

Carmen Marrone  
City of Albuquerque  
Planning Department  
600 Second Street NW, Third Floor/87102  
Phone: 505-924-3814/Fax: 505-924-3339  
E-mail: [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov)

Dear Carmen:

Thank you for your inquiry of **September 5, 2013** requesting the names of **ALL Neighborhood and/or Homeowner Associations and Coalitions** who would be affected under the provisions of O-92 by your proposed project at **(EPC SUBMITTAL) – LOT 6-B, LANDS OF RAY GRAHAM III, OVENWEST CORP. LOCATED ON COORS BOULEVARD NW BETWEEN MONTANO ROAD NW AND LEARNING ROAD NW** Zone Map: **E-F-12.**

Our records indicate that the **Neighborhood and/or Homeowner Associations and Coalitions** affected by this proposal and the contact names are as follows:

**See "Attachment A" for contact information on this EPC Submittal – swinklepleck**

Please note that according to O-92 you are required to notify each of these contact persons by **certified mail, return receipt requested, before** the Planning Department will accept your application filing. **IMPORTANT! Failure of adequate notification may result in your Application Hearing being deferred for 30 days.** If you have any questions about the information provided, please contact me at (505) 924-3902 or via an e-mail message at [swinklepleck@cabq.gov](mailto:swinklepleck@cabq.gov) or by fax at (505) 924-3913.

Sincerely,

***Stephani Winklepleck***

*Stephani Winklepleck*  
Neighborhood Liaison  
OFFICE OF NEIGHBORHOOD COORDINATION  
Planning Department

planningnaform(03/20/12)

**PLEASE NOTE:** The Neighborhood and/or Homeowner Association information listed in this letter is valid for one (1) month. If you haven't filed your application within one (1) month of the date of this letter – you will need to get an updated letter from our office.

**LETTERS MUST BE SENT TO BOTH CONTACTS OF EACH NA AND/OR HOA AND COALITION PROVIDED ON THIS LETTER.**



# **ATTACHMENT A**

Carmen Marrone  
City of Albuquerque  
Planning Department  
600 Second Street NW, Third Floor/87102  
Phone: 505-924-3814/Fax: 505-924-3339  
E-mail: [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov)  
Zone Map: E-F-12

## **LA LUZ DEL SOL N.A. "R"**

**\*Art Woods**

33 Wind Rd. NW/87120 890-8664 (h)  
Terry Wilmot  
10 Mill Rd. NW/87120-1915

## **LA LUZ LANDOWNERS ASSOC. "R"**

**\*Laura Campbell**

15 Pool NW/87120 688-6923 (c)  
Rae Perls e  
15 Tennis Ct. NW/87120 898-8833 (h)

## **TAYLOR RANCH N.A. "R"**

**\*Ray Shortridge**

4800 College Heights Dr. NW/87120 604-3908 (c)  
Rene Horvath  
5515 Palomino Dr. NW/87120 898-2114 (h)

## **WESTSIDE COALITION OF N.A.'S**

**\*Candelaria Patterson, 7608 Elderwood NW/87120 321-1761 (c)**  
**Harry Hendriksen, 10592 Rio Del Sole Ct. NW/87114-2701 890-3481 (h)**

**\* President of Association or Coalition**

# Planning Department

Suzanne Lubar, Acting Director  
600 2<sup>nd</sup> Street NW - 3<sup>rd</sup> Floor  
Albuquerque, NM 87102



Richard J. Berry, Mayor

**To: Neighborhood Representative**  
**From: Carmen Marrone, Manager, Current Planning Section  
Planning Department**  
**RE: EPC Project #1003859, Case #13EPC-40137**  
**Date: September 6, 2013**

PO Box 1293

Albuquerque

NM 87103

[www.cabq.gov](http://www.cabq.gov)

This is to inform you that the City of Albuquerque, Development Review Board (DRB) Chair is requesting the Environmental Planning Commission's (EPC) interpretation of §14-16-3-11(C) of the Zoning Code, POSSIBLE TERMINATION OF SITE DEVELOPMENT PLANS FOR SITES WHICH HAVE NOT BEEN FULLY DEVELOPED. This request is tied to Project #1003859, 04EPC-01844, a Site Development Plan for Building Permit (the Plan) that was approved by the EPC on June 16, 2005. As a condition of approval of the Plan, the EPC delegated final sign-off of the Plan to the DRB (Condition #1). In May of this year, the applicant circulated the Plan to the DRB for final sign-off.

The EPC is being asked to clarify when, and if, the Plan was "adopted" or "approved" on June 16, 2005 or if adoption occurs with DRB sign-off. Details of the question are contained in the attached letter from the DRB Chair dated July 26, 2013. I am also enclosing a map of the Plan site.

The request will be heard by the EPC on October 10, 2013 in the Plaza del Sol Hearing Room, 600 2<sup>nd</sup> Street NW. Please feel free to contact me at (505) 924-3814 or at [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov) if you have any questions.

July 26, 2013

Hugh Floyd PE  
Chair – Environmental Planning Commission  
C/O: City of Albuquerque Planning Department  
600 Second Street NW  
Albuquerque, NM 87102

Also sent by email to: [cmarrone@cabq.gov](mailto:cmarrone@cabq.gov)

RE: Possible Expiration of Site Plan for Building Permit for Project # 1003859—  
04EPC-01844

Dear Mr. Floyd:

This correspondence is a request for a clarification by the Environmental Planning Commission (the “EPC”) on an issue that has recently arisen relating to EPC Project #1003859. On June 16, 2005, the EPC voted to approve Project #1003859—04EPC-01844, a Site Development Plan for Building Permit (the “Plan”). At that meeting, the EPC delegated final sign-off authority for the Plan to the Development Review Board (the “DRB”) to certify compliance with the EPC conditions of approval. At its January 25, 2006, meeting, the DRB conditionally approved the Plan but withheld the final signatures of the individual board members representing Transportation Development and Planning. In May of this year, Silver Leaf Ventures, LLC, (“Silver Leaf”) recirculated copies of the Plan and requested the final DRB member signatures. On June 5, 2013, I received a letter from Timothy V. Flynn-O’Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the Plan’s current status.

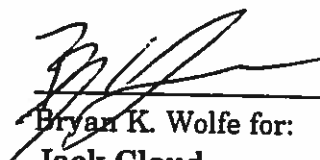
It is my understanding that City of Albuquerque (“City”) Planning and Legal staff have met with Mr. Flynn-O’Brien and representatives of Silver Leaf to discuss the issues surrounding the Plan. In addition to these meetings, more letters from both Mr. Flynn-O’Brien and Mr. Pete Daskalos, as representative of Silver Leaf, followed. I have attached copies of all of these letters to this correspondence. Within these letters, several issues relating to EPC condition conformance, the Coors Corridor Plan, infrastructure, view planes, and previous appeals are discussed. I am not requesting that the EPC make a ruling on these issues. However, one key question requires clarification from the EPC: at what point did the EPC intend that the Plan be “adopted” or “approved” so as to start the Zoning Code’s seven year time period for plan expiration?

Under § 14-16-3-11 (C) R.O. Albuquerque 1994, “[i]f less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically . . . [s]even years after adoption or major amendment of the plan.” In addition, the Official Notice of Decision for the Plan included wording referencing § 14-16-3-11 and noting “[g]enerally plan approval is terminated 7 years after approval by the EPC.” However, in 2005, the EPC only conditionally approved the Plan and delegated final sign-off authority to the DRB. Under such a delegation, the argument can be made that a plan’s “adoption” occurs at the DRB sign-off, and not through any action of the EPC.

Complicating the issue, the Plan was again conditionally approved at a DRB hearing with final sign-off further delegated to individual DRB board members. Those board members’ signatures have not yet been acquired. Accordingly, a logical argument can be made that the seven year termination provision will not begin to run until the final DRB member’s signature is attached to the Plan. The position that “adoption” occurs upon final DRB signature has been endorsed by Planning staff over the last several years. However, this position also leads to a situation where a site plan requiring a single DRB member signature would be valid indefinitely—regardless of the changes to the surrounding environment and regulations.

I understand that interpretations of the Zoning Code are typically made by the Zoning Enforcement Officer (the “ZEO”). However, the City Council has recently discouraged the ZEO from issuing declaratory rulings when an appeal is pending. Mr. Flynn-O’Brien’s letters generally appear to be an attempt to appeal any decisions regarding DRB sign-off of this EPC delegated Plan. Accordingly, as the Planning Director’s representative on DRB, I am asking the EPC to clarify when, and if, the Plan was “adopted” or “approved”. The City Attorney’s Office has encouraged me to request that you make this decision at an advertised hearing, allowing for notice and appeal.

Very truly yours,

  
\_\_\_\_\_  
Bryan K. Wolfe for:  
Jack Cloud

Chair - Development Review Board



**CITY OF ALBUQUERQUE  
PLANNING DEPARTMENT  
PROPERTY OWNERSHIP LIST**

**Meeting Date:** Thursday, October 10, 2013 **1003859**

**Zone Atlas Page:** E-12

**Notification Radius:** Neighborhood Associations  
**100ft plus r.o.w**


**Cross Reference and Location:** Coors Between Montano & Learning NW

**Applicant:** COA Planning Dept.  
600 2<sup>nd</sup> St. NW  
Albuquerque, NM 87102

**Agent:**

**Special Instructions:**

**Notice must be mailed from the  
City's 15 day's prior to the meeting.**

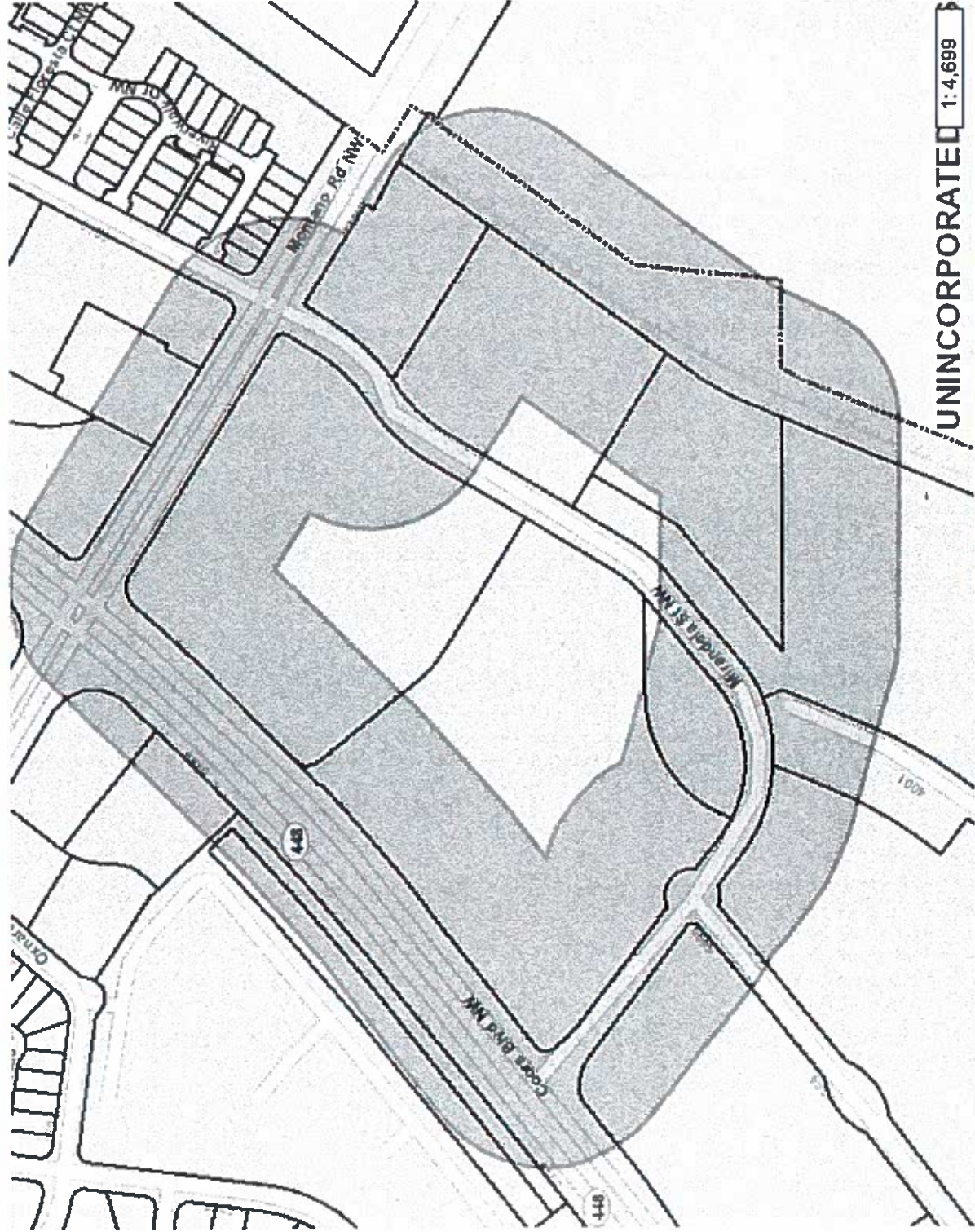
**Date Mailed:** 9-18-13  
**Signature:** 





**Legend**

- Bernalillo County Parcels
- Municipal Limits
- CORRALES
- EDGEWOOD
- LOS RANCHOS
- RIO RANCHO
- TUERAS
- UNINCORPORATED AREAS
- World Street Map



**UNINCORPORATED** 1:4,699

This map is a user generated static output from [www.cabq.gov/gis](http://www.cabq.gov/gis) and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR LEGAL PURPOSES

0.1 0 0.05 0.1 Miles  
 WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
 9/18/2013 © City of Albuquerque

Notes 1002851



SILVER LEAF VENTURES LLC  
Or Current Owner  
5319 MENAUL BLVD NE  
ALBUQUERQUE NM 87110

ANDALUCIA VILLAS LLLP  
Or Current Owner  
300 BENTON RD  
BOSSIER CITY LA 71111

CFCDH-H LLC % CVS/CORP #7242-01  
Or Current Owner  
CVS DR  
WOONSOCKET RI 02895

CAVALIER INVESTMENTS LLC  
Or Current Owner  
PO BOX 35754  
ALBUQUERQUE NM 87176

JPS LLC % WALGREEN CO. RE PROPERTY  
TAX DEPT  
Or Current Owner  
PO BOX 1159  
DEERFIELD IL 60015

BOSQUE SCHOOL  
Or Current Owner  
4000 LEARNING RD  
ALBUQUERQUE NM 87120

WRIGHT MICHAEL S  
Or Current Owner  
3608 CALLE OVEJA CT  
ALBUQUERQUE NM 87120

BOSQUE MONTANO HOMEOWNERS  
ASSOCIATION INC C/O CAROL RICKERT &  
ASSOCIATES  
Or Current Owner  
4121 EUBANK BLVD NE  
ALBUQUERQUE NM 87111  
BERNAL MADELINE C  
Or Current Owner  
2608 LOS TRETOS NW  
ALBUQUERQUE NM 87120

TAYLOR JOEL P ETUX ETAL TRUST % WELLS  
FARGO BNK NM N.A.  
Or Current Owner  
PO BOX 1968  
ALBUQUERQUE NM 87103 1968

SILVER LEAF VENTURES LLC  
Or Current Owner  
5319 MENAUL BLVD NE  
ALBUQUERQUE NM 87110

BOSQUE SCHOOL  
Or Current Owner  
4000 LEARNING RD  
ALBUQUERQUE NM 87120

PEKNIK GEORGE & SABINA  
Or Current Owner  
3612 CALLE OVEJA CT NW  
ALBUQUERQUE NM 87120

HALLE PROPERTIES LLC DEPT 1100 NMA07  
Or Current Owner  
20225 N SCOTTSDALE RD  
SCOTTSDALE AZ 85255

JPS LLC C/O MAESTAS & WARD PROP.  
MGMT.  
Or Current Owner  
PO BOX 91090  
ALBUQUERQUE NM 87199

SILVER LEAF VENTURES LLC  
Or Current Owner  
5319 MENAUL BLVD NE  
ALBUQUERQUE NM 87110

THELEN MELANIE  
Or Current Owner  
3616 CALLE OVEJA CT NW  
ALBUQUERQUE NM 87120

CITY OF ALBUQUERQUE  
Or Current Owner  
PO BOX 2248  
ALBUQUERQUE NM 87103 2248

CITY OF ALBUQUERQUE  
Or Current Owner  
PO BOX 2248  
ALBUQUERQUE NM 87103 2248

WOLVERINE LAND COMPANY LLC  
Or Current Owner  
8525 JEFFERSON NE  
ALBUQUERQUE NM 87113

CITY OF ALBUQUERQUE  
Or Current Owner  
PO BOX 2248  
ALBUQUERQUE NM 87103 2248

BOSQUE SCHOOL  
Or Current Owner  
4000 LEARNING RD  
ALBUQUERQUE NM 87120

AMERICAN REALPROP  
Or Current Owner  
5601 TAYLOR RANCH DR NW  
ALBUQUERQUE NM 87120

SILVER LEAF VENTURES LLC  
Or Current Owner  
5319 MENAUL BLVD NE  
ALBUQUERQUE NM 87110

BOSQUE SCHOOL  
Or Current Owner  
4000 LEARNING RD  
ALBUQUERQUE NM 87120

La Luz Del Sol N.A.  
Art Woods  
33 Wind Rd. NW  
Albuquerque, NM 87120

La Luz Del Sol N.A.  
Terry Wilmot  
10 Mill Rd. NW  
Albuquerque, NM 87120

La Luz Landowners Assoc.  
Laura Campbell  
15 Pool NW  
Albuquerque, NM 87120

La Luz Landowners Assoc.  
Rae Perls  
15 Tennis Ct. NW  
Albuquerque, NM 87120

Taylor Ranch N.A.  
Ray Shortridge  
4800 College Heights Dr. NW  
Albuquerque, NM 87120

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Taylor Ranch N.A.  
Rene Horvath  
5515 Palomino Dr. NW  
Albuquerque, NM 87120

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Westside Coalition of N.A.'s  
Candelaria Patterson  
7608 Elderwood NW  
Albuquerque, NM 87120

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chargement

quêtes faciles à peler  
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Westside Coalition of N.A.'s  
Harry Hendriksen  
10592 Rio Del Ct.  
Albuquerque, NM 87114

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Feed Paper

asy peel™ Labels  
se Avery® Template 5160™

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and referred to the Land Use Hearing Officer (LUHO). The LUHO recommended that the City Council grant the appeal and modify the EPC's Findings and Conditions as follows:

Finding #16 should be modified to read:

*The proposed buildings did not meet the height, bulk and setback requirements of the view preservation policies within the Coors Corridor Plan.*

Condition #9.a should be modified to read:

*All buildings must comply with all the requirements of Issue 4, Visual Impression and Urban Design Overlay Zone of the Coors Corridor Plan including, but not limited to the portion in Section C, View Preservation for Corridor Segments 3 and 4, Policy 1 View Preservation, Section B.1 and 2, Height, Bulk, and Massing that specified, "In no event will the building height be permitted to penetrate above the view of the ridge line of the Sandia Mountains as seen from four feet above the east edge of the roadway. Also, in no event will more than one-third of the total building height outside of the setback area for multi-story buildings be permitted to penetrate through the view plane. Not more than 50% of the view area shall be obscured by the bulk of the buildings placed on the parcel. The applicant shall ensure that all single story or multi-story buildings and towers comply with this requirement. The [2005] submitted site development will be required to meet the view preservation policies contained in the Coors Corridor Plan.*

In addition, the LUHO recommended an additional condition for approval by the City Council:

*Measurement for the view plane on Coors Boulevard shall be taken from the east edge of the east driving lane as it exists today.*

**Note:** Final DRB sign-off of the 2005 SPBP will require compliance with the above conditions.

On **September 19, 2005**, the City Council voted to accept the LUHO's recommendation, in full.

On **January 25, 2006**, the DRB conditionally approved the SPBP with further sign-off delegated to DRB members representing Transportation Development and Planning (DRB Chair). To date, the final two signatures have not been obtained by Transportation or the DRB Chair.

In **October of 2011**, the property owner/applicant submitted an application for SPBP regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After many public hearings, the City Council ultimately denied the request for SPBP on **March 4, 2013**.

In **April of 2013**, the property owner/applicant of the subject site began inquiring about obtaining the final two DRB signatures on the 2005 SPBP and held separate meetings with various Planning and Transportation staff in order to address the EPC Conditions of Approval imposed by the EPC. The applicant was informed by the Zoning Enforcement Manager and other managers within the Planning Department that the 2005 SPBP was still active and that expiration of a SPBP occurred seven (7) years from DRB final sign-off.

On **June 5, 2013**, the DRB Chair received a letter from Mr. Timothy Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that adoption of the SPBP occurred with the EPC approval in June

9-19

of 2005. As such, the SPBP expired seven years after that date - June of 2012. According to Mr. Flynn-O'Brien, the applicant cannot seek final signatures on an expired SPBP and will have to re-apply for SPBP approval.

## II. ANALYSIS

### COMPREHENSIVE ZONING CODE

#### Applicable Section Language

#### Section 14-16-3-11

#### (C) Possible Termination of Site Development Plans for Sites which have not been fully developed.

(1) If less than one half of the approved square footage of a site development plan has been built or less than one half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:

(a) Seven years after adoption of major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.

(2) (c) A major amendment of a Site Development Plan is an amendment adopted by the Planning Commission which is not a minor amendment as contemplated by §14-16-2-22(A)(6) of this Zoning Code.

(b) time periods... run from this... effective

The question before the EPC is whether the 7-year time clock starts with "adoption" or "approval" of the site plan by the EPC or the DRB. Zoning Enforcement Managers (ZEM), both past and present, have had a long-standing interpretation that a site development plan expires seven years after DRB sign-off of the plan.

#### Arguments for the Zoning Enforcement Manager's interpretation

The Zoning Enforcement Manager has relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. Staff and applicants have relied on this interpretation since 1994 when this section of the zoning code was amended to establish procedures for possible plan termination (C/S O-23, Enactment No. 43-1994). Except for the current case in question, Planning Staff cannot recall a case where the current language in the ordinance has raised a question.

14-16-2-22(A)(1) approved by EPC or designer  
(3) in approving an app, EPC may interpret...

*Arguments against the Zoning Enforcement Manager's interpretation*

The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation of the ordinance and relies on the second part of the ordinance, §14-16-3-11 (C) (1) (a), that indicates that the seven-year time clock starts with "adoption or major amendment of the plan."

Regarding "major amendment of the plan", the 2005 SPBP is not considered an amendment of a plan since there is no previous plan to amend. The 2005 SPBP is the first site plan to receive conditional approval by the EPC.

Regarding "adoption of the plan", the Zoning Enforcement Manager considers adoption or approval of a plan to occur with the final signature of the DRB.

*EPC Condition of Approval #1*

Condition #1 of the 2005 SPBP is standard language that the EPC adopts when approving site development plans. This condition is still being applied today. A question for the EPC to consider is whether this condition means that the site development plan is officially approved by the EPC or the DRB. It is the Planning Department's belief that Condition #1 indicates that final approval of the site plan does not occur until the DRB signs off on the plan. An applicant cannot move forward with development of a site until the plan is officially signed off by the DRB. The DRB sign-off is the second step in the approval process and without the sign-off, approval is not complete. The Planning Department equates DRB final sign-off with final "adoption" of the plan.

*The DRB is responsible for assuring EPC conditions are met*

**III. AGENCY & NEIGHBORHOOD COMMENTS** *Sub Ord for infrastructure*

*Reviewing Agencies*

The application was distributed to all of the regular agencies for comment. No comments were received.

*Neighborhood/Public*

The La Luz Del Sol N.A., La Luz Landowners Assoc., Taylor Ranch N.A. and the Westside Coalition of N.A.s were notified regarding this request. Comments have been received from some of the associations indicating opposition with the Zoning Enforcement Manager's and the Planning Department's interpretation regarding which body actually adopts a site plan. The Neighborhood Associations believe that adoption of a site plan occurs with EPC approval.

Letters to the EPC have been submitted by Tim Flynn-O'Brien, Esq., representing the Taylor Ranch N.A. and by Catherine F. Davis, P.C., representing the property owner/applicant. Both attorneys have expressed opposing views of the matter and are relying on the EPC to make the final decision.

Mr. Flynn-O'Brien asserts that the ZEM's interpretation regarding site plan expiration is inconsistent with the purpose of the ordinance, which is, "to terminate site plans so that development is subject to current plans." He claims that if the time clock starts after final DRB signoff, it would allow site plans to have an infinite life if the developer does not obtain sign off. "This is inconsistent with the plain language, legislative purpose, legislative history and the City's written interpretation of §14-16-3-11". Mr. Flynn-O'Brien emphasizes this point by pointing out that the Official Notice of Decision for the 2005 SPBP includes information from the Planning Department that states, "Generally, plan approval is terminated 7 years after approval by the EPC." This statement was changed in 2010 to simply refer to §14-16-3-11 regarding site plan termination.

Ms. Davis, who represents the applicant for the 2005 SPBP, is of the position that the EPC delegated final sign-off authority to DRB, therefore the Plan's adoption date is not until DRB sign-off. Ms. Davis also claims that the infrastructure on the site has been fully constructed, which amounts to at least \$6,500,000. She refers to a letter from the City Engineer to the applicant dated April 14, 2010. This letter refers to a Subdivision Improvements Agreement (SIA) between the applicant and the City of Albuquerque, executed on September 27, 2005. Staff has not verified whether the SIA is part of the overall site development for subdivision for Andalucia North (approx. 70 acres between Montano and Learning Rd.), which was also approved by the EPC at around the same time as the 2005 SPBP or if the SIA is part of the 2005 SPBP for Tract 6B, approximately 15 acres. Since the 2005 SPBP did not receive conditional approval by the DRB until January 25, 2006, it appears that the \$6,500,000 infrastructure costs are associated with the overall site development for subdivision.

#### ***IV. CONCLUSION***

Mention that Staff has prepared Findings of Fact that provide historical context for the case. Staff is not making a recommendation, rather Finding #18 presents options from which the EPC must choose.

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7. In April of 2013, the owner/applicant began seeking final DRB sign-off on the 2005 SPBP involving the subject site. The applicant made several inquiries of Planning Staff, including the Zoning Enforcement Manager, the Urban Design & Development Manager and the Current Planning Section Manager regarding the status of the 2005 SPBP and whether the applicant could seek final sign-off of the 2005 SPBP. In all instances of inquiry, the Planning Staff determined that the 2005 SPBP had not expired and that the applicant could proceed with final DRB sign-off of the 2005 SPBP.
  8. On June 5, 2013, the DRB Chair received a letter from Mr. Timothy V. Flynn-O'Brien, Esq., as the representative of the Taylor Ranch Neighborhood Association, challenging the status of the 2005 SPBP. Mr. Flynn-O'Brien claims that pursuant to Section 14-16-3-11 (C) of the Zoning Code, the SPBP expired on June 16, 2012, seven years after EPC approval of the plan.
  9. Section 14-16-3-11 (C) (1) of the Zoning Code states,  

If less than one-half of the approved square footage of a Site Development Plan has been built or less than one-half of the site has been developed, the plan for the undeveloped areas shall terminate automatically when specified below unless extended as provided below:

    - (a) Seven years after adoption <sup>or</sup> major amendment of the plan: within six months prior to the seven-year deadline, the owners of the property shall request in writing through the Planning Director that the Planning Commission extend the plan's life an additional five years. At an advertised public hearing, the Planning Commission shall grant approval if it deems that the Site Development Plan remains appropriate and the owner intends to fully develop the site according to the plan concept. The Planning Commission shall be less likely to terminate a site plan if there is little flexibility in how the site can be developed or if there is a strong architectural or landscaping character on the site which should be preserved.
  10. The long-standing interpretation of the current and past Zoning Enforcement Managers has been that a site development plan expires seven years after DRB sign-off of the plan. The reason for this interpretation is that they have relied on the first section of the ordinance, §14-16-3-11(C) (1), that provides the intent of the regulation – that is, in order for an owner to get at least one-half of the site built or developed, a DRB signed-off site plan is required. Development cannot occur with an EPC-approved site plan. This same interpretation was communicated to the applicant in April of 2013 when he began pursuing final sign-off of the 2005 SPBP.
  - ~~11.~~ Less than one-half of the approved square footage of the Site Development Plan has been built.
  12. The Taylor Ranch Neighborhood Association and the West Side Coalition of Neighborhood Associations disputes the Zoning Enforcement Managers' long standing interpretation and relies



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**FINDINGS – 13EPC 40137, to determine the status of the Andalucia, Tract 6B Site Development Plan for Building Permit, Project #1003859, Case #04EPC-01844**

1. This is a request for clarification by the EPC regarding the status of the Andalucia, Tract 6B Site Development Plan for Building Permit (SPBP), Project #1003859, Case #04EPC-01844. The subject site is undeveloped and located at the southeast corner of Coors & Montano NW and contains approximately 15 acres.
2. The SPBP was approved by the EPC, with Conditions, on June 16, 2005. Condition #1 states. "The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB). The DRB is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City Requirements have been met, including elements of the Coors Corridor Plan. A letter shall accompany the submittal, specifying all modifications that have been made to the site plan since the EPC hearing, including how the site plan has been modified to meet each of the EPC conditions. Unauthorized changes to this site plan, including before or after DRB final sign-off, may result in forfeiture of approvals."  
*Jan 9 new SPB*
3. The Official Notice of Decision regarding the SPBP, dated June 17, 2005, includes standard template language that informs the applicant of his responsibility for completing the development process. The last section of the template language states, "Successful applicants should be aware of the termination provisions for Site Development Plans specified in Section 14-16-3-11 of the Comprehensive Zoning Code. Generally, plan approval is terminated 7 years after approval by the EPC."  
*→ City PLN not object*
4. The EPC's decision of June 16, 2005 was appealed by the La Luz Landowner's Association. The appeal was referred to the Land Use Hearing Officer (LUHO) who heard the appeal on August 24, 2005. The LUHO recommended that the City Council grant the appeal and modify the EPC's Finding #16 and Condition #9.a. and to add clarifying language regarding the location of where the measurements should be taken of the view plane on Coors Blvd. On September 19, 2005, the City Council voted to accept the LUHO's recommendation, in full.
5. At its January 25, 2006 meeting, the DRB conditionally approved the SPBP but withheld the final signatures of the individual board members representing Transportation Development and Planning.
6. In October of 2011, the property owner/applicant submitted an application for site development plan for building permit approval regarding the subject site. The intention was to have the 2011 SPBP supersede the 2005 SPBP. After several public hearings, the City Council ultimately denied the request on March 4, 2013.