



Please check the appropriate box(es) and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

SUBDIVISIONS		
<input type="checkbox"/> Major – Preliminary Plat (Form P1)	<input checked="" type="checkbox"/> Final Sign off of EPC Site Plan(s) (Form P2)	
<input type="checkbox"/> Minor – Preliminary/Final Plat (Form S2)	<input type="checkbox"/> Amendment to Site Plan (Form P2)	<input type="checkbox"/> Vacation of Public Right-of-way (Form V)
<input type="checkbox"/> Major - Final Plat (Form S1)	MISCELLANEOUS APPLICATIONS	
<input type="checkbox"/> Amendment to Preliminary Plat (Form S2)	<input type="checkbox"/> Extension of Infrastructure List or IIA (Form S1)	<input type="checkbox"/> Vacation of Public Easement(s) DRB (Form V)
<input type="checkbox"/> Extension of Preliminary Plat (Form S1)	<input type="checkbox"/> Minor Amendment to Infrastructure List (Form S2)	<input type="checkbox"/> Vacation of Private Easement(s) (Form V)
	<input type="checkbox"/> Temporary Deferral of SW (Form V2)	PRE-APPLICATIONS
	<input type="checkbox"/> Sidewalk Waiver (Form V2)	<input type="checkbox"/> Sketch Plat Review and Comment (Form S2)
SITE PLANS		
<input type="checkbox"/> DRB Site Plan (Form P2)	<input type="checkbox"/> Waiver to IDO (Form V2)	APPEAL
	<input type="checkbox"/> Waiver to DPM (Form V2)	<input type="checkbox"/> Decision of DRB (Form A)
BRIEF DESCRIPTION OF REQUEST		
Request for Sign-off of a Site Plan - EPC for a 69 dwelling unit subdivision under the existing R-A zoning.		

APPLICATION INFORMATION		
Applicant: Gamma Development, LLC		Phone:
Address: 9798 Coors Blvd NW #400		Email:
City: Albuquerque	State: NM	Zip: 87114
Professional/Agent (if any): Consensus Planning, Inc.		Phone: (505) 764-9801
Address: 302 Eighth Street NW		Email: cp@consensusplanning.com
City: Albuquerque	State: NM	Zip: 87102
Proprietary Interest in Site: Contract Purchaser		List all owners: Daniel's Family Properties, LLC
SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)		
Lot or Tract No.: Please see attached legal description.		Block: Unit:
Subdivision/Addition:		MRGCD Map No.: UPC Code: Please see attached UPC list.
Zone Atlas Page(s): F-11 and F-12	Existing Zoning: R-A	Proposed Zoning: No Change
# of Existing Lots: 3	# of Proposed Lots: 69	Total Area of Site (Acres): 22.75 acres
LOCATION OF PROPERTY BY STREETS		
Site Address/Street: 5001 Namaste Road NW	Between: La Bienvenida Place	and: Oxbow Open Space
CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)		
PR-2018-001402		

Signature:	Date: 10/20/20
Printed Name: James Strozier, FAICP	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

FOR OFFICIAL USE ONLY					
Case Numbers	Action	Fees	Case Numbers	Action	Fees
Meeting Date:				Fee Total:	
Staff Signature:			Date:	Project #	

FORM P2: SITE PLAN – DRB

Please refer to the DRB public meeting schedules for meeting dates and deadlines. Your attendance is required.

A Single PDF file of the complete application including all documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF *shall be organized* with the Development Review Application and this Form P2 at the front followed by the remaining documents *in the order provided on this form.*

SITE PLAN – DRB

MAJOR AMENDMENT TO SITE PLAN – DRB

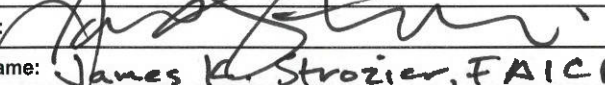
EXTENSION OF SITE PLAN – DRB


- Interpreter Needed for Hearing? if yes, indicate language: _____
- PDF of application as described above
- Zone Atlas map with the entire site clearly outlined and labeled
- Letter of authorization from the property owner if application is submitted by an agent
- Sites 5 acres or greater: Archaeological Certificate in accordance with IDO Section 14-16-6-5(A) (not required for Extension)
- Signed Traffic Impact Study (TIS) Form
- Signed Form DRWS Drainage Report, Grading and Drainage Plan, and Water & Sewer Availability Statement filing information (not required for Extension)
- Justification letter describing, explaining, and justifying the request per the criteria in IDO Section 14-16-6-6(G)(3)
- Explanation and justification of requested deviations, if any, in accordance with IDO Section 14-16-6-4(O)
Note: If requesting more than allowed by deviation, a Variance – ZHE or Variance – DRB will be required, as applicable.
- Proof of Pre-Application Meeting with City staff per IDO Section 14-16-6-4(B) (not required for Extension)
- Proof of Neighborhood Meeting per IDO Section 14-16-6-4(C)
 - Office of Neighborhood Coordination neighborhood meeting inquiry response
 - Proof of email with read receipt OR Certified Letter offering meeting to applicable associations
 - If a meeting was requested or held, copy of sign-in sheet and meeting notes
- Sign Posting Agreement
- Required notices with content per IDO Section 14-16-6-4(K)(6)
 - Office of Neighborhood Coordination notice inquiry response
 - Copy of notification letter and proof of first class mailing
 - Proof of emailed notice to affected Neighborhood Association representatives
 - Buffer map and list of property owners within 100 feet (excluding public rights-of-way) provided by Planning Department or created by applicant, copy of notifying letter, and proof of first class mailing
- Completed Site Plan Checklist
- Site Plan and related drawings (7 copies, 24" x 36" folded to fit into an 8.5" x 14" pocket)
- Copy of the original approved Site Plan or Master Development Plan (for amendments only) (1 copy, 24" x 36")
- Site Plan and related drawings reduced to 8.5" x 11" format (1 copy)
- Landfill disclosure statement per IDO Section 14-16-5-2(G) if site is within a designated landfill buffer zone
- Infrastructure List, if required

FINAL SIGN-OFF FOR MASTER DEVELOPMENT PLANS AND SITE PLANS – EPC

- Interpreter Needed for Hearing? **No** if yes, indicate language: _____
- PDF of application as described above
- Zone Atlas map with the entire site clearly outlined and labeled
- Letter of authorization from the property owner if application is submitted by an agent
- Solid Waste Department signature on Site Plan
- Signed Form DRWS Drainage Report, Grading and Drainage Plan, and Water & Sewer Availability Statement filing information
- Approved Grading and Drainage Plan
- Copy of Site Plan with Fire Marshal's stamp, i.e. "Fire 1" plan (not required for Master Development Plans)
- Copy of EPC Notice of Decision and letter explaining how each EPC condition has been met
- Site Plan and related drawings (7 copies, 24" x 36" folded to fit into an 8.5" x 14" pocket) **> pdf**
- Site Plan and related drawings reduced to 8.5" x 11" format (1 copy)
- NA** Infrastructure List, if required

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting, if required, or otherwise processed until it is complete.

Signature: 	Date: October 13, 2020
Printed Name: James K. Strozier, FAICP	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

FOR OFFICIAL USE ONLY	
Case Numbers:	Project Number:
Staff Signature:	
Date:	

Legal Description

- *Lots 1 through 3 Block 1 Plat of West Bank Estates Together with Tract A1 Lands of Suzanne H Poole Containing 14.1326 Acres;*
- *Tract C-1 Plat of Tracts C-1, C2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West;*
- *Lot 4-A Plat of Tracts C-1, C-2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West*

UPC Codes

- *101106148219040203*
- *101106148715940232*
- *101106142516140201*

August 14, 2018

Derek Bohannon, Chairman
Environmental Planning Commission

Kym Dicome, Chair
Development Review Board

City of Albuquerque
600 Second Street NW
Albuquerque, NM 87102

Dear Mr. Chairman:

Daniels Family Properties, LLC is the owner of the three properties legally described as the following:

- *Lots 1 through 3 Block 1 Plat of West Bank Estates Together with Tract A1 Lands of Suzanne H Poole Containing 14.1326 Acres;*
- *Tract C-1 Plat of Tracts C-1, C2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West;*
- *Lot 4-A Plat of Tracts C-1, C-2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West*

I hereby authorize Consensus Planning, Inc. to act as agent for all matters related to the Site Plan, planning, and platting actions through the City of Albuquerque related to the entitlement and development of the properties legally described above.

Sincerely,



Kevin Daniels
Daniels Family Properties, LLC

August 14, 2018

Derek Bohannon, Chairman
Environmental Planning Commission

Kym Dicome, Chair
Development Review Board

City of Albuquerque
600 Second Street NW
Albuquerque, NM 87102

Dear Mr. Chairman:

I hereby authorize Consensus Planning, Inc. to act as agent for all matters related to the Site Plan, planning, and platting actions through the City of Albuquerque related to the entitlement and development of the three properties legally described as:

- *Lots 1 through 3 Block 1 Plat of West Bank Estates Together with Tract A1 Lands of Suzanne H Poole Containing 14.1326 Acres;*
- *Tract C-1 Plat of Tracts C-1, C2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West;*
- *Lot 4-A Plat of Tracts C-1, C-2 & Lot 4-A Lands of Suzanne H Poole Being a Replat of Tract C Lands of Suzanne H Poole Tract C Annexation Plat Land in Section 25 & 36 T11N R2E Lot 4 Block 1 West*

Gamma Development, LLC is the contract purchaser of the properties.

Sincerely,



Chris Scott, Director of Acquisition
Gamma Development, LLC

FORM DRWS: DRAINAGE REPORT/GRADING AND DRAINAGE PLAN / WATER & SANITARY SEWER AVAILABILITY

THIS FORM IS REQUIRED WITH THE DEVELOPMENT REVIEW BOARD APPLICATION FOR SUBDIVISIONS AND SITE PLANS.

PROJECT NAME: Overlook at Oxbow


AGIS MAP # F-11 and F-12

LEGAL DESCRIPTIONS: Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West



DRAINAGE REPORT/GRADING AND DRAINAGE PLAN

A drainage report/grading and drainage plan, as per the Drainage Ordinance, was submitted to the City of Albuquerque Planning Department, Hydrology Division (2nd /Ground Floor, Plaza del Sol) on 10/20/20 (date).


 10/20/20
Applicant/Agent Date

 10/20/20
Hydrology Division Representative Type text here Date

NOTE: A GRADING AND DRAINAGE PLAN MUST BE APPROVED PRIOR TO DRB APPROVAL

WATER AND SEWER AVAILABILITY STATEMENT

A Water and Sewer Availability Statement for this project was requested to the ABCWUA (2nd/Ground floor, Plaza del Sol) on 10/19/2020 (date).

 10/19/2020
Applicant/Agent Date

 _____
ABCWUA Representative Date

PROJECT # 2018-001402



October 9, 2020

Ms. Jolene Wolfley, Chair
Development Review Board
City of Albuquerque
600 North 2nd Street NW
Albuquerque, NM 87102

Landscape Architecture
Urban Design
Planning Services

302 Eighth St. NW
Albuquerque, NM 87102

(505) 764-9801
Fax 842-5495
cp@consensusplanning.com
www.consensusplanning.com

Re: Response to EPC Conditions of Approval for Project #2018-001402; Site Plan EPC SI-2018-00171

Dear Ms. Wolfley:

The purpose of this letter is to transmit the updated Site Plan drawings and respond to the EPC Conditions for approval from their hearing held on February 13, 2020. This property was appealed to the City Council (AC-20-4 & 5) and the appeals were denied with the recommended findings from the Land Use Hearing Officer (See attached). The applicant is aware that an appeal of the City Council's decision has been filed in District Court and that any future actions are being done "at risk".

Each of the EPC conditions is listed below with the applicant response in italics.

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB) to ensure all technical issues are resolved. 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.

Applicant Response: *Agreed, this letter provides responses to all the conditions which are reflected on the updated drawings.*

2. The applicant shall meet with the Staff planner prior to applying to the DRB to ensure that all conditions of approval are met. Upon receiving final approvals, the applicant shall submit a finalized version of the site plan for filing at the Planning Department.

Applicant Response: *The applicant met with Catalina Lehner and Maggie Gould on October 12, 2020 to review the conditions of approval and specific changes to the plans.*

PRINCIPALS

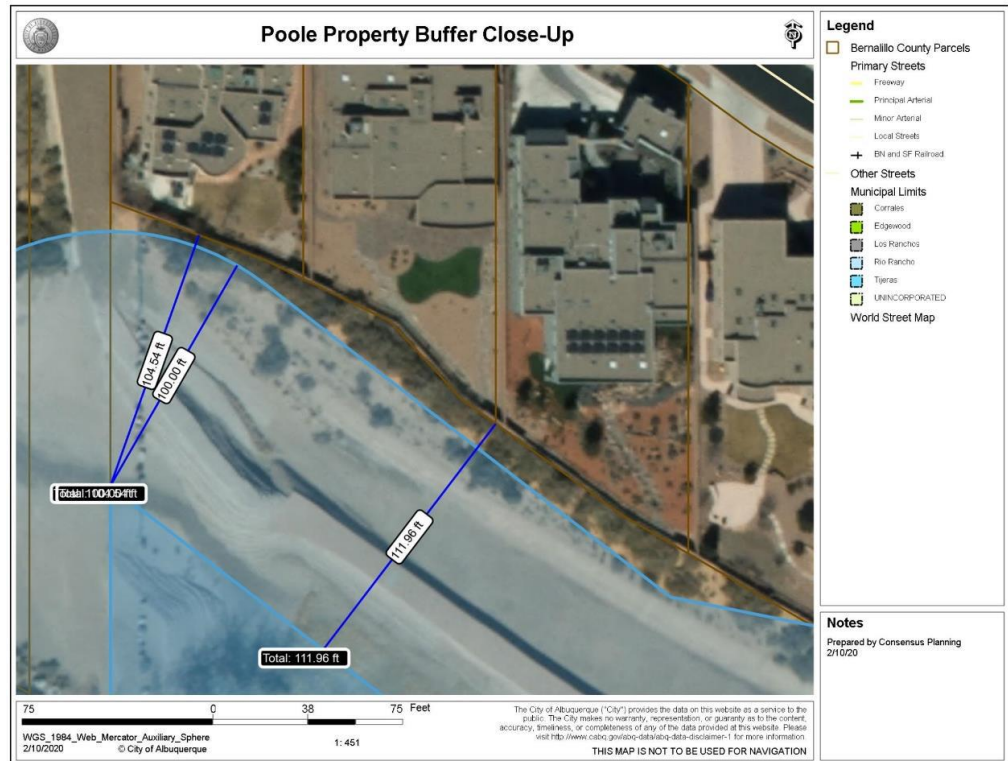
James K. Strozier, FAICP
Christopher J. Green, PLA,
ASLA, LEED AP
Jacqueline Fishman, AICP

3. The Site Plan shall comply with all applicable regulations of the IDO, the Subdivision Ordinance, other applicable design regulations, and shall fulfill the City Council Remand Instructions in full.

Applicant Response: To the best of our knowledge, the updated Site Plan complies with all applicable regulations of the IDO, Subdivision Ordinance, and other applicable design regulations and fulfills the City Council Remand Instructions in full. The City Council’s decision denying the appeal of the remand and referenced LUHO recommendation are attached to this letter.

4. Notification (Remand Instruction #4): The applicant shall ensure that the buffer map used for notification of property owners clearly shows a 100 foot buffer plus right-of-way and that all affected parties, particularly the four properties starting at the southeastern corner of the intersection of Valle Bosque Way NW and Valle Santo Trail NW, are duly noticed as required.

Applicant Response: The following exhibit was presented at the EPC Hearing demonstrating that the buffer map and notification was done correctly and in accordance with the IDO requirements:



5. Setbacks (Remand Instruction #1):

- A. Setbacks at the perimeter of each cluster are required to be pursuant to the underlying R-A Zone District: Front- minimum 20 feet; Side- minimum 10 feet; Rear, minimum 25 feet. All lots shall meet the required setbacks, and the following lots shall be revised so that they comply:
 - Cluster A: Lots A-11 and A-24 through A-33
 - Cluster B: Lots B-1, B-25, B-19 through B-25, and B-26

Applicant Response: The drawings were modified prior to the EPC hearing. In addition, there are two new sheets added to the set that provide each individual



cluster at a scale of 1" = 50' with the setbacks dimensioned. The exhibit is also included on the new detail sheet.

- B. The Cluster Setback Exhibit shall be included as a sheet (or part of a sheet) in the Site Plan and shall be scaled so that measurements are easy to verify.

Applicant Response: A new detail sheet has been added that includes the Cluster Setback Exhibit. This combined with the larger scale drawings demonstrate compliance with the setback requirements for each cluster.

- C. The Cluster Setback Exhibit shall indicate the location of any walls for purposes of setback measurement and shall indicate a rear setback from the homes near the middle of the subject site.

Applicant Response: The detail sheet and site plan provide information concerning the existing perimeter wall, which will be maintained. Any new or replacement wall portions shall match the existing wall color and design. Setback dimensions have been added for the lots near the middle section of the site plan (at the boundary between Cluster A and Cluster B).

6. Common Open Space (Remand Instruction #2):

- A. The calculations that produced the open space figures shall be shown, step by step, in order to determine compliance and shall be adjusted as needed to meet applicable requirements.

Applicant Response: The calculations have been added to the larger scale drawings for each cluster.

- B. Like the Cluster Setback Exhibit, the Common Space Exhibits and tables, etc. shall be shown on a separate sheet (or part of a sheet) for ease of reading and demonstration of compliance.

Applicant Response: The exhibits and calculations have been added to the site plan as described above.

- C. A comparison of the minimum required lot size in the R-A zone (10,890 sf) and each proposed lot size is needed to figure out the "100% of the area gained through lot reductions". A table showing the size differential for each lot, and a summary total, shall be provided and clearly show if the figure for "30% of gross project site" or the figure for the area gained through lot reductions is the larger.

Applicant Response: The information regarding the required open space for each cluster has been updated on the Site Plan and the table with the calculations has been added to the larger scale drawings for each cluster.



- D. Even after adjustments to the lot sizes, the common open space must remain a minimum of 35 feet wide between the houses pursuant to IDO Section 14-16-4-3(B)(2)(d)(2).

Applicant Response: All the open space area that is considered part of the “common open space” is a minimum of 35 feet wide.

7. Landscaping:

Pursuant to IDO Section 14-16-5-2(C)(I)(i)), the Pinon stand in the area shown as common open space shall be preserved. If the mature pinon pine trees cannot be retained, then they will be replaced in the same general area with new trees at a ratio of three new trees for every mature tree lost.

Applicant Response: A note has been added to the Landscape Plan stating this requirement. The final determination will be made with the final grading plan at the time of platting.

8. Notes and Clarification:

- A. The following notes shall be added to Sheet 1 and under Maintenance on Sheet 2:
 - i. Pursuant to IDO 14-16-4-3(B)(2)(e), the common open space for each cluster shall be on a separate subdivided lot or easement.
 - ii. Pursuant to 14-16-4-3(B)(2)(f): Maintenance for common open space areas is the responsibility of the HOA for each cluster.

Applicant Response: These notes have been added to Sheet 1 and the Landscape Plan (Sheet 5 – formerly Sheet 2).

- B. A note shall be added to the Site Plan that states all new buildings and landscapes will comply with IDO Sections 14-16-3-6(D)(6), Colors, in Coors Boulevard VPO-1 and 14-16-5-2(H), Major Public Open Space Edges.

Applicant Response: This note has been added to Sheet 1.

- C. The details for street section, free-standing entry sign, and view fence shall be moved to a separate detail sheet.

Applicant Response: The detail sheet has been added to the site plan drawings.

- D. A light pole detail and a wall detail shall be added to the detail sheet so that compliance with IDO Sections 3-4(C)(5)(d) and 5-7(D)(I) can be evaluated.

Applicant Response: The light pole and wall detail have been added to the detail sheet.

9. The Site Plan shall be submitted to and approved by the Development Review Board (DRB) for the following technical issues and/or requirements:

A. Hydrology

- i. An approved Grading and Drainage Plan & Drainage Report is required prior to approval of Preliminary Plat or Site Plan. A separate submittal is required to hydrology to include sufficient engineering analysis and calculations to determine the feasibility and adequacy of the proposed improvements.

Applicant Response: Agreed.

- ii. All floodplains need to be shown on the plat and site plan.

Applicant Response: The floodplain is show on the Site Plan with a note regarding the anticipated LOMR. The LOMR Note as well as the floodplain are included on the Grading and Drainage Plan as well.

- iii. A LOMR will be required to remove the floodplain from the lots that have the floodplain.

Applicant Response: Agreed, this requirement is noted on the Site Plan and the Grading and Drainage Plan.

- iv. AMAFCA approval will be required for connection to their Channel and grading adjacent to their right of way.

Applicant Response: Agreed.

- v. USACE approval will be required for any fill proposed in Waters of the US.

Applicant Response: Per the approved Conceptual Grading and Drainage Plan, no fill in Waters of the US is proposed with this project.

- vi. An infrastructure list will be needed for Preliminary Plat.

Applicant Response: Agreed.

- vii. A recorded IIA is required prior to Final Plat.

Applicant Response: Agreed.

- viii. A prudent setback from the Rio Grande is recommended because the slope on City Open Space is not stable and subject to lateral migration of the river. The City has no plans to stabilize the slope and does not want



to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.

Applicant Response: *Agreed. The slope is included within and completely on the private open space and within the "Sensitive Lands Protection Area" and is not owned by the City. No bank stabilization is proposed at this time.*

- ix. Management onsite will be required for the SWQV unless a waiver is demonstrated on the G&D Plan and accepted by Hydrology.

Applicant Response: *Agreed.*

- x. Note 4 on sheet 3 is incorrect and should be removed. Replace with a note that says, "A prudent setback will be established to allow for the future construction of bank protection by the HOA on the HOA's property without any encroachment into the Open Space property or on any of the lots."

Applicant Response: *Note 4 has been replaced with the requested note.*

B. Transportation Development

- i. Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed development site plan, as required by the Development Review Board (DRB).

Applicant Response: *Agreed.*

- ii. Infrastructure and/or ROW dedications may be required at DRB.

Applicant Response: *Agreed, we are not aware of any additional ROW dedication requirements at this time.*

- iii. All work within the public ROW must be constructed under a COA Work Order.

Applicant Response: *Agreed.*

- iv. The following comments need to be addressed prior to DRB:
Show the clear sight triangle and add the following note to the plan:
"Landscaping and signage will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in the clear sight triangle.



Applicant Response: *The clear sight triangle and note have been added to both the Site and Landscape Plans.*

C. MUNICIPAL DEVELOPMENT DEPARTMENT (DMD)- TRANSPORTATION

Per the 2040 Long Range Bikeway System Map there is a bicycle route proposed along Namaste Road and at La Bienvenida Place adjacent the west side of subject property.

Applicant Response: *Agreed.*

D. SOLID WASTE MANAGEMENT DEPARTMENT

Need site plan to (1 :40) scale, with dimensions, to verify safe refuse truck access/exit. The circumference of the cul-de-sac next to RA 16/17, will need to be redesigned to allow complete/continuous turnaround for refuse truck. Clarify "Public Lift Station" noted inside cul-de-sac, noted on Pg. #4.

Applicant Response: *The Site Plan and larger scale drawings for each cluster have been provided to Solid Waste Management for their review and approval. The "public lift station" is underground and will be a manhole cover in the cul-de-sac, so it will not interfere with truck movement. The applicant is currently working with ABCWUA on alternatives to eliminate the lift station. Solid Waste Department has reviewed and approved the current site plan and is included with this submittal.*

E. ABC WATER UTILITY AUTHORITY (ABCWUA)

- i. From the information provided it is understood that a section of the site intends to utilize a public force main to provide sanitary sewer service to the east portion of the development.

Applicant Response: *Agreed, however the Project Engineer is currently researching options to eliminate the public force main.*

- ii. Every opportunity should be utilized to minimize the use of public force main.

Applicant Response: *Agreed, the Project Engineer is currently researching options to eliminate the public force main and utilize private grinder pumps.*

- iii. Once development is desired obtain an Availability Statement for the new developments.

Applicant Response: *Agreed an availability statement has been issued for the project.*

- iv. Requests can be made at the link below:

http://www.abcwua.org/Availability_Statements.aspx



Request shall include a zone map showing the site location, as well as a site plan indicating finish floor elevations.

Applicant Response: Agreed.

- v. It should be noted that there is an existing ten-inch collector line transecting the development. This line is not to be abandoned. If relocation of this line is required for the development to take place the capacity shall be maintained or improved.

Applicant Response: Agreed, this line will be rerouted within the development and capacity shall be maintained or improved.

- F. ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL (AMAFCA)
Identify the AMAFCA Easement, filed for public record in Bernalillo County, NM on October 17, 1996 as Document No. 96114620, on the Site Plan for subdivision and Grading & Drainage Plan including the Storm Water Holding and Sediment Trapping Pond, Riprap bank stabilization, and grade control structure.

Applicant Response: The easement information has been noted on the Site Plan.

- G. PUBLIC SERVICE COMPANY OF NEW MEXICO (PNM)

- i. An existing underground distribution line is located on the subject property to the existing structure to be removed. It is the applicant's obligation to abide by any conditions or terms of these easements.

Applicant Response: Agreed.

- ii. It will be necessary for the developer to contact the PNM New Service Delivery Department to coordinate electric service regarding this project. Contact: Andrew Gurule, PNM Service Center, 4201 Edith Boulevard NE, Albuquerque, NM 87107, Phone: (505) 241-0589.

Applicant Response: Agreed.

- iii. Ground-mounted equipment screening will be designed to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Refer to the PNM Electric Service Guide at www.pnm.com for specifications.

Applicant Response: Agreed.

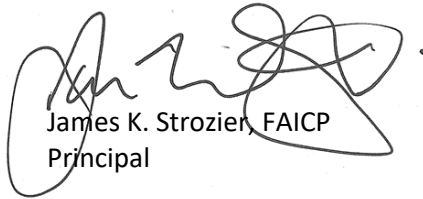


10. The EPC delegates its approval authority to the DRB for any changes to the Site Plan that meet the thresholds outlined in IDO Table 6-4-5, Allowable Minor Amendments.

Applicant Response: *The applicant is submitting the revised plans to the DRB for final sign-off. No additional changes are proposed at this time. No changes are impacted by the IDO thresholds for Minor Amendments.*

Please do not hesitate to contact us if you have any questions or require any additional information.

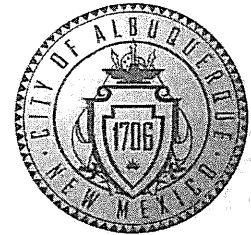
Sincerely,



James K. Strozier, FAICP
Principal

Attachments: EPC NOD 2-13-2020
LUHO Recommendation to City Council
City Council NOD for AC-20- 4 & 5

CITY OF ALBUQUERQUE



PLANNING DEPARTMENT
URBAN DESIGN & DEVELOPMENT DIVISION
600 2nd Street NW, 3rd Floor, 87102
P.O. Box 1293, Albuquerque, NM 87103
Office (505) 924-3860 Fax (505) 924-3339

OFFICIAL NOTIFICATION OF DECISION

February 14, 2020

Gamma Development, LLC
9798 Coors Blvd NW #400
Albuquerque, NM 87114

Project #2018-001402
SI-2018-00171 – Site Plan

LEGAL DESCRIPTION:

The above action for all or a portion of Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West; zoned R-A, located at 5001 Namaste Rd. NW, between La Bienvenida Pl. NW and the Oxbow Major Public Open Space, containing approximately 23 acres. (F-11 and F-12)
Staff Planner: Catalina Lehner

PO Box 1293

Albuquerque

On February 13, 2020 the Environmental Planning Commission (EPC) voted to Approve Project 2018-NM 871001402/SI-2018-00171, Site Plan-EPC, remanded to the EPC by the City Council, based on the following Findings and subject to the following Conditions of Approval:

- www.cabq.gov
1. This is a request for a Site Plan-EPC for Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West, located at 5001 Namaste Road NW, between La Bienvenida Place NW and the Oxbow Major Public Open Space, containing approximately 23 acres (the "subject site").
 2. The subject site is comprised of three legally platted County assessor parcels, subdivided into six City parcels, zoned R-A, surrounded by existing single-family development, a City park to the north, the Rio Grande Bosque to the east, and designated Major Public Open Space (MPOS) to the south.
 3. The applicant proposes two cluster developments of single-family homes, consisting of 69 lots and three open-space areas, one on the subject site's western side, one in the middle, and another spanning the southeastern corner to the eastern side of the subject site. The proposed layout is divided into Cluster A (33 lots) and Cluster B (36 lots).

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4. The EPC is reviewing the request because the subject site is over 5 acres in size and is adjacent to MPOS [Ref: IDO 14-16-6-6(H)(1)(b)(3)]. IDO Section 14-16-6-6(H) applies to any development on a site 5 acres or greater adjacent to MPOS prior to any platting action.
5. The subject site is private property in contract with the applicant and, therefore, was evaluated pursuant to the Integrated Development Ordinance (IDO) and all other applicable City Council adopted regulations as described herein.
6. The standards in IDO Section 14-16-5-2, Site Design and Sensitive Lands, apply to all site development and new subdivisions. The subject site is adjacent to MPOS so the regulations in Section 14-16-5-2 apply, particularly those found in Section 14-16-5-2(C)- Avoidance of Sensitive Lands, and in Section 14-16-5-2 (H)- Major Public Open Space Edges.
7. In addition to the requirements of the R-A Zone District, the Site Plan is subject to IDO's Use Specific Standards for Cluster Development, which address site design and common open space [Ref: 14-16(B)(2)].
8. The subject site is within the boundaries of CPO-2 [Coors Boulevard, 14-16-3-4 (C)] and VPO-2 (Coors Boulevard, 14-16-3-6 (E), and is subject to those regulations.
9. The subject site is located in an Area of Consistency as designated by the Comprehensive Plan. The Comprehensive Plan has several Goals and policies intended to protect and enhance the character of existing single-family neighborhoods, areas outside of designated Centers and Corridors, parks, and MPOS.
10. The Albuquerque/Bernalillo County Comprehensive Plan and the Integrated Development Ordinance (IDO) are incorporated herein by reference and made part of the record for all purposes.
11. The request meets the following, applicable criteria in 14-16-6-6-(H)(3), Review and Decision Criteria, Site Plan-EPC:
 - A. 14-16-6-6(H)(3)(a) The request is consistent with the following, applicable Comprehensive Plan Goals and policies:
 - i. Goal 4.1 and Policy 4.1.2. The lot sizes range from approximately 5,500 square feet to over 9,700 square feet, which is contextual with the lot sizes of adjacent subdivisions zoned R-1B, R-1C, and R-1D.
 - ii. Policy 4.1.5. The applicant has responded to the natural setting by preserving an area near the MPOS and the Bosque to retain some of the natural setting in the context of the site's R-A zoning entitlements.
 - iii. Goal 5.3, Policy 5.3.1, and Policy 7.3.4 because the subject site is in an area with existing development, infrastructure, and public facilities, the project is infill development, which is more efficient than development on the edge of the City.
 - iv. Policy 5.6.3 because lot sizes are similar to the surrounding subdivisions, they generally protect the character of the existing single-family neighborhoods. The adjacent MPOS is

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protected by the Site Plan's private open space buffer.

- v. Policy 9.2.3 because the proposed project is generally clusters residential units and provides private community open space.
- vi. Policy 11.3.3 b) because the common open space to the east adjacent to the Bosque will be undisturbed or revegetated to a natural setting.
- vii. Policy 11.3.3 c) because the request is for a development on R-A zoned land adjacent to the Bosque, which will conserve approximately 30% of the land as private open space.

- B. 14-16-6-6(H)(3)(b) The request is consistent with any applicable terms and conditions in any previously approved NR-SU or PC zoning covering the property and any related development agreements and/or regulations.

The subject site is zoned R-A, not NR-SU or PC. The reason this project is being reviewed by the EPC is due to its location adjacent to MPOS, not as a result of the zoning district designation.

- C. 14-16-6-6(H)(3)(c) The request complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the property.

The site plan is required to comply with all provisions of the IDO applicable to the site and the site plan, including but not limited to the Coors Boulevard CPO; Coors Boulevard VPO; Major Public Open Space Edges (Open Space Superintendent approved the open space buffer instead of the single loaded street); and Cluster Development use-specific standards. Conditions of approval are needed to ensure that compliance is achieved with all applicable requirements, including the City Council Remand Instructions.

- D. 14-16-6-6(H)(3)(d) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.

The developer will provide any necessary and additional infrastructure to include street, trail, drainage, and sidewalk systems to serve the proposed development. The applicant has also agreed to work with City Open Space and the DRB regarding improvements to the Namaste cul-de-sac and trail head area.

- E. 14-16-6-6(H)(3)(e) The request mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.

The applicant voluntarily committed to only single-story homes on the western edge of the site (lots backing up to Tres Gracias Drive) to mitigate adverse impact on the views for neighbors to the west. The applicant has also included private common open space and recreation amenities adjacent to Major Public Open Space to mitigate adverse impacts.

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12. The DRB approved a variance to IDO Section 14-16-5-3(E)(2)(a), Access and Connectivity, on December 7, 2018 (VA-2018-00173). The decision was appealed (AC-18-20) and was heard by the Land Use Hearing Officer (LUHO) on March 20, 2019. The City Council voted to accept the LUHO's recommendation and deny the appeal.
13. The EPC approved a previous version of the proposed site plan for the subject site at its March 19, 2019 hearing. The decision was appealed (AC-19-6 and AC-19-7). The City Council heard the case on August 5, 2019 and remanded it to the EPC based on findings and four remand instructions.
14. The City Council's remand instructions to the EPC are as follows:
 - A. Instruction #1: On remand, the EPC shall require the submission of a revised site plan for its consideration that clearly concentrates buildings in specific areas on the site, in identifiable clusters of no more than fifty lots each, and that otherwise satisfies the setback requirements of its condition number five. For purposes of setbacks between clusters, the relevant setback for each cluster shall not overlap. The minimum separation between clusters must include the combination of the relevant setback as applicable to each individual cluster.
 - B. Instruction #2: On remand, the EPC shall also evaluate and issue specific findings on the proposed cluster development's satisfaction of the IDO's applicable open space requirements for cluster developments, including but not limited to the ability to count drainage easements as part of its required open space designation and how the preserved common open space reasonably relates to each identifiable cluster.
 - C. Instruction #3: On remand, the EPC shall also evaluate, explain and issue a specific finding as to whether the IDO allows more than one Cluster Development on a site plan.
 - D. Instruction #4: The EPC shall conduct the remand hearing within the scope of these remand instructions as a duly noticed quasi-judicial hearing in conformance with the Open Meetings Act and shall allow all interested persons and the public to submit comments by letter or electronic mail, testify, submit written evidence, present written or oral arguments, and/or cross-examine witnesses.
15. The applicant submitted a revised site plan, dated November 25, 2019, for consideration by the EPC (the "request"). The request was deferred at the January 9, 2020 EPC hearing for one month, to the February 13, 2020 hearing, to ensure that all requirements regarding proper notice are met (City Council Remand Instruction #4). The EPC finds that notice was met (Remand Instruction #4).
16. In response to Remand Instruction C.1, The revised Site Plan – EPC shows two identifiable clusters, that concentrates buildings in specific areas of the site, with less than 50 lots in each cluster on a single site plan. The revised site plan also provides for the setbacks as referenced from the previous EPC Condition number five and demonstrates that the required setbacks for the perimeter of each cluster do not overlap.
 - A. The Zoning Enforcement Officer (ZEO) issued a Declaratory Ruling about cluster development on April 22, 2019.

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- B. The declaratory ruling states that the regulations for cluster development apply to each project site, and that the IDO does not prohibit more than one project site per application.
17. In response to Remand Instruction C.3, the IDO permits multiple cluster developments to be located on one site development plan so long as each cluster development meets all of the applicable IDO requirements because: (i) the IDO does not expressly limit site plans to a single cluster development; (ii) the CPO-2 zone states that "Cluster development design on land above the flood level shall be used to the maximum extent practicable, and the floodplain shall be used as open space" (3-4(C)(5)(a)); and (iii) it is in the best interest of the City to consider a whole project with multiple clusters rather than require multiple site plan applications. The EPC finds that the IDO allows more than one cluster development on a site plan. (City Council Remand Instruction #3).
 18. The site plan shows the required open space and setbacks that show that City Council's Remand Instructions #1 and #2 are fulfilled as instructed.
 19. In response to Remand Instruction C.2, the proposed open space designation is consistent with other policies as articulated in the ABC Comp Plan and CPO-2, IDO Section 14-16-3-4(C)(5)(a) Floodplain. Further, 4-3(B)(2)(d) provides that common open space be "set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any combination thereof . . ." Common open space is distinct from usable open space and may include drainage easements. The EPC finds that drainage easements (on-site ponding) can be counted as part of the required common open space (City Council Remand Instruction #2).
 20. Conditions of approval are needed to create compliance with applicable IDO requirements, to demonstrate that compliance with all applicable requirements is achieved, and to fulfill the City Council Remand Instructions, especially #1 and #2. The conditions are based on the November 25, 2019 version of the site plan.
 21. On remand, four agencies submitted comments based on the November 25, 2019 proposed site plan: the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA), the Department of Municipal Development (DMD), PNM, and the Open Space Division of the Parks and Recreation Department.
 22. The Open Space Division (OSD) has major concerns regarding the proposed site layout. OSD remains concerned about the proximity of lots on the site's southern side to the steep, sandy bluff and potential erosion over time. OSD would like to see a significant open space area contiguous to the existing MPOS pursuant to IDO 5-2(H)(2)(a)(2) and, despite remaining concerns about the use of a drainage detention area and steep sloped areas as open space, would be open to discussing the dedication of acreage to the City as MPOS.
 23. The City Hydrology Division states "The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank protection may be constructed to prevent lateral migration of the river, and erosion of the slope." Subsequent to EPC review, the project shall be reviewed for technical issues such as this by the Development Review Board (DRB).

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24. In 2018, the applicant notified the La Luz Landowners Association, the Taylor Ranch Neighborhood Association, and the Westside Coalition of Neighborhood Associations as well as property owners within 100 feet as required. Several meetings were conducted regarding the proposal, notably an initial neighborhood meeting, staff meetings with the neighbors, a facilitated meeting, and the Open Space Advisory Board meeting. During the remand period, no additional meetings were held.
25. Staff received multiple letters, comments, reviews, and reports in opposition to the proposed development. These are included in the case record. During the remand period, Staff received over 100 letters from concerned parties, some emails of opposition, and a hand-written letter. Staff did not receive any comments in support.

CONDITIONS OF APPROVAL

1. The EPC delegates final sign-off authority of this site development plan to the Development Review Board (DRB) to ensure all technical issues are resolved. 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 applicant shall meet with the Staff planner prior to applying to the DRB to ensure that all conditions of approval are met. Upon receiving final approvals, the applicant shall submit a finalized version of the site plan for filing at the Planning Department.
3. The Site Plan shall comply with all applicable regulations of the IDO, the Subdivision Ordinance, other applicable design regulations, and shall fulfill the City Council Remand Instructions in full.
4. Notification (Remand Instruction #4):
The applicant shall ensure that the buffer map used for notification of property owners clearly shows a 100 foot buffer plus right-of-way and that all affected parties, particularly the four properties starting at the southeastern corner of the intersection of Valle Bosque Way NW and Valle Santo Trail NW, are duly noticed as required.
5. Setbacks (Remand Instruction #1):
 - A. Setbacks at the perimeter of each cluster are required to be pursuant to the underlying R-A Zone District: Front- minimum 20 feet; Side- minimum 10 feet; Rear, minimum 25 feet. All lots shall meet the required setbacks, and the following lots shall be revised so that they comply:
 - Cluster A: Lots A-11 and A-24 through A-33
 - Cluster B: Lots B-1, B-25, B-19 through B-25, and B-26
 - B. The Cluster Setback Exhibit shall be included as a sheet (or part of a sheet) in the Site Plan and shall be scaled so that measurements are easy to verify.

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- C. The Cluster Setback Exhibit shall indicate the location of any walls for purposes of setback measurement and shall indicate a rear setback from the homes near the middle of the subject site.
6. Common Open Space (Remand Instruction #2):
 - A. The calculations that produced the open space figures shall be shown, step by step, in order to determine compliance and shall be adjusted as needed to meet applicable requirements.
 - B. Like the Cluster Setback Exhibit, the Common Space Exhibits and tables, etc. shall be shown on a separate sheet (or part of a sheet) for ease of reading and demonstration of compliance.
 - C. A comparison of the minimum required lot size in the R-A zone (10,890 sf) and each proposed lot size is needed to figure out the "100% of the area gained through lot reductions". A table showing the size differential for each lot, and a summary total, shall be provided and clearly show if the figure for "30% of gross project site" or the figure for the area gained through lot reductions is the larger.
 - D. Even after adjustments to the lot sizes, the common open space must remain a minimum of 35 feet wide between the houses pursuant to IDO Section 14-16-4-3(B)(2)(d)(2).
 7. Landscaping:

Pursuant to IDO Section 14-16-5-2(C)(1)(i), the Pinon stand in the area shown as common open space shall be preserved. If the mature pinon pine trees cannot be retained, then they will be replaced in the same general area with new trees at a ratio of three new trees for every mature tree lost.
 8. Notes and Clarification:
 - A. The following notes shall be added to Sheet 1 and under Maintenance on Sheet 2:
 - i. Pursuant to IDO 14-16-4-3(B)(2)(e), the common open space for each cluster shall be on a separate subdivided lot or easement.
 - ii. Pursuant to 14-16-4-3(B)(2)(f): Maintenance for common open space areas is the responsibility of the HOA for each cluster.
 - B. A note shall be added to the Site Plan that states all new buildings and landscapes will comply with IDO Sections 14-16-3-6(D)(6), Colors, in Coors Boulevard VPO-1 and 14-16-5-2(H), Major Public Open Space Edges.
 - C. The details for street section, free-standing entry sign, and view fence shall be moved to a separate detail sheet.
 - D. A light pole detail and a wall detail shall be added to the detail sheet so that compliance with IDO Sections 3-4(C)(5)(d) and 5-7(D)(1) can be evaluated.
 9. The Site Plan shall be submitted to and approved by the Development Review Board (DRB) for the following technical issues and/or requirements:
 - A. Hydrology

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- i. An approved Grading and Drainage Plan & Drainage Report is required prior to approval of Preliminary Plat or Site Plan. A separate submittal is required to hydrology to include sufficient engineering analysis and calculations to determine the feasibility and adequacy of the proposed improvements.
- ii. All floodplains need to be shown on the plat and site plan.
- iii. A LOMR will be required to remove the floodplain from the lots that have the floodplain.
- iv. AMAFCA approval will be required for connection to their Channel and grading adjacent to their right of way.
- v. USACE approval will be required for any fill proposed in Waters of the US.
- vi. An infrastructure list will be needed for Preliminary Plat.
- vii. A recorded IIA is required prior to Final Plat.
- viii. A prudent setback from the Rio Grande is recommended because the slope on City Open Space is not stable and subject to lateral migration of the river. The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.
- ix. Management onsite will be required for the SWQV unless a waiver is demonstrated on the G&D Plan and accepted by Hydrology.
- x. Note 4 on sheet 3 is incorrect and should be removed. Replace with a note that says "A prudent setback will be established to allow for the future construction of bank protection by the HOA on the HOA's property without any encroachment into the Open Space property or on any of the lots."

B. Transportation Development

- i. Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed development site plan, as required by the Development Review Board (DRB).
- ii. Infrastructure and/or ROW dedications may be required at DRB.
- iii. All work within the public ROW must be constructed under a COA Work Order.
- iv. The following comments need to be addressed prior to DRB:

Show the clear sight triangle and add the following note to the plan: "Landscaping and signage will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in the clear sight triangle.

C. MUNICIPAL DEVELOPMENT DEPARTMENT (DMD)- TRANSPORTATION

Per the 2040 Long Range Bikeway System Map there is a bicycle route proposed along Namaste Road and at La Bienvenida Pl. adjacent the west side of subject property.

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D. SOLID WASTE MANAGEMENT DEPARTMENT

Need site plan to (1:40) scale, with dimensions, to verify safe refuse truck access/exit. The circumference of the cul-de-sac next to RA 16/17, will need to be redesigned to allow complete/continuous turnaround for refuse truck. Clarify "Public Lift Station" noted inside cul-de-sac, noted on Pg. #4.

E. ABC WATER UTILITY AUTHORITY (ABCWUA)

i. From the information provided it is understood that a section of the site intends to utilize a public force main to provide sanitary sewer service to the east portion of the development.

ii. Every opportunity should be utilized to minimize the use of public force main.

iii. Once development is desired obtain an Availability Statement for the new developments. Requests can be made at the link below:

iv. http://www.abcwua.org/Availability_Statements.aspx

Request shall include a zone map showing the site location, as well as a site plan indicating finish floor elevations.

v. It should be noted that there is an existing ten inch collector line transecting the development. This line is not to be abandoned. If relocation of this line is required for the development to take place the capacity shall be maintained or improved.

F. ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL (AMAFCA)

Identify the AMAFCA Easement, filed for public record in Bernalillo County, NM on October 17, 1996 as Document No. 96114620, on the Site Plan for subdivision and Grading & Drainage Plan including the Storm Water Holding and Sediment Trapping Pond, Riprap bank stabilization, and grade control structure.

G. PUBLIC SERVICE COMPANY OF NEW MEXICO (PNM)

i. An existing underground distribution line is located on the subject property to the existing structure to be removed. It is the applicant's obligation to abide by any conditions or terms of these easements.

ii. It will be necessary for the developer to contact the PNM New Service Delivery Department to coordinate electric service regarding this project. Contact: Andrew Gurule, PNM Service Center, 4201 Edith Boulevard NE, Albuquerque, NM 87107, Phone: (505) 241-0589.

iii. Ground-mounted equipment screening will be designed to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Refer to the PNM Electric Service Guide at www.pnm.com for specifications.

10. The EPC delegates its approval authority to the DRB for any changes to the Site Plan that meet the thresholds outlined in IDO Table 6-4-5, Allowable Minor Amendments.

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APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **February 28, 2020**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15th day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-6-4(U) of the IDO, Administration and Enforcement. 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 recommendation.

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 Zoning Code must be complied with, even after approval of the referenced application(s).

Sincerely,


for Brennon William
Planning Director

BW/CL

- cc: Gamma Development, LLC, 9798 Coors Blvd NW #400 ABQ, NM 87114
- Consensus Planning, Inc., 302 Eighth St. NW, ABQ, NM 87102
- La Luz Landowners Assoc., Jonathan Abdalia, 6 Tumbleweed NW, ABQ, NM 87120
- La Luz Landowners Assoc., Kathy Adams, 5Arco NW, ABQ, NM 87120
- Taylor Ranch NA, Jolene Wolfley, 7216 Carson Trail NW, ABQ, NM 87120
- Taylor Ranch NA, Rene Horvath, 5515 Palomino Dr., NW, ABQ, M 87120
- Westside Coalition of NAs, Harry Hendriksen, 10592 Rio del Sol NW., ABQ, NM 87114
- Westside Coalition of NAs, Rene Horvath, 5515 Palomino Dr., NW, ABQ, NM 87120
- Alan Reed, 3105 Donquixote Ct. NW, ABQ, NM 87104
- Brian Hanson, 9016 Freedom Way NE, ABQ, NM 87109
- Ken Churchill, 4612 Almeria Dr., ABQ, NM 87120
- Linda Starr, 509 Aliso Dr. NE, ABQ, NM 87108
- Becky C. Davis, 500 Leeward Dr. NW, ABQ, NM 87121
- Tom Gulley, 4701 Valle Bonita Ln NW, ABQ, NM 87120
- Susan Hunter, 2529 George Dr. NE, ABQ, NM 87112
- Wendy Cox, P.O. Box 6572, ABQ, NM 87197
- Daniel Jensen, 7 Arco NW, ABQ, NM 87120
- Kevin Dullea, 4704 Almeria Dr. NW, ABQ, NM 87120
- Ann Prinz, 4611 Mijas Dr. NW, ABQ, NM 87120

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Shelley Bauer, 4616 Almeria Dr. NW, ABQ, NM 87120
Kathy Adams, 5 Arco Ct. NW, ABQ, NM 87120
Perrienne Houghton, 3010 20th Ave., Rio Rancho, NM 87124
Susan Chaudoir, 40404 St. Josephs Pl, ABQ, NM 87120
Elizabeth Haley, 6005 Chaparral Circle, ABQ, NM 87114
Ana Medina P.H.D., 3512 Yipee Calle Ct NW, ABQ, NM 87120
Reid McLean, 6716 Napa Rd. NE, ABQ, NM 87109
Brillante Cloud, 7700 Compass Dr. NW, ABQ, NM 87120
Sheena Ramos, 6420 Petirrojo Rd NW, ABQ, NM 87120
Willa Pilar, 744 Montclair NE, ABQ, NM 87110
E. Ward, P.O. Box 7434, ABQ, NM 87194
Pat Gallagher, 24 Lind NW, ABQ, NM 87120
Alexis Kaminsky, 15 Pool NW, ABQ, NM 87120
Alexander Wine, 7000 Armeria Dr. NW, ABQ, NM 87120
John Lopez, 12920 Calle de Sandias NE, ABQ, NM 87111
Jon Price, 4704 Mi Cordelia, ABQ, NM 87120
Heather Foote Jasso, 1105 Maciel Dr. NW, ABQ, NM 87104
Sue Flynt, 8615 Brook St. NE, ABQ, NM 87113
Chris Madrid, 6627 Rim Rock Circle NW, ABQ, NM 87120
Santiago Acevez, 1524 Richmond Dr. NE, ABQ, NM 87106
Walter Putnam, 4 Tennis Ct. NW, ABQ, NM 87120
Marianne Barlow, 27 Tennis Ct. NW, ABQ, NM 87120
Victor Lopez, 725 Arizona SE, ABQ, NM 87108
Norm Gaume, 44 Canoncito Dr. NE, ABQ, NM 87122
Cynthia Hall, 511 Solar Rd. NW, ABQ, NM 87107
John A. Garcia, 4100 Wolcott NE, ABQ, NM 87109
Seth Beecher, 1001 Royene Ct. NE, ABQ, NM 87110
Peggy Norton, 3810 11th St. NW, ABQ, NM 87107
Pam McBride, 5409 9th St. NW, ABQ, NM 87107
Rene Horvath, 5515 Palomino Dr. ABQ, NM 87120
Wendy Caruso, 5123 Sevilla AV., NW, ABQ, NM 87120
Steve Epstein, 5515 Kettle NW, ABQ, NM 87120
Jolene Wolfley, 7216 Carson Trl. NW, ABQ, NM 87120
Peggy Neff, 319 Princeton Dr. SE, ABQ, NM 87106
Jed M. Judson, 9798 Coors NW, ABQ, NM 87144
Chris Torres, 11023 Park North St. NW, ABQ, NM 87114
Jeffrey Borrego, 9798 Coors Blvd. ABQ, NM 87114
Jaron Oliver, 8008 Compass, ABQ, NM 87114
Barbara Ortiz, 8501 Ravenridge NE, ABQ, NM 87113
Christopher Oechsler, 8008 Compass, ABQ, NM 87114
Beth Cohen, 707 Arno St. SE, ABQ, NM 87102
Jonathan Price, 4704 Mi Cordelia Dr. NW, ABQ, NM 87120
Alfonso Mirabal, 17 Pool St. NW, ABQ, NM 87120
Kenneth Funk, 4908 Camino Valle Trl. NW, ABQ, NM 87120
Robert Erselius, 4908 Camino Valle Trl. NW, ABQ, NM 87120
Antoine Predock, 3200 Grande Vista Pl. NW, ABQ, NM 87120
Dick Kirschner, 5004 Grande Vista Ct. NW, ABQ, NM 87120
Barbara Tegtmeier, 4623 Almeria Dr. NW, ABQ, NM 87120
Dan Regan, 4109 Chama St. NE, ABQ, NM 87109

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Lynn Perls, 18 Berm St. NW, ABQ, NM 87120
Brenda Broussard, 18 Berm St. NW, ABQ, NM 87120
Marian Pendleton, 5608 Equestrian Dr. NW, ABQ, NM 87120
Fabian Lopez, 589 Apache Loop SW, Rio Rancho NM 87124
Sharon Miles, 2700 Vista Grande NW, #10, ABQ, NM 87120
Dr. Joe L. Valles, 5020 Grande Vista Ct. NW, ABQ, NM 87120
Jeff McCroa, 9100 San Mateo Blvd NE, ABQ, NM 87113
Joan Morrison, 390 Rincon Rd, Corrales, NM 87048
Jennifer Pohl, 4512 Atherton, ABQ, NM 87120
Joel C. Miller, 4608 Cayetena Pl. NW, Abq NM 87120
Susan Homer, 5000 Sequoia Rd. NW, Abq. NM 87120
Patricia Willson, 505 Dartmouth Dr. SE, Abq. NM 87106
Wendy N. Keller, 4412 Rabbit Brush Ave NW, Albuquerque, NM 87120
Martin Duzor, 4627 Mijas Dr NW Albuquerque, NM 87120
Kassi Nelson, 9180 Coors Blvd. NW Albuquerque NM 87120
Hess Yntema, 215 Gold Ave. SW, Suite 201, Abq. NM 87102
Cynthia Mclean, 5128 San Adan Ave NW Albuquerque, NM 87120
Margaret Delong, 10016 Blume St NE Albuquerque, NM 87112
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**BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER**

APPEAL NO. AC-20-4 and AC-20-5

**PR-2018-001402, SI-2018-00171,
VA-2020-00061, VA-2020-00066, VA-2019-00103**

**THOMAS P. GULLY, TAYLOR RANCH
NEIGHBORHOOD ASSOCIATION,
LA LUZ LANDOWNERS ASSOCIATION,
DISTRICT 4 COALITION, KNAPP HEIGHTS
NEIGHBORHOOD ASSOCIATION, ALAMEDA
NORTH VALLEY ASSOCIATION, INC.,
INTER-COALITION PANEL, GRANDE HEIGHTS
NEIGHBORHOOD ASSOCIATION, WEST SIDE
COALITION OF NEIGHBORHOOD ASSOCIATIONS,
WEST BLUFF NEIGHBORHOOD ASSOCIATION,
SUSAN CHAUDOIR, KENNETH H. CHURCHILL,
BECKY DAVIS, WILLIAM GODFREY, TERRI GODFREY,
KEVIN DULLEA,**

Appellants,

**CONSENSUS PLANNING, INC., and
GAMMA DEVELOPMENT, LLC,**

Party Opponents.

1 I. BACKGROUND

2 These are two separate appeals from a decision of the Environmental Planning
3 Commission (EPC). Appeal AC-20-04 is an appeal by Thomas P. Gully individually, and
4 AC-20-5 was filed by Hess Yntema, an attorney on behalf of all the other above-named
5 Appellants. The two appeals were joined for efficiency and expediency because they both

6 concern the same facts, the same Party Opponents, and stem from the same EPC decision.
7 The issues that each appeal presents significantly overlap and will be discussed in detail
8 below.

9 The EPC hearing and decision from which these consolidated appeals originate, only
10 concerned narrow issues that were remanded to it by the City Council from a prior EPC
11 decision and appeals having to do with the Party Opponents’ (Applicants) site plan proposal.
12 Thus, there are two sets of records that are associated with this appeal—the previous record
13 (AC-19-6 and AC-19-7), and the record of these appeals. Both records are relevant, and they
14 will be referenced herein. For clarity, the appeal record of these consolidated appeals (AC-
15 20-4 and 5) will be referenced as the “remand record.”¹ At the Land Use appeal hearing, the
16 parties stipulated to incorporating the previous EPC record with these appeals. Beginning
17 with the Applicants’ site plan application, the relevant historical procedural facts will be
18 highlighted below before the merits of the appeals are discussed.

19

20 **A. The First EPC Record--AC-19-6 and AC-19-7.**

21 The first record shows that in July 2018, and later in August 2018, Consensus Planning,
22 Inc. Planners, on behalf of Gamma Development, LLC met with City Planning Staff for a
23 mandatory (IDO, § 14-16-6-4(B)) pre-application conference to discuss the IDO
24 requirements for the proposed residential housing site plan known as the “Overlook at
25 Oxbow” [R. 698].² Throughout this recommendation, I will make references to the entire

1. Pages from the remand record will be referenced as “R.R.” and page number. Pages from the previous record will be referenced as “R.” and page number.

2. The first meeting with City Staff dealt with the requirements of the IDO for the site plan and the second meeting

26 site plan (both clusters) either as “site plan,” “Oxbow project,” or “revised site plan.” On
27 August 20, 2018, the Applicants met with the seven area neighborhood associations in a City
28 sponsored facilitated meeting [R. 793]. The record reflects that the 30 or so neighborhood
29 residents who attended the facilitated meeting voiced a number of concerns with the
30 proposed site plan [R. 739-746].

31 Because the conceptual site plan proposed by the Applicants includes two cluster
32 development projects, the proposed site is adjacent to City designated Major Public Open
33 Space (MPOS), and because the developments together exceed 5-acres in size, under the
34 IDO, § 6-6(H)(1)(b) 3 and 4, the Applicants sought “concurrence” with the then-Planning
35 Director to proceed to the EPC with both developments in the single site plan [R. 19]. On
36 September 17, 2018, in a letter memorandum, the City Planning Director gave his “approval”
37 to allow the site plan to move forward in the EPC review process [R. 703]. Ten days later on
38 September 27, 2018, the Applicants submitted their application and site plan to the EPC [R.
39 692].³

40 The record also shows that the Applicants met with neighborhood groups an additional
41 time in October 2018 [R. 749 and 769]. The Applicants also met with City Parks and
42 Recreation Staff regarding the MPOS in October 2018. On November 8, 2018, the EPC
43 commenced and deferred its first public hearing on the application three separate times [R.
44 1286, 1274, and 435, respectively]. Then, at its March 14, 2019 public hearing, the EPC

included the Zoning Enforcement Officer (ZEO).

3. Notably, the application originally included requests for what are colloquially called connectivity variances for terminating internal streets within the site plan. The EPC delegated the variance requests to the Development Review Board (DRB). The DRB approved the variance requests and that decision was subsequently appealed (AC-18-20). After a LUHO hearing, the appeal was remanded to the DRB and the applicants withdrew their application before the DRB set the matter for the remand hearing.

45 heard the substantive merits of the application and after a lengthy hearing, the EPC approved
46 the application with numerous conditions [R. 87-93].⁴ Among the many conditions of
47 approval, the EPC required that the site plan be modified so that each cluster can
48 independently satisfy the setback standards of the IDO [See R. 91, Condition No 5].

49 The Appellants herein filed two independent appeals of the EPC’s approval and the
50 City Council delegated to this Land Use Hearing Officer (LUHO) the authority to hold a
51 hearing and make recommendations on the appeals. The two appeals (AC-19-6 and & 7)
52 were consolidated and an extended appeal hearing was held on May 20, 2019. During the
53 pendency of the appeals, the Applicants filed a request for a declaratory ruling with the
54 Zoning Enforcement Officer (ZEO) regarding certain components of the site plan. The
55 Applicants sought a ruling on questions that could ultimately impact the EPC’s Condition
56 Number 5 in its earlier decision. The ZEO issued a declaratory ruling on April 22, 2019 [R.R.
57 758]. That ruling was later appealed by some of the Appellants herein.⁵

58 In the meantime, after the LUHO hearing, appeals AC-19-6 and & 7 made their way to
59 the City Council. The City Council rejected the LUHO recommendations and on August 5,
60 2019, it held its own quasi-judicial hearing on the appeals [RR. 133]. After its hearing, the
61 City Council issued a decision remanding certain issues back to the EPC to resolve, and in
62 doing so it finally approved certain other findings and recommendations of the LUHO.⁶ In

4. Notably, the site plan changed at least two times before the EPC gave its March 14, 2019 approval.

5. The appeal of the declaratory ruling is currently pending an appeal (AC-18-20) before the City Council.

6 The City Council “accepted and adopted” LUHO Findings regarding IDO, § 5-2(C)(1), Avoidance of Sensitive Lands; IDO § 5-2(H)(2)(b)2, Properties Adjacent to MPOS; Issues related to Street Connectivity delegated to the DRB; IDO, § 5-1(C)(2), Contextual Residential Development in Areas of Consistency; and an allegation of Open Meetings Act and Due Process violations [RR.134 and 777-793].

63 In its remand instructions to the EPC, the City Council expressly instructed the following:

64 1. On remand, the EPC shall require the submission of a revised site plan
65 for its consideration that clearly concentrates buildings in specific areas
66 on the site, in identifiable clusters of no more than fifty lots each, and that
67 otherwise satisfies the setback requirements of its condition number five.
68 For purposes of setbacks between clusters, the relevant setback for each
69 cluster shall not overlap. The minimum separation between clusters must
70 include the combination of the relevant setback as applicable to each
71 individual cluster.

72
73 2. On remand, the EPC shall also evaluate and issue specific findings on the
74 proposed cluster development's satisfaction of the IDO's applicable open
75 space requirements for cluster developments, including but not limited to
76 the ability to count drainage easements as part of its required open space
77 designation and how the preserved common open space reasonably
78 relates to each identifiable cluster.

79
80 3. On remand, the EPC shall also evaluate, explain and issue a specific
81 finding as to whether the IDO allows more than one Cluster Development
82 on a site plan.

83
84 4. The EPC shall conduct the remand hearing within the scope of these
85 remand instructions as a duly noticed quasi-judicial hearing in
86 conformance with the Open Meetings Act and shall allow all interested
87 persons and the public to submit comments by letter or electronic mail,
88 testify, submit written evidence, present written or oral arguments, and/or
89 cross-examine witnesses [RR. 134].

90
91
92 **B. Remand Background**

93 Presumably to address the City Council's remand instructions, on November 26, 2019,
94 the Applicants submitted to the City Planning Staff a revised site plan. In their transmittal
95 letter, the Applicants specifically referenced the remand instructions, claimed to have revised
96 the site plan to address the issues in the remand instructions, requested that city Planning
97 Staff recommend that the EPC approve the site plan, and requested that the matter be set for
98 hearing before the EPC [R.R. 165].

99 The record next demonstrates that on December 5, 2019, City Deputy Planning
100 Director, James Aranda notified the Applicants of more than 20 deficiencies in their
101 application, and as a result the application was deemed incomplete [R.R. 161]. Deputy
102 Director Aranda invited the Applicants to call him with any questions regarding the
103 notification [R.R. 162]. Next, in a memorandum dated December 16, 2019, Colleen
104 McRoberts, Superintendent of the City Open Division (OSD) of the Parks and Recreation
105 Department, issued comments to the EPC regarding the revised site plan [R.R. 182].

106 In late December, the Applicants presented a buffer map to the City Planning Staff
107 showing the dwellings within 100-feet of the project site, presumably, to assure that those
108 dwelling owners received individual notice of the EPC hearing as required by the IDO [R.R.
109 196]. Ostensibly, this was to assure that the City Council’s instruction on notice was met.
110 Notably, the record also includes numerous email letters from various people to the City
111 Planning Staff and EPC voicing strong opposition to the site plan [R.R. 260 –731]. I note for
112 the City Council that the content in the majority of these email letters appear to be boiler-
113 plate language tailored around the criteria in the IDO having to do with Avoidance of
114 Sensitive Lands—issues that were seemingly resolved by the City Council in its August 5,
115 2019 decision.

116 The record further reflects that the EPC’s remand hearing was scheduled for January 9,
117 2020, and prior to the hearing, Senior City Staff Planner, Catalina Lehner, issued a Staff
118 Report recommending that the EPC defer the hearing for a month [R.R. 949]. Apparently,
119 the basis for the recommendation concerned a problem with notice that was or was not sent
120 to the impacted neighborhood associations [R.R. 951]. The EPC heeded the advice and

121 deferred its hearing to its February 13, 2020 public hearing docket.

122 Then, on January 16, 2020, presumably to address the deficiencies and the question
123 regarding notice to neighborhood associations, the Applicants transmitted proof that notice
124 was mailed to the appropriate neighborhood associations. The Applicants also transmitted
125 additional documentation to justify their revised site plan under the IDO. Thereafter, Senior
126 Planner Lehner submitted a supplemental Staff Report to the EPC [R.R. 102].⁷ In her
127 Report, Ms. Lehner outlined several alleged deficiencies with the revised site plan, and
128 recommended a *“two-month deferral to allow adequate time for the appeal of the*
129 *declaratory ruling to be decided, and for the applicant to clarify and ensure that the*
130 *proposed site plan addresses IDO requirements related to site design and open space...”*
131 [R.R. 121]. Evidently, in response to Senior Planner Lehner’s Report, on February 10, 2020,
132 the Applicant’s agent James Strozier with Consensus Planning, Inc., transmitted a detailed
133 letter to the EPC clarifying questions raised by Ms. Lehner and objected to the deferral
134 request [R.R. 795-801].

135 On February 13, 2020 the EPC held its public hearing on the remand issues. In the
136 hearing, it first took up the recommendation for a deferral [R.R. 852-856]. After hearing from
137 Ms. Lehner and from Mr. Strozier regarding the deferral recommendation, the EPC voted to
138 proceed and hear the merits of the remand issues [R.R. 856]. The EPC allowed testimony,
139 heard arguments and took cross-examination questions in written form before it voted to
140 approve the revised site plan. In doing so, it debated and set findings and conditions of its
141 approval in its Official Decision [R.R. 90].

7. The Report is undated, but it appears from the Applicant’s response February 10, 2020 response to it, it was transmitted to the EPC, after January 16, but before February 10, 2020.

142 These consolidated timely appeals followed. The City Council delegated the appeals to
143 this LUHO and a nearly five-hour extended Land Use appeal hearing on both appeals was
144 held on June 12, 2020. Appellants raised a number of overlapping issues and ultimately asked
145 that the City Council reverse the decision of the EPC. As explained below, Appellants also
146 raised issues relating to matters previously finalized by the City Council.

147 After reviewing the records, supplements to the records, hearing arguments and
148 testimony, all with particular forethought of the standard of review, I respectfully
149 recommend that the EPC’s decision be upheld because it is supported with substantial
150 evidence in the record. Moreover, under the applicable standard of review, I cannot find that
151 the EPC misapplied the relevant IDO provisions in its review and approval of the revised
152 site plan. In short, I find that its decision is rational and reasonable, not arbitrary or
153 capricious.

154

155 **II. STANDARD OF REVIEW**

156 A review of an appeal is a whole record review to determine whether the EPC acted
157 fraudulently, arbitrarily, or capriciously; or whether the EPC’s decision is not supported by
158 substantial evidence; or if the EPC erred in applying the requirements of the IDO, a plan,
159 policy, or regulation [IDO, § 14-16-6-4(U)(4)]. At the appeal level of review, the decision
160 and record must be supported by substantial evidence to be upheld. The Land Use Hearing
161 Officer (LUHO) may recommend to the City Council that an appeal be affirmed in whole or
162 in part or reversed in whole or in part. [IDO, § 14-16-6-4(U)(3)].

163

164 **III. DISCUSSION**

165 As stated above, Appellants have raised numerous, sometimes duplicative issues to
166 support their appeals. Under the above referenced standard of review, each of those issues
167 will be examined below.

168

169 **A. There is substantial evidence in the record to support a finding that the EPC did**
170 **not act arbitrarily or capriciously when it rejected the recommendations of its**
171 **Staff Planner.**

172

173 Next, Appellants claim that it was arbitrary and capricious conduct for the EPC to reject
174 the recommendations from a City Senior Staff Planner, Catalina Lehner. In support of their
175 arguments, Appellants point to Ms. Lehner’s testimony to the EPC advising them *that “the*
176 *record does not contain sufficient evidence to demonstrate that all IDO requirements are met”*
177 and that a deferral is appropriate [R.R. 854]. Appellants further contend that the EPC ignored
178 Ms. Lehner’s admonitions and was “anxious” to proceed “without discussion” of the issues
179 she raised. Moreover, Appellants claim that the evidence demonstrates that the Applicants’
180 revised site plan was incomplete under the IDO for the EPC to render a substantive decision.
181 Appellants suggest, therefore, that the EPC erred.

182 I first note that there is no rule or IDO provision, and Appellants have not cited one,
183 requiring the EPC to follow the recommendations of its Staff Planners. The EPC alone has
184 been delegated the authority by the City Council to decide on matters before it. It is free to
185 reject any recommendation from Staff, from Applicants, or from any other person attending
186 its hearing. I take notice that, over the years, the EPC has occasionally rejected the
187 recommendations of its Staff. Thus, the EPC’s rejection of Staff’s recommendations, in and of

188 itself, is insufficient to show error. In addition, despite Appellants’ factual contentions, I find
189 that there is substantial evidence in the record that the EPC gave due consideration to Ms.
190 Lehner’s recommendations. The sufficiency of the evidence will be further discussed below.

191 The record shows that the EPC allowed Ms. Lehner to testify why she believed the site
192 plan was not supported with adequate evidence [R.R. 852-854]. Then, the EPC put the question
193 of deferral to a vote and decided as a body to proceed [R.R. 856]. I note that before voting, EPC
194 members acknowledged that they continued to have the option to defer the hearing if, after hearing
195 the merits of the matter, it decided that a deferral was necessary [See discussion between Chairman
196 Serrano and Commissioner Eyster, R.R. 856].

197

198 **B. The Appellants have not met their burden of proof to show that the site plan was**
199 **“incomplete” to be presented to the EPC for hearing, or that there was a *de facto***
200 **stay on the site plan.**

201
202 Appellants next contend that the Applicants’ revised site plan was “incomplete for
203 consideration under the IDO.” Appellants support this contention primarily on Ms. Lehner’s
204 testimony and Staff Report. However, Appellants raise an interesting issue under §6-4(H) of
205 the IDO which will briefly be discussed. Appellants generally suggest that Ms. Lehner
206 concluded that the site plan was “incomplete” and therefore under the IDO, the EPC lacked
207 jurisdiction over it.

208 Under IDO, §6-4(H), if the Planning Director (or her /his Staff) renders an application
209 “incomplete,” that application cannot be reviewed for compliance and scheduled for any public
210 hearings “until it is determined to be complete” [IDO, §6-4(H)(1) through (5)]. The applicable
211 presumption is that, if the application is ultimately scheduled for a public hearing, then by
212 implication, it is deemed complete.

213 The facts demonstrate that on December 5, 2019 (post remand), the Planning Staff
214 initially determined that the Applicants’ revised site plan was “incomplete” and advised the
215 applicants of 24 issues that must be resolved before the site plan would be scheduled for a
216 hearing [R.R. 161]. The record further demonstrates that in response, on December 16, 2019,
217 the Applicants’ agent, James Strozier, supplemented their application with a detailed reply to
218 each of the issues raised by Mr. Aranda [R.R. 154]. Apparently, there was some disagreement
219 and/or confusion as to what information was relevant under the Council’s remand instructions
220 to determine the completeness of the revised site plan. However, the revised site plan was
221 eventually scheduled for an EPC public hearing. Although the record does not include any
222 follow-up emails from Staff to the Applicants expressly determining that the revised site plan
223 documentation was “complete,” the rational inference is that the act of setting the matter for
224 hearing under IDO, §6-4(H), signifies that it was complete to be presented to the EPC. Thus,
225 I find that the revised site plan was complete for EPC review on February 13, 2020.

226 As stated above, the fact that the matter was set for hearing supports that the application
227 was not incomplete as that term is used in the IDO. In addition, Planning Director Brennan
228 Williams wrote in a memorandum to the City Council that the “*site plan and application was*
229 *complete for EPC consideration*” [R.R. 7].

230 Next, in a related appeal issue, Appellants generally claim that under NMSA 1978, §
231 3-21-8(B), when there is a pending appeal of a decision, the appeal acts as a stay on all
232 “proceedings in furtherance of the action appealed.” Appellants contend that because there is
233 currently a pending appeal of the declaratory ruling regarding issues involved in the project
234 site (AC-20-1), NMSA 1978, § 3-21-8(B) is applicable in this matter. I disagree. The EPC

235 hearing was a remand hearing, stems from appeals AC -19-6 and AC-19-7 which
236 commenced prior to the declaratory ruling and subsequent appeal. Thus, these appeals (AC-
237 20-4 and 5) are not “in furtherance of the action appealed” in the declaratory ruling.
238 Accordingly, I find that NMSA 1978, § 3-21-8(B) is inapplicable, and there is substantial
239 evidence in the record that the site plan was properly before the EPC and it was complete for
240 EPC consideration.

241

242 **C. The EPC did not error regarding how it managed the records associated with the**
243 **Applicants’ site plan.**

244 Appellants made several allegations regarding how the EPC handled and/or decided to
245 supplement the record with additional materials Appellants submitted into the record.
246 Without alleging error, Appellants cite pages 857, 876, 877, and 926-928. Yet, their
247 argument is more of a request to supplement the record at the LUHO hearing rather than a
248 claim of error from the EPC. I note that, in its hearing, the EPC did vote to allow Mr. Yntema
249 (Appellants’ counsel) to supplement the record with additional materials. I cannot discern
250 from the arguments what the error is that Appellants claim with this process [Letter from H.
251 Yntema, dated 6-2-20, p. 4-5]. Through counsel, Appellants requested that the record be
252 supplemented with documents pertaining to “negotiations” between Staff and the applicants
253 regarding proposed findings to be submitted to the EPC (issues discussed below). However,
254 at the LUHO hearing Mr. Strozier testified that there were no negotiations, thus other than
255 the proposed findings submitted to the EPC, there are no negotiated documents.

256 I cannot find that the EPC erred with requests for supplementation of the record. If a
257 document did not make its way into the record it is not from EPC error. I note that, at the
258

259 LUHO hearing, all requests for supplementing the record were granted.

260

261 **D. There are no prohibitions to allowing multiple cluster developments on a single**
262 **site plan and the EPC did not abuse its discretion or act arbitrarily or capriciously**
263 **in allowing two clusters on a single site plan.**

264

265 Getting to the substantive merits of the EPC’s decision and the City Council’s remand,

266 Appellants next contend that allowing multiple cluster developments on a single site plan

267 circumvents the IDO’s 50-dwelling unit limit. They further contend that the entire site plan

268 constitutes a single “project site” under the IDO definition and only a single cluster is allowed

269 on a single project site.

270 This issue has much to do with the third remand instruction from the City Council. It’s

271 worth restating it here. Remand Instruction Number Three states in full:

272 On remand, the EPC shall also evaluate, explain and issue a specific
273 finding as to whether the IDO allows more than one Cluster Development
274 on a site plan.

275

276 Regarding remand instruction Number Three, the EPC expressly found that:

277 the IDO permits multiple cluster developments to be located on one site
278 development plan so long as each cluster development meets all of the
279 applicable IDO requirements because: (i) the IDO does not expressly limit
280 site plans to a single cluster development; (ii) the CPO-2 zone states that
281 "Cluster development design on land above the flood level shall be used
282 to the maximum extent practicable, and the floodplain shall be used as
283 open space" (3-4(C)(5)(a)); and (iii) it is in the best interest of the City to
284 consider a whole project with multiple clusters rather than require
285 multiple site plan applications. The EPC finds that the IDO allows more
286 than one cluster development on a site plan [R.R. 94, Finding 17].

287

288 Appellants argue that, in this finding, the EPC misapplied the applicable IDO provisions and

289 that the EPC abused its discretion by arbitrarily and capriciously misinterpreting and or

290 misapplying the IDO when it approved the above finding [R.R. 12].

291 Before analyzing Appellants’ arguments, it is useful to take the time to enumerate the
292 applicable standards from which Appellants’ arguments must be judged in administrative,
293 quasi-judicial appeals. Under New Mexico law, arbitrary and/or capricious conduct is action
294 taken that “is unreasonable or without a rational basis, when viewed in light of the whole
295 record.” *Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission*, 2003-
296 NMSC-005, ¶ 17. Moreover, it is action taken “without proper consideration in disregard of
297 the facts and circumstances.” *Perkins v. Department of Human Services*, 1987-NMCA-148, ¶
298 20. Furthermore, as stated above, the decision must be supported with substantial evidence to
299 be upheld. “Substantial evidence is such relevant evidence as a reasonable mind might accept
300 as adequate to support a conclusion.” *Embudo Canyon Neighborhood Ass'n v. City of*
301 *Albuquerque* - 1998-NMCA-17, ¶8. Unless it can be shown that the EPC’s interpretation of
302 the relevant IDO provisions was irrational such that a reasonable mind cannot accept it as
303 adequate to support the result reached, the EPC’s interpretation will be accorded deference
304 under New Mexico law. For this reason, even if Appellants have shown that a contrasting
305 interpretation of the relevant IDO provisions exists, such a showing in itself is insufficient to
306 disturb the EPC decision. Put another way, the question is not whether substantial evidence
307 exists to support the Appellants’ interpretation of the IDO, but rather the question comes down
308 to whether there is substantial evidence in the record that can support the EPC’s interpretation
309 and the result it reached. This important maxim of New Mexico law cannot be overemphasized
310 in these consolidated appeals.

311 With these standards in mind, turning to the substantive issue, I point out that
312 Appellants have not argued or otherwise demonstrated that there is any express language

313 prohibiting placing two cluster developments in a single site plan. I find that there is no such
314 express prohibition. Thus, I first find that the EPC did not err in finding that “*the IDO does*
315 *not expressly limit site plans to a single cluster development...*” [R.R. 94].

316 Because there is no express prohibition in the IDO for creating two cluster
317 developments in a single site plan, Appellants’ arguments must rest on statutory interpretation
318 of various applicable provisions of the IDO dealing with cluster developments. In this regard,
319 Appellants first contend that the revised site plan, which includes two cluster developments in
320 it, by implication must be defined as a single “project site” under the IDO. They further contend
321 that the IDO does not allow a single “project site” to have multiple clusters.⁸ Starting with
322 the definition of “project site,” in the IDO, a project site is:

323 A lot or collection of lots shown on a Subdivision – Minor or Major or
324 on a Site Plan. This term refers to the largest geography specified in
325 the earliest request for decision on the first application **related to a**
326 **particular development**. For example, if a large parcel is subdivided
327 and submitted for development in phases, any regulation referring to
328 the project site would apply to the entirety of the land in the original
329 parcel included in the Subdivision application (Emphasis added.)
330 [IDO, § 14-16-7].

331 Under the above definition, Appellants contend that the Applicants’ entire site plan is the
332 “*largest geography specified in the earliest request for decision on the first application*
333 *related to a particular development.*” Accordingly, they claim, the site plan, even though it
334 includes two theoretically separate developments, under the definition of a project site,
335 necessarily must be interpreted as a single project site. They next contend that, because the
336

8. The terms “cluster” and “cluster development” have the same meaning and are used interchangeably by the parties to this appeal and in this recommendation, I will do the same. For clarity, however, a single “cluster” or a single “cluster development” is one that includes 50-dwellings or fewer and independently or autonomously meets all the other Use-Specific Standards of the IDO, § 4-3.

337 revised site plan is a single project site, multiple clusters cannot be allowed on a single project
338 site under the Use-Specific Standards for cluster developments.

339

340 **i. The EPC determination that the revised site plan may include two cluster**
341 **developments is not erroneous or contrary to the definition in the IDO of a**
342 **project site.**

343

344 I first find that the EPC’s decision that the revised site plan may include two separate
345 cluster developments is not “unreasonable or without a rational basis, when viewed in light
346 of the whole record” and under the totality of the IDO. *Rio Grande Chapter of the Sierra Club*
347 *v. New Mexico Mining Commission*, 2003-NMSC-005, ¶ 17. This is so because the definition
348 of a project site relates primarily to “a particular development.” Arguably, there are two
349 “particular developments” in the revised site plan. And because the IDO lacks an unequivocal
350 prohibition on allowing multiple cluster developments adjacent to each other and on a single
351 site plan, I cannot find that the EPC erred.

352 Although I agree with Appellants that the definition of a project site could be interpreted
353 in the manner they suggest, that is not the standard for appellate review of administrative
354 decisions. Again, it cannot be overemphasized that in an appeal from a decision of the EPC,
355 “the question is not whether substantial evidence exists to support the opposite result, but
356 rather whether such evidence supports the result reached” *Huning Castle Neighborhood Ass’n*
357 *v. City of Albuquerque*, 1998-NMCA-123, ¶ 15. In these appeals, I find that, although there
358 are competing interpretations of the term “project site” as that term applies to whether two
359 cluster developments can be sited in the single revised site plan (under the facts in this case),
360 the EPC’s decision that a site plan may include two cluster developments is rational, and as

361 shown herein and below, that decision is well-supported with substantial evidence.

362 Next, under the multiple Use-Specific Standards of § 4-3(B)(2), which clearly are
363 applicable to cluster developments, there are subtle differences to how various standards are
364 applied to cluster developments. One such difference is in how the term “project site” is
365 applied. For example, it is indisputable that “*setback requirements, including contextual*
366 *standards in Subsection 14-16-5-1(C)(2), shall apply to the project site as a whole, but not to*
367 *individual dwellings*” [§ 4-3(B)(2)(b)]. In addition, “[*t*]he cluster development project site
368 *shall include a common open space set aside[s]...*” [§ 4-3(B)(2)(d)]. Furthermore, the
369 Contextual setback standards for clusters in § 5-1(C)(2)(c) similarly are applicable to a project
370 site. Thus, it is beyond doubt that, in sections (b) and (d) of § 4-3(B) of the Use-Specific
371 Standards for cluster developments, setbacks and open space set asides are plainly applicable
372 to a single project site. In other words, setbacks and open space requirements apply to any
373 single project site. This is an unmistakable conclusion of the Use-Specific Standards for
374 cluster developments.

375 The evidence in the record demonstrates that the two cluster developments within the
376 revised site plan both independently satisfy the Use-Specific Standards and the Contextual
377 standards specifically with regards to setbacks and open space dimensions for each cluster.
378 The evidence shows that the setbacks were applied to the individual clusters autonomously,
379 not to the individual lots internally or to the entire revised site plan as a single site plan. And
380 as discussed in more detail below, each cluster development includes more than the threshold
381 requirement of open space. Thus, it was not unreasonable or irrational for the EPC to evaluate
382 each cluster as a “particular development” or more appropriately-- as a separate project site.

383 I also note that, because the evidence demonstrates that encompassing two cluster
384 developments within a single site plan is not proscribed by the express terms of the IDO,
385 Appellants’ arguments that the site plan includes more than the allowed 50-dwelling unit limit
386 in the IDO, is without merit. The evidence in the record unmistakably shows that each
387 autonomous cluster has less than 50 residential units. EPC Findings Number 3 states what the
388 evidence shows—that cluster A encompasses 33-lots and dwellings, and cluster B has 36 lots
389 [R.R. 90].

390

391 **ii. The EPC’s justification of its decision that two clusters may exist on a single**
392 **site plan is rational and reasonable and is well-supported by the IDO.**

393

394 Appellants allege that the EPC did not rationally explain its decision that two clusters
395 are allowed on a single site plan. However, the evidence in the record demonstrates otherwise.
396 In its decision, the EPC found in Finding 17, subsection (ii) that “*the CPO-2 zone states that*
397 *“cluster development design on land above the flood level shall be used to the maximum*
398 *extent practicable...”* and in subsection (iii) it found that “*it is in the best interest of the City*
399 *to consider a whole project with multiple clusters rather than require multiple site plan*
400 *applications”* [R.R. 94, Finding 17]. These are strong public policy rationales supporting its
401 decision of which are well-underpinned in the IDO. I would add that these policy rationales
402 are consistent with IDO, § 1-3 wherein it is a purpose of the IDO to “provide for orderly and
403 coordinated development patterns” [IDO, § 1-3(H)]. Arguably, evaluating both cluster
404 developments together, rather than separately, achieves these policy purposes.

405 As indicated above, the IDO could be interpreted to allow only one cluster development
406 on a single site plan. If the EPC would have chosen that interpretation, the Applicants would

407 be free to merely submit two separate site plans, perhaps at different times, showing a single
408 cluster in each. However, such a process would arguably be less efficient, less orderly, and
409 piecemeal planning. Because allowing two clusters in a site plan is not prohibited in the IDO,
410 the EPC’s rationales encompassed in its Finding Number 17, subsections ii and iii are
411 rationally related to the decision it reached. Thus, I find that the EPC gave its decision proper
412 consideration and did not disregard the facts and circumstances of that issue. Administrative
413 efficiency and evaluation of the larger site (22.75-acres), rather than a chunk of it, are rational
414 policy objectives for the EPC to consider, especially when, as in this case, it does not violate
415 the IDO. Thus, despite Appellants’ contention that the EPC failed to rationally “evaluate” and
416 “explain” how it arrived at its decision, I find otherwise.

417

418 **E. The EPC did not err in concluding that the site plan shows two identifiable clusters**
419 **that concentrates buildings.**

420

421 Next, Appellants challenge the EPC’s Finding Number 16 in which it expressly found
422 that the revised site plan “*shows two identifiable clusters that concentrates buildings in*
423 *specific areas of the site plan*” [R.R. 93]. Appellants challenge this finding and support their
424 challenge entirely based on Senior Staff Planner Lehner’s opinions expressed in her report to
425 the EPC in which she concluded that the configuration of cluster B buildings proposed in the
426 revised site plan are “not clearly concentrated” because they are depicted in a “long, linear
427 serpentine” manner [R.R. 108]. She further explained that the cluster B buildings are the
428 “hallmark of standard subdivision design and is purposefully intended to not create a clear
429 concentration of buildings” [R.R. 108].

430 In its remand order to the EPC, the City Council expressly instructed the EPC to require:

431 the submission of a revised site plan for its consideration that clearly
432 concentrates buildings in specific areas on the site, in identifiable
433 clusters of no more than fifty lots each, and that otherwise satisfies the
434 setback requirements of its condition Number five [R.R. 134].
435

436 In the IDO, cluster developments differ from traditional subdivision layouts only because they
437 must concentrate dwelling buildings on smaller lots to allow the remaining land to be used
438 for common open space [IDO, § 7-1]. It's worth restating the entire definition. A "cluster
439 development" is:

440 A development type that concentrates single-family or two-family
441 dwellings **on smaller lots** than would otherwise be allowed in the zone
442 district in return for the preservation of common open space within the
443 same site, on a separate lot, or in an easement. See also Open Space,
444 Common (Emphasis added.) [IDO, § 7-1].
445

446 Thus, under this definition, dwellings must be concentrated on lots smaller than I otherwise
447 allowed in that zone in return for increased common open space. There is no requirement that
448 the resulting concentrated cluster of buildings not be linear, or serpentine in its configuration.
449 Lot design configuration for clustering lots or buildings is not regulated in the IDO. In
450 simplest terms, what is clearly required under this IDO definition is that:

- 451 (1) lots must be smaller than what is otherwise allowed in the zone district in which the
452 cluster(s) sit; and
453 (2) in return for the smaller lots, there must be adequate common open space.⁹

454 The first prong of the definition is the concentration of lots, which by implication would
455 result, in terms of proximity to one another, the concentration of buildings.¹⁰ The second

9. Notably, the threshold amount of common open space required in a cluster development is defined in another section of the IDO and will be discussed in detail below.

10. I note that there is a subtle difference between the definitions of "cluster design" and cluster development" in the

456 prong is the requirement for common open space. Certainly, there are other requirements in
457 the Use-Specific Standards and the Contextual standards of the IDO, but for purposes of how
458 a development satisfies the definition of a cluster development or cluster design in the IDO,
459 these two requirements are the foundational attributes of a cluster development in the IDO.

460 The evidence in the record shows that the zone district in which the site plan is situated
461 is an R-A zone [R.R. 90]. This is undisputed. The minimum lot size in the RA zone is 10,890
462 square feet (1/4-acre) [IDO, § 2-2(A)]. I find that all of the residential lots in both clusters
463 as shown in the site plan are reduced from what is allowed in the IDO [R.R. 810-811]. The
464 evidence shows that in cluster A, the lot sizes range from 5,340 to 8,171 sq. ft. in size [R.R.
465 810]. In cluster B, the lot sizes range from 5,500 to 10,199 sq. ft. [R.R. 810-811]. Appellants
466 did not challenge or otherwise rebut the Applicants’ lot reduction calculations. Thus, they
467 must be accepted as accurate.

468 Because there are no prerequisite design configuration patterns required under the IDO
469 for a cluster development, I find that it is irrelevant under the IDO whether or not the site plan
470 has a linear, serpentine lot configuration. I also find that the lots in both clusters satisfy the
471 first prong of the cluster development definition of the IDO. Accordingly, the EPC did not err
472 in concluding, as it did in its Finding Number 16, that the two clusters satisfy the concentration
473 component of the City Council’s remand instruction.

474
475
476
477
478

IDO. The first is a “design technique” that “concentrates buildings” and the latter is a “development type” that concentrates dwellings on smaller lots. The implication of both is that when lots are concentrated, so too are buildings because buildings end up closer to one another in the cluster.

479 **F. The site plan setbacks for both clusters do not overlap, are independent of each**
480 **other, and otherwise satisfy the IDO and the City Council’s remand instructions.**
481

482 Appellants generally challenge the setback findings of the EPC and contend that the
483 revised site plan does not satisfy what the City Council instructed. Appellants also claim that
484 it was inappropriate under the City Council’s remand order for the EPC to delegate to the
485 DRB the issues pertaining to evaluating setbacks. I find that the setbacks do not overlap and
486 I further find that the EPC did not delegate the evaluation of setbacks to the DRB.

487 In its remand decision, the EPC concluded in its Finding Number 16, and again in
488 Finding Number 18, respectively, that the revised site plan:

489 “provides for the setbacks as referenced from the previous EPC
490 Condition number five and demonstrates that the required setbacks for
491 the perimeter of each cluster do not overlap” [R.R. 93].

492 ...

493
494 The site plan shows the required open space and setbacks that show that
495 City Council's Remand Instructions #1 and #2 are fulfilled as instructed
496 [R.R. 94].

497
498 In the same decision, the EPC further set as a condition of its approval that the setbacks must
499 be further detailed on the revised site plan for 3-lots in cluster A and for 5-lots in cluster B
500 [R.R. 95, Condition 5]. In Condition 5, the EPC further required that the Applicants also attach
501 with their final site plan, presumably for sign-off approvals, an exhibit they presented to the
502 EPC in the hearing which depicts the calculation details of the setbacks for both clusters.

503 First, I do not agree with Appellants that the EPC in Condition Number 5 delegated the
504 City Council’s setback instructions to the DRB. EPC Finding Number 16 and 18 makes it
505 clear that, based on the representations of the Applicants and as shown in their exhibits, the
506 EPC evaluated setbacks and concluded that the setbacks satisfy both the IDO and the City

507 Council's instructions that each cluster's setbacks essentially stand on their own and further
508 do not overlap. Condition Number 5 essentially holds the Applicants' feet to the fire and
509 requires the Applicants to adhere to what they represented at the hearing and to what was
510 evaluated by the EPC to support its approval of setbacks. Eventually the DRB has to
511 independently evaluate the technical criteria in the IDO. The condition only requires more
512 certification support for what was represented. The Applicants must attach their setbacks
513 exhibits to the revised site plan when it is submitted for the technical requirements in a
514 subsequent DRB review. Condition Number 5 essentially adds more detail to the EPC's
515 findings. It is not a delegation to the DRB of anything other than to authenticate what was
516 approved by the EPC. Thus, I find that the EPC did not delegate its remand duties to the DRB.

517 Regarding whether setbacks are met under the IDO and under the City Council's first
518 remand instruction, I find that the evidence supports that they are. The City Council's
519 remand instruction required that the setbacks between the two clusters not overlap. The
520 evidence in the record supports EPC Finding Number 16, that the setbacks do not overlap. In
521 particular, the evidence shows that the eastern boundary of cluster A is entirely comprised of
522 common open space (not lot setback space) and there are no lots along its border (in cluster
523 A) with cluster B. However, cluster A's eastern boundary is also the western boundary of
524 cluster B. In cluster B, there are lots along this border. Side-yard setbacks for these lots are
525 required to be at least 10 feet. Because the cluster A's boundary and border with cluster B has
526 only open space, it satisfies the setbacks requirements independently of the setbacks for
527 cluster B.¹¹ Conversely, because there are lots along cluster B's western boundary (in cluster

11. I note that there is not any prohibition that setback space cannot be counted as common open space in a cluster development.

528 B) adjacent to cluster A, the setbacks for these lots must be 10-feet and are 10 feet. Thus, the
529 setbacks for cluster B along the border are also satisfied independently [See R.R. 798 and
530 Applicants' setback exhibit]. Appellants did not challenge this evidence or the EPC's finding
531 regarding this evidence; thus, it is accepted as accurate.

532

533 **G. The Open Space requirements of the IDO are met in each cluster, satisfying the**
534 **City Council's remand instructions.**

535

536 Appellants next contend that the EPC erred in approving the revised site plan's common
537 open space requirements. Specifically, they claim that the common open space provided
538 cannot encompass on-site ponding or floodways because such land does not contribute to the
539 "use and enjoyment of the residents" as required in the IDO, § 4-3(B)(2)(d). Appellants
540 essentially presume that ponding and/or floodways cannot possibly contribute to the use and
541 enjoyment of the residents. Appellants further contend that the common open space actually
542 provided in the revised site plan is not contiguous to MPOS as required under IDO, § 5-
543 2(H)(2)(a)2.

544 In the City Council's remand instruction Number 2, the Council expressly directed the
545 EPC to:

546 evaluate and issue specific findings on the proposed cluster
547 development's satisfaction of the IDO's applicable open space
548 requirements for cluster developments, including but not limited to the
549 ability to count drainage easements as part of its required open space
550 designation and how the preserved common open space reasonably
551 relates to each identifiable cluster [R.R. 134].

552

553 Beginning with the IDO, in any cluster development, open space must be provided "in return"

554 for allowing reduced lot sizes. The IDO requires:

555 The common open space area shall be 30 percent of the gross area of the
556 project site or 100 percent of the area gained through lot size reductions,
557 whichever is greater [R.R. § 4-3(B)(2)(d)1].

558
559 Under the IDO, there are five categories of open space [IDO, § 7-1]. Of these five categories,
560 under § 4-3(B)(2)(d)1 (above), “common open space” is the category that is required in cluster
561 developments. Common open space is expressly defined in the IDO as:

562 The area of undeveloped land within a cluster development that is set
563 aside for the use and enjoyment by the owners and occupants of the
564 dwellings in the development and includes agriculture, landscaping, **on-**
565 **site ponding**, or outdoor recreation uses. The common open space is a
566 separate lot or easement on the subdivision plat of the cluster
567 development. See also Dwelling, Cluster Development (Emphasis
568 added.) [IDO, § 7-1].

569
570 This definition must be read in conjunction with the Use-Specific Standards of § 4-3(B),
571 particularly with the requirement that any:

572 cluster development project site shall include a common open space set
573 aside for agriculture, landscaping, **on-site ponding**, outdoor recreation,
574 or any combination thereof allowed in the zone district, and for the use
575 and enjoyment of the residents (Emphasis added.) [IDO, § 4-3(B)(2)(d)].

576
577 Next, because the revised site plan is adjacent to MPOS, under the IDO, the cluster
578 developments depicted therein must:

579 Locate on-site open space **to be contiguous** with the Major Public Open
580 Space, with access generally not allowed unless approved by the Open
581 Space Division of the City Parks and Recreation Department (Emphasis
582 added.) [IDO, § 5-2(H)(2)(a)1].

583
584 There are additional requirements for a cluster development’s common open space and those
585 requirements will be discussed below. However, in evaluating the revised site plan against
586 the backdrop of these IDO definitions and requirements pertaining to open space required for
587 cluster developments, I find that the revised site plan satisfies the IDO requirements. I also

588 find that the EPC’s decision further satisfies the City Council’s remand instructions.

589

590 **i. Each independent cluster development furnishes the requisite common**
591 **open space under the IDO.**

592

593 The evidence in the record shows that the revised site plan encompasses a total of 22.75
594 acres of gross land between the two clusters [R.R.812]. Cluster A has 10.04 acres total and
595 cluster B has 12.71 acres total [R.R. 812]. This evidence was not disputed.

596 Thirty percent of cluster A is 3.012 acres and 30% of cluster B is 3.81 acres. Thus,
597 under the 30% rule (above), a total of 6.82 acres of common open space is necessary for the
598 entire site.

599 Under the lot reduction rule, the 33 lots in cluster A are reduced by a total of 150,198
600 sq. feet which calculates to 3.448 acres [R.R. 810]. Similarly, under the lot reduction rule the
601 36 lots in cluster B are reduced by a total of 117,699 sq. feet which calculates to 2.70 acres of
602 land [R.R. 811]. Accordingly, under the lot reduction rule a total of 6.148 acres in common
603 open space is necessary for the entire site. The record further demonstrates that the Applicants
604 have contributed a total of 7.96 acres of common open space for the entire site which breaks
605 down to 3.45 acres in cluster A and 4.51 acres in cluster B [R.R. 812].¹² Thus, as stated above,
606 each cluster independently satisfies the IDO’s common open space spatial requirements.

607

608

609

12. The record shows that the applicants applied the greater of the two rules for cluster A. In cluster A, they applied the lot reduction rule (3.45 acres). However, in cluster B, they provided 4.51 acres of common open space which is greater than what is required under either rule.

610 ii. **The portion of the AMAFCA detention pond and or floodway which is on**
611 **site in cluster B satisfies the requirement for common open space and can**
612 **therefore be counted as such.**

613
614 Appellants next claim that the EPC erred in allowing the Applicants to count land at
615 the northeastern edge and along the southeastern side of cluster B as common open space
616 because that land is either part of a designated floodway or is designated to accumulate on-
617 site water drainage from the site or both. Appellants take the position that the ponding and
618 floodways cannot possibly contribute to the “use and enjoyment” of residents who will reside
619 in the Overlook at Oxbow project site.

620 In making this argument, Appellants point to the definition of common open space in
621 § 7-1, and the Use-Specific Standards of § 4-3(B)(2)(d) (restated above) of which both include
622 provisions for “use and enjoyment” in defining common open space. Appellants, however,
623 take an excessively narrow reading of these provisions of the IDO, one that was clearly not
624 accepted by the EPC. In its decision, the EPC made two findings regarding the issues
625 presented by Appellants. It first decided in part of its Finding Number 17 that:

626 ...the CPO-2 zone states that "Cluster development design on land above
627 the flood level shall be used to the maximum extent practicable, and the
628 floodplain shall be used as open space" (3-4(C)(5)(a))... [R.R. 94].

629
630 Then, in its Finding Number 19, it determined:

631
632 In response to Remand Instruction C.2, the proposed open space
633 designation is consistent with other policies as articulated in the ABC
634 Comp Plan and CPO-2, IDO Section 14-16-3-4(C)(5)(a) Floodplain.
635 Further, 4-3(B)(2)(d) provides that common open space be "set aside for
636 agriculture, landscaping, on-site ponding, outdoor recreation, or any
637 combination thereof" Common open space is distinct from usable
638 open space and may include drainage easements. The EPC finds that
639 drainage easements (on-site ponding) can be counted as part of the
640 required common open space (City Council Remand Instruction #2)
641 [R.R. 94].

642 I find that the EPC did not err in finding that on-site ponding and floodway areas qualify as
643 countable common open space under the IDO. These findings are well-supported in the IDO.
644 First, in the definition of common open space, which is what is required in cluster
645 developments, common open space unmistakably encompasses “*agriculture, landscaping,*
646 *on-site ponding, or outdoor recreation uses*” [IDO, § 7-1]. Next these components of
647 common open space are again summarized in the Use-Specific Standards in IDO, § 4-
648 3(B)(2)(d) which allows for common open space as a set aside for “*agriculture, landscaping,*
649 *on-site ponding, outdoor recreation, or any combination thereof allowed in the zone district,*
650 *and for the use and enjoyment of the residents.*”

651 Appellants’ argument is without merit because by definition in the IDO, on-site
652 ponding is unmistakably intended to be common open space for the “use and enjoyment of
653 the residents.” Moreover, floodways are also expressly allowed as open space under the IDO.
654 It is undisputed that the revised site plan is within the Coors Boulevard– CPO-2 overlay zone
655 of the IDO [R.R. 94]. IDO, § 3-4(c)(5)(a) states in relevant part that “[c]luster development
656 design on land above the flood level shall be used to the maximum extent practicable, and **the**
657 **floodplain shall be used as open space.**” Reading this section and § 4-3(B)(2)(d) together
658 (allowing on-site ponding as common open space) creates a rational inference that floodways
659 are intended to be counted as common open space under the IDO.

660 Next, because part of the floodway which encompasses part of the common open space
661 will be dedicated by easement to the Albuquerque Metropolitan Arroyo Flood Control
662 Authority (AMAFCA), Appellants further claim that it cannot be for the use and enjoyment
663 of residents. This argument is also without merit, because under the IDO, it is expressly

664 contemplated that common open space may be dedicated to the City in easement or in title
665 [IDO, § 4-3(B)(2)(d)5]. The IDO also envisages that common open space may be physically
666 inaccessible because common open space may be “walled or fenced,” but it must remain
667 partially visible from a street [IDO, § 4-3(B)(2)(d)3]. The Applicants submitted a diagram in
668 the record that shows how all the common open space is visible from the area streets
669 [Applicants’ supp. Visual Access diagrams]. The Appellants presented no evidence to rebut
670 the diagram evidence.

671 Finally, Appellants raised a question regarding whether all the designated common
672 open space that is counted as such under the IDO’s Use-Specific Standards satisfy the 35-foot
673 width requirement of § 4-3(B)(2)(d)2. In the LUHO hearing, the Applicants’ agent, James
674 Strozier testified under oath that all the common open space meets the 35-foot width
675 requirement, including two narrow connecting paths in both clusters. Appellants did not rebut
676 this evidence; thus, it is accepted as substantial evidence.

677 Accordingly, EPC Finding Numbers 17 and 19 are not erroneous as Appellants claim.
678 Moreover, these findings are supported with substantial evidence in the record. I further find
679 that these findings and the supporting record satisfy the EPC’s remand Instruction Number 2.

680

681 **iii. The EPC did not err in finding that the common open space is contiguous**
682 **with the adjacent MPOS.**

683

684 Although not part of the remand instructions and not raised in the previous appeals,
685 Appellants now contend that the designated, countable on-site common open space is not
686 contiguous with the adjacent MPOS as required by the IDO, § 5-2(H)(2)(a)3. However, the
687 requisite amount of contiguity of open space necessary to satisfy this provision is not

688 established in § 5-2(H)(2)(a)3. All that is required is contiguity between the open space and
689 the MPOS.¹³ Because the requisite contiguity is not defined, it is appropriate to look to other
690 sources for defining the term. The most applicable common dictionary definitions of
691 “contiguous” are “touching along the side or boundary; in contact” and or “physically
692 adjacent; neighboring.”¹⁴ Without guidance from the IDO, I find that these common
693 definitions are rational and applicable to § 5-2(H)(2)(a)3. Excluding the streets, the revised
694 site plan clearly demonstrates that the common open space is to some extent in contact with,
695 physically connected to, and neighbors the MPOS.

696 I also note that in the EPC hearing, Russel Brito, the City’s Planning and Urban
697 Development Manager, testified that:

698 Cluster A, the western cluster has contiguity with the major public open
699 space at the Namaste cul-de-sac. And the cluster B open space on the
700 east has contiguity to major public open space along the entire southern
701 and eastern edges of that cluster open space [R. 917].
702

703 This evidence was un rebutted. Therefore, I find that there is substantial evidence that the
704 common open space is contiguous to the MPOS.
705

706 **H. The sensitive lands analysis, the mitigation analysis, and the area of consistency**
707 **analysis, all required under the IDO and well-documented in the record have**
708 **already been decided by the City Council in AC-19-6 and 7.**
709

710 Appellants wish to redefine the history of these appeals with many of their appeal

13. For example, in several parts of the IDO, the term “contiguous” is used. For annexations, the land annexed must be “to some extent” or 10% contiguous to City land [§ 6-7(E)(3); there are contiguity requirements in non-residential zone in relation to other non-residential zones [§§ 2-5(B), 2-6(A) and 4-3(D)].

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711 issues. Specifically, in these appeals, Appellants raise issues that were already decided by
712 the City Council---matters relating to protecting and/or avoiding sensitive lands, mitigation
713 of adverse impacts to the adjacent MPOS, and issues relating to street connectivity and areas
714 of consistency.¹⁵

715 It cannot be disputed that the proverbial “horse has already left the barn” on these issues
716 because in its August 5, 2019 hearing of the previous appeals (AC-19-6 and AC-19-7), the
717 City Council unmistakably decided these issues [R.R. 133]. When the City Council voted to
718 remand to the EPC “*to consider issues related to clustering and open space,*” it also decided
719 all the other issues encompassed in the EPC prior decision [R.R. 133]. In its remand order,
720 the City Council was very specific as to what it approved in its findings, as well as what
721 deficiencies it found in the LUHO recommendation and in the EPC’s decision. Specifically,
722 with regard to the matters it did not remand back to the EPC, the City Council expressly held:

723 *As to all other matters* raised in this appeal that are not specifically
724 remanded pursuant to the above, the recommendation and findings of
725 the Land Use Hearing Officer (the "LUHO") are accepted and adopted.
726 More specifically, to the extent not otherwise inconsistent with these
727 findings for remand, the recommendation and findings of the LUHO is
728 accepted and adopted with the exception of the recommendations and
729 findings contained in Page 11, Line 211 through Page 17, Line 359
730 (Emphasis added.) [R.R. 133].

731 Moreover, it cannot be rationally disputed that the EPC decided and approved all issues
732 pertaining to avoidance and protection of sensitive lands and issues related to mitigation of
733 adverse impacts to the MPOS in its first hearing (March 14, 2019) of the merits of the
734 applicants’ Oxbow site plan [R. 88].¹⁶ These issues were well-documented in the previous
735

15. I note that at the LUHO hearing Appellants withdrew their appeal issue having to do with areas of consistency.

16. This is the previous record, in the EPC’s March 14, 2019 Notice of Decision, Findings 8-13.

736 record and in a detailed analysis by the EPC decided in its March 14, 2020 decision [R. 87-
737 93]. In the appeal of that decision, the LUHO found that the EPC’s decisions on these
738 matters were supported by substantial evidence [R.R. 777-794]. These matters all fall into the
739 “as to all other matters” category of the City Council’s decision and by implication are
740 unequivocally settled and cannot now be raised again to the City Council.

741 As to Appellants’ claim that the revised site plan is a “new” site plan and therefore it
742 must be considered as a new application under the IDO, I find that this argument has no
743 support in law or facts. The site plan was simply revised to address only the issues remanded.
744 Furthermore, the City Council did not instruct the EPC to start anew. It instructed the EPC to
745 only review those aspects it found deficient. In resubmitting a revised site plan, the Applicants
746 relied on the limited purpose for the hearing and focused their submissions on the remanded
747 issues only. Using the same horse metaphor, it would be patently unfair to attempt to put the
748 horse back in the barn at this point in the process. I also find that the Appellants have not
749 shown with any evidential support that the revised site plan must be considered a new
750 application under the IDO.

751

752 **I. There is insufficient objective evidence that the EPC violated the Open Meetings**
753 **Act or otherwise showed bias against the Appellants in favor of the Applicants.**

754

755 Appellants claim, as they did in the prior consolidated appeals, that the EPC violated
756 the Open Meeting Act (OMA). Appellants specifically contend that it was an OMA violation
757 for the EPC (in the remand hearing) to delegate its authority to City Planning Staff and to
758 the Applicants’ agent to “negotiate” findings in an off-the-record “closed meeting” at its
759 February 13, 2020 hearing. The specific conduct which Appellants contend was unlawful

760 stems from a late hearing on-record discussion that the EPC chair held with Planning Staff
761 and the Applicants’ agent regarding revising proposed findings for the EPC to review.
762 Chairman Serrano inquired about the potential of Staff and the Applicants’ agent meeting
763 during a break to come up with proposed findings [R.R. 923-924].

764 Appellants generally contend, that NMSA, 1978, § 10-151(B) is applicable which
765 generally requires public meetings to be open. Appellants are conflating off-record
766 discussion between Staff and the Applicants’ agent as an impermissible “closed meeting.”
767 Discussions between Planning Staff and the Applicant’s agent are not regulated under the
768 OMA.¹⁷ Aside from their unsupported claim, Appellants have not demonstrated in any
769 manner that such discussions qualify as public meetings under the OMA. I find that
770 discussions between Staff and or any other individual, under these circumstances, are not
771 regulated by the OMA.

772 Next, Appellants argue that it was an impermissible delegation of their duty when the
773 EPC requested that City Planning Staff and the Applicants’ agent create and submit findings
774 to the EPC for its vote and approval. Appellants’ argument presumes that the EPC delegated
775 its decision-making authority to its Staff. Delegating to Staff the act of drafting potential
776 findings is not proscribed by any rule, law, or ordinance. Anyone, including Appellants, have
777 the right to draft and submit requested findings to the EPC. In doing so, the EPC was free to
778 reject any findings or adopt any findings. The objective evidence in the record shows that,
779 after the break, the EPC briefly discussed the proposed findings from Staff, and then voted
780 on them. I find nothing unusual or impermissible with this process.

17. A substantially similar argument was made by these Appellants in the previous appeals of this matter. The City Council upheld the LUHO findings therein regarding the OMA.

781 Finally, Appellants vaguely contend that the EPC showed bias against them during its
782 hearing. Appellants argue that the EPC showed that it was not impartial when it rejected the
783 Staff Report of Senior City Planner Lehner, when it rejected the advice of Staff from the City
784 Open Space Division, and when individual EPC members made comments about the revised
785 site plan. I respectfully disagree that the EPC objectively showed bias. At best, Appellants’
786 arguments are based in subjective speculation.

787 As shown above, there were rational reasons for rejecting the Staff Report seeking a
788 deferral. The issues supporting deferral were resolved during the hearing. And, the EPC
789 voted as a body on the deferral request.

790 With regard to OSD, in its Finding Number 22, the EPC described what issues OSD
791 Staff had with the revised site plan [R.R. 92]. OSD essentially desired more open space and
792 additional buffer protections for the steep slopes on the southern side of the site [R.R. 181].
793 These issues had nothing to do with the requirements of the IDO; they were merely wish
794 lists. Regardless, the evidence before the EPC demonstrated that the revised site plan fully
795 met the requisite common open space provisions of the IDO and the setback requirements.
796 Moreover, buffer protection of the steep slopes at the site are entangled with the avoidance
797 of sensitive lands issues previously already decided by the City Council. Thus, these issues,
798 although raised again by OSD, were not germane to the remand hearing.

799

800 **III. CONCLUSION**

801 For all the reasons described above, I respectfully recommend that Appellants’ appeals
802 be denied in full. Both Appellants have not met their burdens of proof to sustain the appeals

803 regarding any of the issues presented in their appeals. Conversely, I find that the EPC gave
804 due consideration to the City Council's remand instructions and the issues therein. Moreover,
805 I find that the EPC decisions are supported with substantial evidence. Accordingly, under
806 the appropriate standard for appellate review, the EPC's decision should be upheld, and the
807 appeals should be denied.

808



Steven M. Chavez, Esq.
Land Use Hearing Officer

June 26, 2020

Copies to:

Appellants (via email)
Party Opponents (via email)
City Council (via Email)
City Planning Department (via email)

**Notice of Decision
City Council
City of Albuquerque
September 14, 2020**

AC-20-4 Project #2018-001402 SI-2018-00171 VA-2019-00100 VA-2020-00061 VA-2020-00064: Thomas P. Gulley, appeals the decision of the Environmental Planning Commission (EPC) to Approve a Site Plan for all or a portion of Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West; zoned R-A, located at 5001 Namaste Rd. NW, between LaBienvenida Pl. NW and the Oxbow Open Space, containing approximately 23 acres

Decision

On August 17, 2020, by a vote of 4 FOR 3 AGAINST the Council voted to deny the appeal, and affirm the decision of the EPC

For: Bassan, Gibson, Harris, Jones

Against: Benton, Davis, Peña

Recused: Borrego, Sena

On September 9, 2020, by a vote of 5 FOR 2 AGAINST the Council voted to adopt its Land Use Hearing Officer's recommendation and findings in support of its decision

For: Bassan, Gibson, Harris, Jones, Peña

Against: Benton, Davis

Recused: Borrego, Sena

IT IS THEREFORE ORDERED THAT THE APPEAL IS DENIED, THE DECISION OF THE EPC IS AFFIRMED, AND THE SITE PLAN IS APPROVED

Attachments

1. Action Summary from the August 17, 2020 City Council Meeting
2. Action Summary from the September 9, 2020 City Council Meeting
3. Land Use Hearing Officer's Recommendation and Findings

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.



Patrick Davis, President
City Council

Date: 9/14/20

Received by: 

City Clerk's Office

Date: 9/15/2020

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**Notice of Decision
City Council
City of Albuquerque
September 14, 2020**

AC-20-5 Project #2018-001402 SI-2018-00171 VA-2019-00100 VA-2020-00061 VA-2020-00064: AC-20-5- Project #2018-001402 SI-2018-00171 VA-2019-00103 VA-2020-00061 VA-2020-00064: Hessel Yntema III, Yntema Law Firm P.A, agent for the Taylor Ranch Neighborhood Association, eight other associations, and six other property owners and interested parties, appeals the decision of the Environmental Planning Commission (EPC) to approve a Site Plan for all or a portion of Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West; zoned R-A, located at 5001 Namaste Rd. NW, between La Bienvenida Pl. NW and the Oxbow Open Space, containing approximately 23 acres

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Patrick Davis, President
City Council

Date: 9/14/20

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Received by: Alicea Nunery Date: 9/15/2020
City Clerk's Office

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