

From: [Gomez, Angela J.](#)
To: [Robert Lucero](#); [Brennon Williams](#); [mmyers@moplav.com](#); [Phelan, Whitney A.](#); [Chen, Tiequan](#); [Ibarra, Marcelo X.](#); [Boylan, Jacob](#); [Montoya, Anthony](#); [Montoya, Antoni](#); [Kanbar, Sertil A.](#); [Shea, Hannah](#); [rkane@abcwua.org](#); [kcadena@abcwua.org](#); [Fowler, Aaron W.](#); [Open Space Planning](#); [Strange, Bonnie S.](#); [Eaton, Shellie](#); [jromero@amafca.org](#); [kradius@amafca.org](#); [Al-najjar, Marwa G.](#); [Thompson, Bailey](#); [Rose, Robyn L.](#); [Biazar, Shahab](#); [Gomez, Angela J.](#); [Jane Baechle](#); [Mike Voorhees](#); [Rene" Horvath](#); [Sloan, Terry](#); [Clark, Kate](#); [Chen, Tiequan](#); [Montoya, Anthony](#); [Angela Piarowski](#); [trula@modulusarchitects.com](#); [Rodenbeck, Jay B.](#); [John.L.Galvan@jemezpuablo.org](#); [Ltoledo@jemezpuablo.org](#); [Vince.A.Toya@jemezpuablo.org](#); [Paul.Clark@jemezpuablo.org](#); [Jaime.Loretto@jemezpuablo.org](#); [Matthew.Gachupin@jemezpuablo.org](#); [TJ.Lorretto@jemezpuablo.org](#); [Ctoya@jemezpuablo.org](#); [Governor@pol-nsn.gov](#); [asilva-jose@pol-nsn.gov](#); [rsarracino@pol-nsn.gov](#); [wherrerajr@pol-nsn.gov](#); [Tlamber@pol-nsn.gov](#); [gao@pol-nsn.gov](#); [rsmith@pol-nsn.gov](#); [Governor@Nambepueblo.org](#); [Dmartinez@Nambepueblo.org](#); [governor@ohkay.org](#); [executiveassistant@ohkay.org](#); [governor@picurispueblo.org](#); [tribalsecretary@picurispueblo.org](#); [JCroybal@pojoaque.org](#); [Ledwards@pojoaque.org](#); [javiarrial@pojoaque.org](#); [ahooper@pojoaque.org](#); [Flopez@pojoaque.org](#); [Gov.Mcalabaza@SFpueblo.com](#); [jdrywater@sfpueblo.com](#); [ROrtiz@sfpueblo.com](#); [pstout@sfpueblo.com](#); [Governor@SanIpueblo.org](#); [governorsassistant@SanIpueblo.org](#); [THPO@SanIpueblo.org](#); [snmontoya@sandiapueblo.nsn.us](#); [Governor@Santaana-nsn.gov](#); [Lt.gov@Santaana-nsn.gov](#); [monica.murrell@santaana-nsn.gov](#); [Governor@Santaclarapueblo.org](#); [Govsecretary@Santaclarapueblo.org](#); [Governor@Kewa-nsn.us](#); [beverly.garcia@kewa-nsn.us](#); [Lt.governor@kewa-nsn.us](#); [Joseph.Garcia@Kewa-nsn.us](#); [Governor@taospueblo.com](#); [Tromero@taospueblo.com](#); [mamitchell@pueblooftesuque.org](#); [audrap@pueblooftesuque.org](#); [Lsamuel@pueblooftesuque.org](#); [Governor@Ziapueblo.org](#); [Ursula.Toribio@Ziapueblo.org](#); [Ltgovernor@Ziapueblo.org](#); [Ulysses.Reid@Ziapueblo.org](#); [Arden.Kucate@ashiwi.org](#); [Bernidine.Natsacio@ashiwi.org](#); [Michael.Silvas@ydsp-nsn.gov](#); [atorres@ydsp-nsn.gov](#); [Lgranillo@ydsp-nsn.gov](#); [Ovillanueva@ydsp-nsn.gov](#); [jatencio@indianpueblo.org](#); [J.gachupin@indianpueblo.org](#); [Administration@19PueblosDistrict.org](#); [Adrian.notsinneh@janadmin.com](#); [jimmy.garcia@jan-nsn.gov](#); [Lvelarde@jan-nsn.gov](#); [Tpadilla@mescaleroapachetribe.com](#); [Tcochise@mescaleroapachetribe.com](#); [Hhouthton@mescaleroapachetribe.com](#); [Jennifer.Heminokeky@fortsillapache-nsn.gov](#); [fsat@fortsillapache-nsn.gov](#); [Naomi.Hartfor@fortsillapache-nsn.gov](#); [Open Space Planning](#); [Langan-McRoberts, Colleen](#); [Vialpando, Adryana L.](#); [Lewis, James L.](#); [nancy_hendricks@nps.gov](#); [nick_jarman@nps.gov](#); [gregorio.gonzales@cochiti.org](#); [governor@cochiti.org](#); [lt.governor@cochiti.org](#); [everett.herrera@cochiti.org](#); [Allison Athens](#); [ddnaranjo@santaclarapueblo.org](#); [mrtafoya@santaclarapueblo.org](#); [jmchavarria@santaclarapueblo.org](#); [dconnolly@rothsteinlaw.com](#)
Subject: FW: MAJOR_PLT-2025-0016 - Preliminary Plat
Date: Tuesday, February 17, 2026 8:48:45 AM
Attachments: [image002.png](#)

From: Coon, Andrew S. <aconoon@cabq.gov>
Sent: Friday, February 13, 2026 4:43 PM
To: Gomez, Angela J. <agomez@cabq.gov>
Cc: Rose, Robyn L. <rrose@cabq.gov>; Rodenbeck, Jay B. <jrodenbeck@cabq.gov>
Subject: MAJOR_PLT-2025-0016 - Preliminary Plat

Angela,

Please forward this email to the hearing officer in Application #: MAJOR_PLT-2025-00016 – Preliminary Plat, and please copy the distribution list for that matter when you do so.

Mr. Hearing Officer,

I am writing to you in my capacity as counsel for the City's Planning Department. My client will not be responding further to the email chain shown below.

In the event that you seek input for the Notice of Decision for the deferral that you ordered at the February 11, 2026, hearing in this matter, the City requests that all parties and party representatives be given advanced prior notice of such a request for input and an opportunity to participate in

providing such input.

The City further requests that this email chain be made part of the record in this matter.

Sincerely,



Andrew S. Coon

Managing City Attorney

Lauren Keefe, City Attorney

One Civic Plaza NW | PO Box 2248 | Albuquerque, New Mexico
87103

Telephone: 505-768-4519 | Cell: 505-932-8944 | aconon@cabq.gov

From: Robert Lucero <robert@lucerolawpc.com>

Sent: Friday, February 13, 2026 10:55 AM

To: Rodenbeck, Jay B. <jrodenbeck@cabq.gov>

Cc: Rose, Robyn L. <rrose@cabq.gov>; Robert Lucero <robert@lucerolawpc.com>

Subject: Re: Kimmick deferral NOD

This Message Is From an External Sender

This message came from outside your organization.

[Report Suspicious](#)



Thanks, Jay. Let me share my thoughts on #s 14 and 15 and solicit your feedback on those thoughts.

#15 provides the factual relevance of #14. Without #15, people may not understand the discussion in #14 regarding the analysis of “unsuitability” required by IDO Section 14-16-5-4(C)(2).

I read the unsuitability analysis required by IDO Section 14-16-5-4(C)(2) to be larger than and inclusive of the sensitive lands analysis. Put another way, the sensitive lands analysis is but one factor in determining the unsuitability of land for subdivision. IDO Section 14-16-5-4(C)(2) lays out several other categories of unsuitability that the DHO must consider (“flooding, ponding, poor drainage, adverse soil conditions, adverse geological formations, unsatisfactory topography, limitations of water quantity, and/or quality, lack of access or restrictions on accessibility, or other conditions likely to be harmful to the public health, safety, or general welfare”).

The requirement in Section 14-16-5-4(C)(2) that the DHO determine whether the subject

land is "unsuitable" for subdivision must therefore consider any "conditions likely to be harmful to the public health, safety, or general welfare." To me, that inquiry requires the DHO to consider the Comp Plan, because the Comp Plan is the officially adopted policy framework by and through which the City has determined and set forth what promotes public welfare. Without reference to the Comp Plan, there would appear to be a higher risk that the DHO's judgment of what constitutes public general welfare might be found arbitrary and capricious on appeal. If the DHO is not to consider the Comp Plan, how else should the DHO analyze public general welfare?

I recognize that the DHO has infrequent mandate to analyze or refer to the Comp Plan. I believe that is because suitability as to "the public health, safety, or general welfare" under IDO Section 14-16-5-4(C)(2) is rarely at issue. In this case, however, I am finding that public health, safety and general welfare are at issue, for the factual reasons stated in finding #15.

Does this make sense? Thanks for your feedback.

Best,
Robert
Robert L. Lucero, Jr.
Lucero Law, P.C.
Phone: 505-798-2555

From: Rodenbeck, Jay B. <jrodenbeck@cabq.gov>
Date: Friday, February 13, 2026 at 8:57 AM
To: Robert Lucero <robert@lucerolawpc.com>, Rose, Robyn L. <rose@cabq.gov>
Subject: RE: Kimmick deferral NOD

Good morning Robert,

All of your proposed findings below except for #15 seem to focus on Sensitive Lands Analysis, so the only finding I am not sure about is #15, as that finding just seems to be confirming issues noted by opponents of the application at the hearing, including referencing the ABC Comp Plan. I just know the DHO is limited to reviewing applications per the IDO and DPM requirements and any ABC Comp Plan requirements directly referenced in the IDO or DPM.

Jay

From: Robert Lucero <robert@lucerolawpc.com>
Sent: Thursday, February 12, 2026 4:49 PM

To: Rose, Robyn L. <rrose@cabq.gov>
Cc: Rodenbeck, Jay B. <jrodenbeck@cabq.gov>; Robert Lucero <robert@lucerolawpc.com>
Subject: FW: Kimmick deferral NOD

FYI

Robert L. Lucero, Jr.
Lucero Law, P.C.
Phone: 505-798-2555

From: Robert Lucero <robert@lucerolawpc.com>

Date: Thursday, February 12, 2026 at 4:45 PM

To: Jay B. Rodenbeck <jrodenbeck@cabq.gov>

Cc: Robert Lucero <robert@lucerolawpc.com>

Subject: Kimmick deferral NOD

Hello, Jay. This is what I was thinking for the specific findings on Kimmick deferral (in addition to any standard findings you may have):

1. At the February 11, 2026, DHO hearing on the Application, the DHO heard testimony and viewed written evidence on Zoom shared screens available to participants in that meeting.
2. IDO section 14-16-5-2(C)(2) requires that "[n]ew subdivisions of land and site design shall avoid locating development, except for open spaces and areas that will not be disturbed during the development process, in the following types of sensitive lands:
 - 5-2(C)(2)(a) Arroyos.
 - 5-2(C)(2)(b) Floodplains and Special Flood Hazard Areas.
 - 5-2(C)(2)(c) Irrigation facilities (acequias).
 - 5-2(C)(2)(d) Large stands of mature trees.
 - 5-2(C)(2)(e) Riparian areas.
 - 5-2(C)(2)(f) Rock outcroppings.
 - 5-2(C)(2)(g) Significant archaeological sites.
 - 5-2(C)(2)(h) Steep slopes and escarpments.
 - 5-2(C)(2)(i) Wetlands."

See also IDO section 14-16-5-4(A)(4) regarding "Subdivision of Land" ("This Section 14-16-5-4 is intended to promote the public health, safety, and general welfare of the current and future inhabitants of the City by ensuring that development sites:

5-4(A)(1) Are consistent with the land use planning objectives of the adopted ABC Comp Plan, as amended, and other plans, policies, and

ordinances adopted by the City Council.

5-4(A)(4) Avoid development of sensitive lands.”).

3. The IDO further requires in section 14-16-5-2(C)(4) that "If development cannot avoid sensitive lands pursuant to Subsections (2) and (3) [of section 14-16-5-2(C)], the project shall be processed as a Site Plan – EPC pursuant to Subsection 14-16-6-6(I) and may require a Variance – EPC pursuant to Subsection 14-16-6-6(N)."
4. Thus, if development cannot avoid sensitive lands under IDO section 14-16-5-2(C)(4) and provisions cited therein, the EPC would be the correct venue to hear the Application, and in such a case the DHO would lack jurisdiction to hear the Application.
5. A threshold question for the DHO therefore is whether the Subject Property avoids sensitive lands as required by IDO section 14-16-5-2.
6. Applicant bears the burden of providing a sound justification for the requested decision, based on substantial evidence, pursuant to IDO Section 14-16-6-4(E)(3).
7. Applicant bears the burden of showing compliance with required standards through analysis, illustrations, or other exhibits as necessary, pursuant to IDO Section 14-16-6-4(E)(4).
8. It appears to the DHO that the record currently lacks substantial evidence and sufficient justification for the DHO to determine whether the Subject Property avoids sensitive lands as required by IDO section 14-16-5-2.
9. Specifically, the DHO seeks additional evidence, argument and justification regarding whether the Subject Site contains and would disturb "rock outcroppings" under IDO section 14-16-5-2(C)(2)(f), or" steep slopes and escarpments" under IDO section 14-16-5-2(C)(2)(h) (see definitions of such terms in IDO section 14-16-7-1 under “Sensitive Lands Definitions”).
10. There is evidence in the record that the subject property has undergone some degree of disturbance by unknown parties (apparently not the Applicant) such as scrubbing and/or grading.
11. During the February 11, 2026, DHO hearing on the Application, the City Zoning Enforcement Officer (ZEO) testified regarding staff interpretation (not formal determination) of how to analyze sensitive lands regarding slope when there has been site disturbance.
12. The DHO’s understanding of this ZEO testimony is that, when there is disturbed land, the sensitive lands analysis regarding slope cannot focus on the as-disturbed condition.
13. The DHO has questions regarding:

- a. If the sensitive lands slope analysis cannot focus on the as-disturbed condition, would such analysis then appropriately focus on the pre-disturbed condition? If not, then on what should the analysis properly focus?
 - b. How should the slope angles in the IDO definitions of "rock outcroppings," "steep slopes" and "escarpments" be measured? Over what distance? Is there any relevant administrative gloss regarding these questions?
14. In addition to the sensitive lands analysis discussed, above, it appears to the DHO from evidence in the record that the Subject Site arguably may be unsuitable for subdividing under IDO Section 14-16-5-4(C)(2), which requires: "No land shall be subdivided that is found to be unsuitable for subdividing by reason of flooding, ponding, poor drainage, adverse soil conditions, adverse geological formations, unsatisfactory topography, limitations of water quantity, and/or quality, lack of access or restrictions on accessibility, or other conditions likely to be harmful to the public health, safety, or general welfare, unless such unsuitable conditions are corrected or mitigated to the satisfaction of the City. The Development Hearing Officer (DHO) is responsible for making determinations regarding unsuitability of land for subdivision."
15. Evidence in the record submitted by opponents of the Application, including Pueblo and neighborhood association representatives, indicates that approval of the proposed subdivision would result in removal of VPO-2 height restrictions from some of the resulting lots, which could have harmful effects to public general welfare, including, without limitation, by potentially conflicting with certain land use planning objectives of the adopted ABC Comp Plan.
16. Applicant and concerned parties (including all commenting agencies and City staff) should be allowed additional time to submit evidence, argument and justification regarding the sensitive lands and suitability analyses discussed in this Notification of Decision. All parties are directed to focus their submittals on these analyses.

Please let me know if you would like to discuss. Thank you.

Best,
Robert

Robert L. Lucero, Jr.
Attorney

6300 Riverside Plaza Ln. NW, Suite
100



Lucero Law, P.C.

www.luceroLawpc.com

Albuquerque, NM 87120

Phone: 505-798-2555

Email: robert@luceroLawpc.com

This message is confidential and may be protected by the attorney-client privilege. If you believe it has been sent to you in error, please reply to the sender that you received the message in error and then delete it.