

From: [Rodenbeck, Jay B.](#)
To: ["Robert Lucero"](#); [Rose, Robyn L.](#)
Subject: RE: Kimmick deferral NOD
Date: Friday, February 13, 2026 8:56:00 AM

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

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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



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