

Notice of Violation and Request for Withdrawal

**Attention: Development Hearing Officer
 Environmental Planning Commission
 Planning Department**

December 12, 2025

The West Side Coalition of Neighborhood Associations (WSCONA) has received notice of an improper hearing before a City of Albuquerque Development Hearing Officer (DHO) regarding an application for “DHO Major Subdivision Action to Subdivide the subject property into 4 legal tracts.” and to “Dedicate additional right-of-way to the City of Albuquerque along the project frontage as shown and grant easements.”

Due to the location of this property on and near sensitive lands, the DHO does not have the authority to hear such an application, and any such request for subdivision must first seek approval for a Site Plan — EPC before the Environmental Planning Commission under 14-16-6-6(I)(1)(c)(4) and 14-16-5-2(C).

Subject property: “Unassigned Addresses - 99999 VALIENTE NW (x2 lots)”

Location: “South East Corner of Paseo and Kimmick”

Property owner: “VOLCANO CLIFFS INC & GROUP I U26 VC LLC RM 115”

Agent/Applicant: “Property Owner / Modulus Architects & Land Use Planning, Inc.”

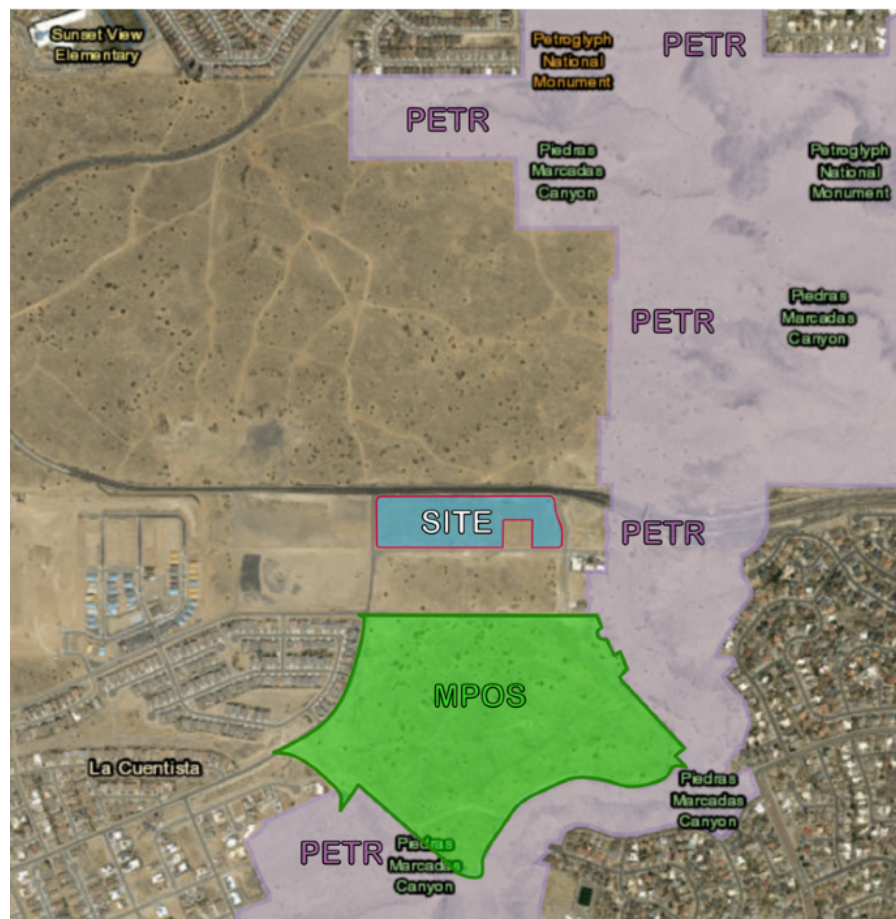
Nature of the Case

The application to subdivide the property in question appears to be an attempt, through the use of piecemeal development, to skirt the regulations designed to protect Albuquerque’s most sensitive lands. The property in question is comprised of steeply sloping parcels located on and near the volcanic escarpment, and situated whereby portions of Petroglyph National Monument (PETR) lie to the North, East, and South of the property, and the La Cuentista Major Public Open Space (MPOS) is to the South. The Site is also within 330 feet of PETR.

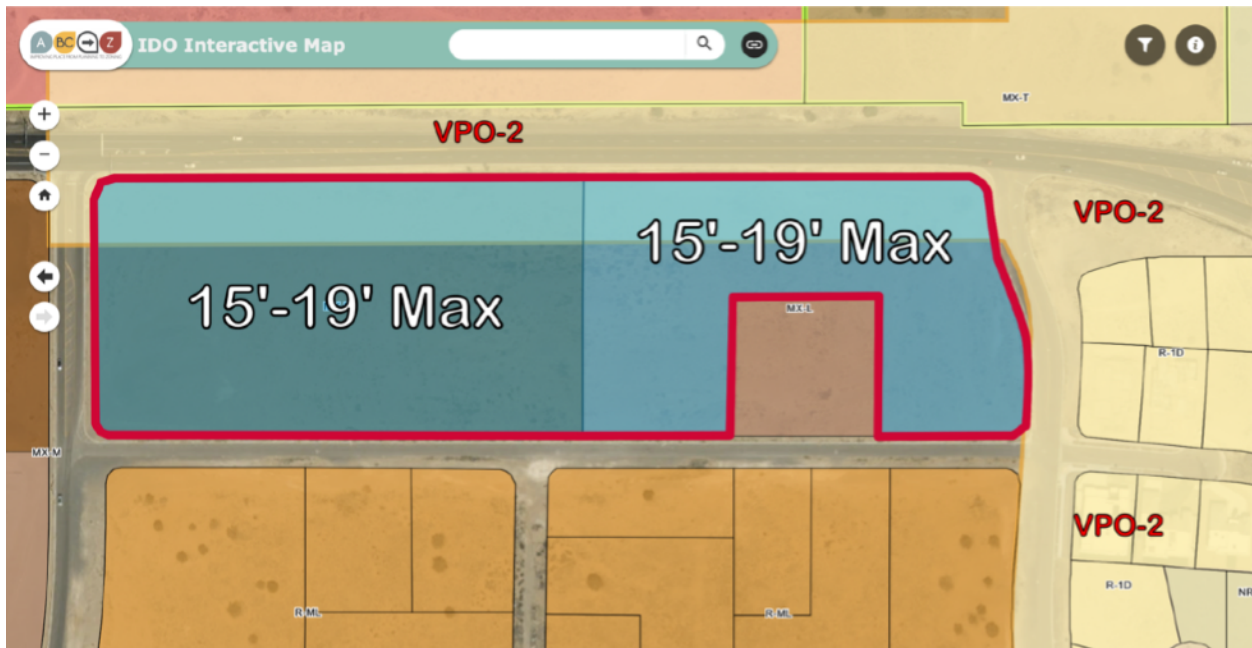
Some of the principals with VOLCANO CLIFFS INC & GROUP I U26 VC LLC (i.e. the property owners) have also been involved in a prior attempt to circumvent the same provisions of the IDO, and in that case attempted to gain approvals via the DRB (Development Review Board) instead of via the EPC as required. As you are aware, the DRB has since been disbanded and

replaced with the DHO. A lawsuit was filed by WSCONA, resulting two and a half years later with the DRB approvals reversed by the New Mexico Court of Appeals. A related suit involving a different attempt to avoid compliance with the protections of VPO-2 and unlawfully change its provisions also resulted in the New Mexico Court of Appeals reversing the City's action.

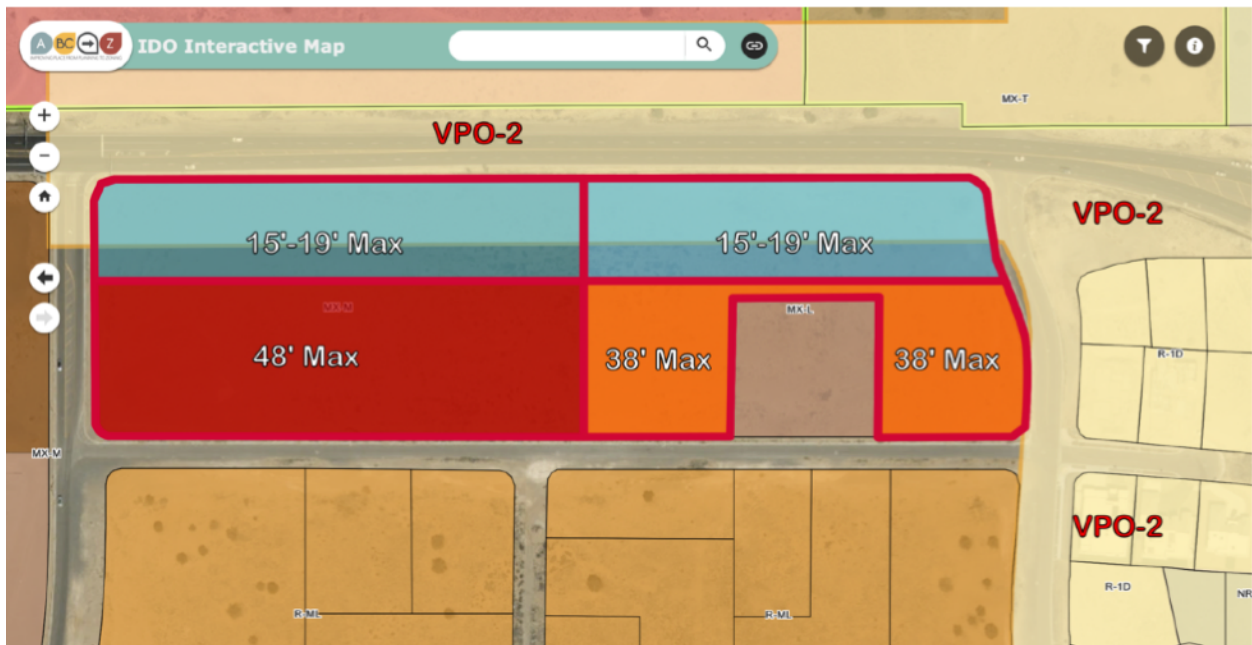
To assist in providing clarity for this request for subdivision, we have provided the following maps using the City's online IDO Interactive Map. It is important to note, however, that this mapping tool still has parcels listed with outdated and incorrect information, including errors as to status of MPOS under the IDO. As such, the tools by which planning staff measures or cross-checks for compliance are not accurate, and give misleading results, specifically the "Administration and Enforcement Layers". Similarly, the Zone Atlas used in the Application shows outdated and misleading information, including parcels south of Rosa Parks listed as R-1D, when they were changed to MPOS over three years ago. These errors are known to the City and were the subject of legal proceedings. That the City has failed to update its GIS systems is negligent. In the first map below, we have corrected the information to show the full extent of the La Cuentista MPOS. PETR is the dominant surrounding land use in this sensitive area of the City. The Site in question is nestled near both.



In the next map, the boundary of VPO-2 is depicted (pale yellow) crossing over both lots in question, and thus both are subject to the 15' maximum building height (or 19' with a variance) shown in blue.



In the second map, the parcels are subdivided as per the request, with the apparent intent to create two parcels with maximum building heights of 48' (red) and 38' (orange) respectively.



Placing 48' tall structures at that location (which occupies the highest elevation of the parcels in question) would directly conflict with the purpose of the VPO-2 and goals of the

Comprehensive Plan, which are part of the decision criteria under the Site Plan — EPC process.

Thus to avoid years of similar litigation, the Application should be withdrawn or the acceptance of the Application for hearing before the DHO should be revoked, and the Applicants directed toward submitting a Site Plan — EPC instead. It should be noted that under such a Site Plan— EPC, compliance with overlay zones, such as the VPO-2 Height Restriction is required for the entire Site covered by the plan and is not discretionary. Thus, the plan should be for single story neighborhood-scale businesses at this location.

It also appears that the Applicant and the City has failed to properly conduct a site analysis, as required under 14-16-5-2(C)(1) “Both the subdivision and site design processes shall begin with an analysis of site constraints related to sensitive lands. The site analysis shall be included with applications for Subdivision or Site Plan. The site analysis shall be reviewed by relevant staff from Hydrology, Parks and Recreation, Historic Preservation, the City Forrester, and/or the City Archaeologist, depending on the type(s) of sensitive lands identified on the site.”

A “Sensitive Lands Analysis”—Dated October 15, 2025—was apparently submitted by the Agent, however, as can be seen in the map that was included by the Agent and reproduced below (map in red box), the Agent shows a different location as the identified “SITE” and clips off the entire northern portion of the actual site, concealing the presence of the VPO-2 Height Restriction Sub-Area or the site’s location at the crest of Paseo del Norte after rising through the escarpment and its technical adjacency to PETR.

Figure 1: AMAFCA Facilities Map of Site and Vicinity.



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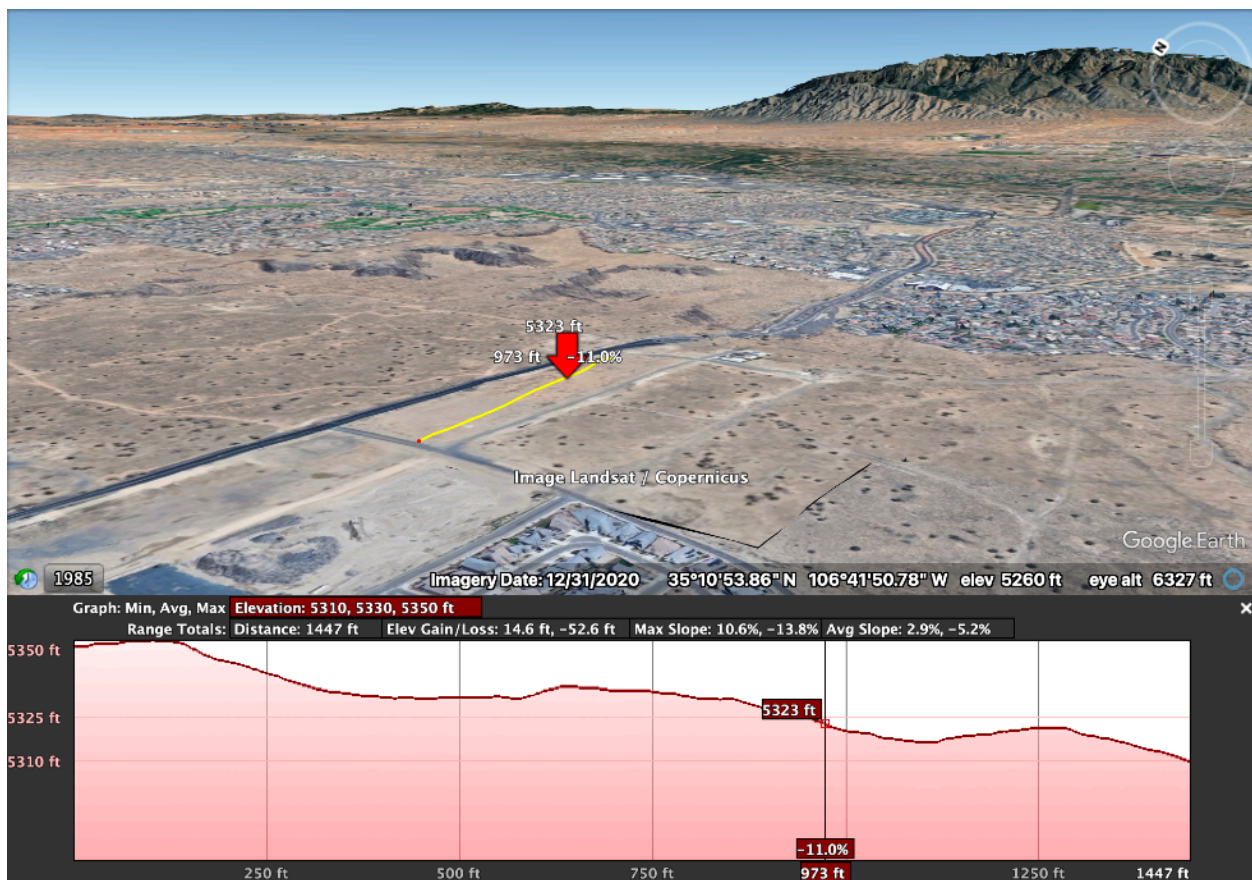
The IDO “Sensitive Lands Definitions” defines “Escarpment” as:

“Land with 9 percent slope or more, where development is discouraged. The Northwest Mesa Escarpment is part of the Petroglyph National Monument, which is also designated as Major Public Open Space. See also Open Space Definitions for Major Public Open Space.”

The IDO “Sensitive Lands Definitions” defines “Steep Slope” as:

Land with 9 percent slope or more, where development is discouraged.

Using Google Earth Pro terrain tools, a path drawn across the Site (yellow line below) shows that the slope of the land is as high as 13.8% across that particular transect.

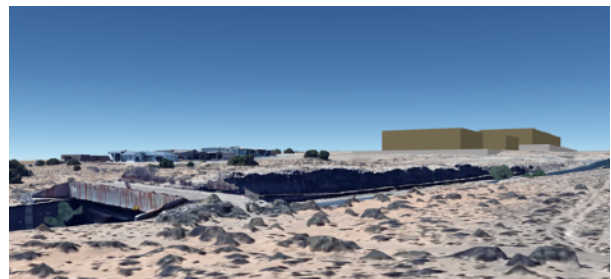
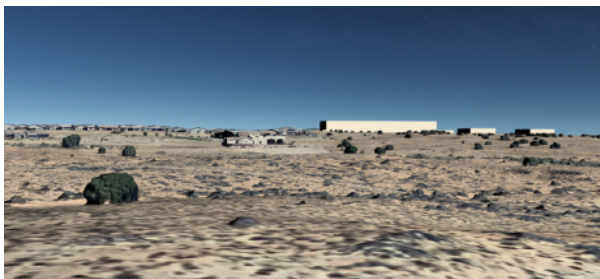
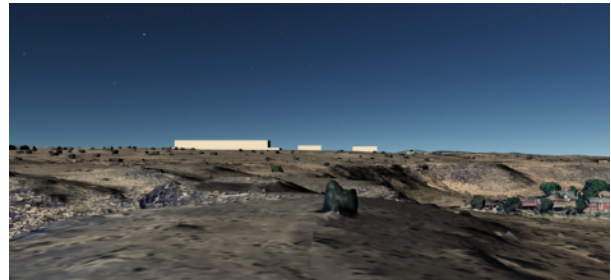
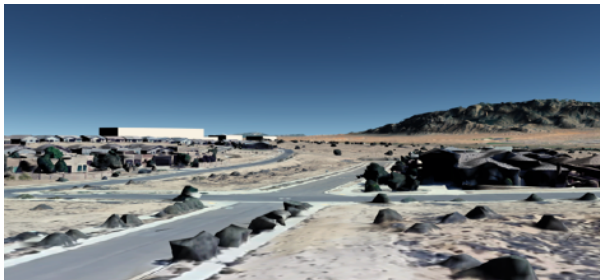
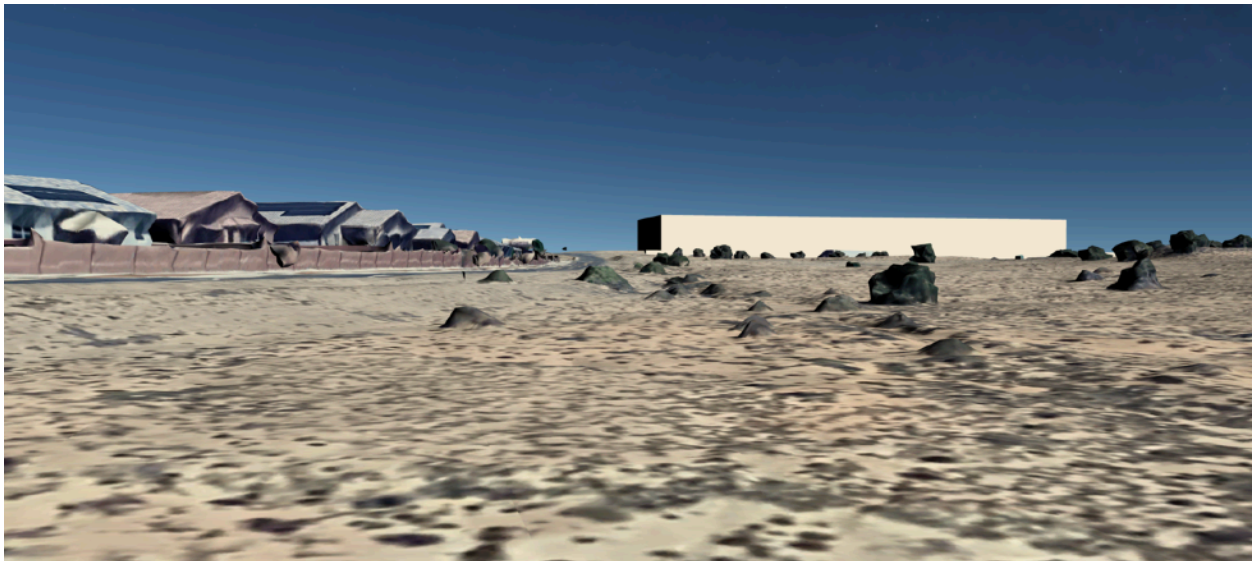


The IDO, Under 14-16-5-2(C)(4):

If development cannot avoid sensitive lands pursuant to Subsections (2) and (3) above, 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).

The Site in question clearly meets the Sensitive Lands definition of both “Escarpment” and “Steep Slope”, and therefore must be processed as a Site Plan – EPC.

Since much of the documentation related to this request was not provided in the Notice to WSCONA from the applicant, we were not privy to what kind of development is planned for the site. Ostensibly, in the “CONCEPTUAL GRADING AND DRAINAGE PLAN” which appears to have received preliminary approval from Anthony Montoya, Jr., P.E., C.F.M. Senior Engineer, Hydrology Planning Department, Design Review Services, there appear to be multiple buildings and extensive parking lots, without specified building heights. However as a conceptual plan, this does not appear to be binding upon what would be permissible at the site after subdivision via the DHO. In order to help visualize what could be permitted, we have provide correct-to-scale models of three buildings located on the proposed southern subdivided parcel. The first building is 150 x 600 feet and 48 feet tall, with the foundation starting at current natural grade on the West-most portion of the lot. The second and third buildings are both 150 x 150 feet & 38 feet tall, also at current natural grade, which is significantly lower due to the steep slope.



The models are then placed precisely in Google Earth Pro using its terrain modeling and 3D building visualization and simulated natural lighting conditions. As can be seen, regardless of which orientation the view takes, these structures dominate the landscape and dramatically alter the view shed. Whether looking from La Cuentista Major Public Open Space (Top), the house of a WSCONA member (Row 2 Left), a ridgeline on Petroglyph National Monument looking north (Row 2 Right), near a Juniper on Petroglyph National Monument looking northeast (Row 3 Left), or by the bridge crossing Paseo del Norte on Petroglyph National Monument looking southwest (Row 3 Right), these buildings are out of scale and character with the cultural landscape.

While the DHO is not charged with considering compliance with the Comprehensive Plan, the EPC is, and that is why development and subdivision of sensitive lands is assigned exclusively to the jurisdiction and purview of the EPC.

All of the residential homeowners within the view-shed of the proposed subdivision site purchased their property with a reliance upon the City enforcing its view protection ordinances on all of the applicable neighboring property. New Mexico case law is clear that such reliance is both reasonable and indeed, desirable:

“there is the desirable stability of zoning classifications upon which the property owner has a right to rely, since property may be purchased and sold or uses of the property undertaken in reliance on existing classifications” —Miller v. City of Albuquerque, 1976 NMSC 052, 554 P.2d 665, 89 N.M. 503.

By allowing the Applicant to circumvent the VPO-2 protections through this improper administrative maneuver, the City would be in defiance of the Courts.

Partial Compliance is Not Compliance

Our communication with Indian Nations, Tribes, and Pueblos indicates that the required referrals for this Application to commenting agencies under 14-16-6-4(l)(8), (9), & (10) appear to have neglected contacting the Acoma, Cochiti, & Ohkay Owingeh Pueblos, the Jicarilla Apache, Mescalero Apache, & Ft. Sill Apache Tribes, and the Navajo Nation. It also appears that neither the 19 Pueblos District or the All Pueblos Council of Governors was contacted and that there is a discrepancy between the City’s published NM Tribes and Leaders List 2025 and the addresses the City used to notify Tribal nations as required by the IDO. The information in the notifications that were sent also appears to be incomplete at best and fails to achieve the purpose of this requirement, and it appears all Indian Nations, Tribes, and Pueblos were excluded from the Archeological Certificate Procedure as well.

The requirements for notification were added legislatively based upon the following statements:

“WHEREAS, one purpose of VPO-2 is to ensure development that is compatible with and respectful of the cultural and natural landscape in the area surrounding the Petroglyph National Monument; and WHEREAS, Indian Nations, Tribes, and Pueblos throughout New Mexico have been the stewards of this cultural and natural landscape for millennia:”

Failure to fully and completely comply with the referral requirements further invalidates the legitimacy of this Application.

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| 14-16-6-4(l) | REFERRALS TO COMMENTING AGENCIES
Following a determination that the application is complete, the Planning Director, ZEO, or any City staff designated to review applications in Table 6-1-1 shall refer applications for comment to the following departments or agencies, as noted below. For administrative decisions in Table 6-1-1, any comments received after such a referral and prior to the decision shall be considered with the application materials in any further review and decision-making procedures. For decisions that require a public hearing and policy decisions in Table 6-1-1, any comments received within 15 calendar days after such a referral shall be considered with the application materials in any further review and decision-making procedures. |
| 14-16-6-4(l)(8) | Development in the Northwest Mesa Escarpment View Protection Overlay Zone (VPO-2)
6-4(l)(8)(a) Indian Nations, Tribes, or Pueblos.
6-4(l)(8)(b) Tribal Representatives. |
| 14-16-6-4(l)(9) | Development within 660 feet of Major Public Open Space
6-4(l)(9)(a) Indian Nations, Tribes, or Pueblos.
6-4(l)(9)(b) Tribal Representatives. |
| 14-16-6-4(l)(10) | Development within 660 feet of the Petroglyph National Monument
6-4(l)(10)(a) Indian Nations, Tribes, or Pueblos.
6-4(l)(10)(b) National Park Service.
6-4(l)(10)(c) Open Space Division of the City Parks and Recreation Department.
6-4(l)(10)(d) Tribal Representatives. |

Complications from Related Cases

Another complication is that since several current city councilors were involved in the prior two quasi-judicial decisions that were overturned on appeal, we would argue that all councilors who voted contrary to law in those decisions would necessarily be recused from playing any role in potential decisions for this parcel, should this matter come before them in any subsequent proceeding. In particular, Councilor Lewis was singled out by Judge Ortega in her decision for demonstrating bias and prejudgment.

“In sum, the Court holds that Councilor Lewis’s conduct and statements at the LUPZ and Council meeting indicate prejudgment and resulted in Appellants being denied an opportunity for a fair hearing. The Court holds that Councilor Lewis’s participation renders the City Council’s hearing on the proposed amendment invalid.”

— Judge Lisa Chavez Ortega, D-202-CV-2023-03961

Since that was affirmed by the Court of Appeals, and this case involves many of the same issues of building height limitations, applicability of the same View Protection Overlay zone sub-area, applicants, improper process, and on property adjacent to the property affected in both of the above referenced cases, Councilor Lewis must certainly be recused.

Additionally, since the Applicant, specifically the late Billy J. Wright of VOLCANO CLIFFS INC & GROUP I U26 VC, LLC failed to disclose the potential conflicts of interest with then DHO David Campbell in the related hearings, Mr. Wright’s successors should be compelled to provide a complete list of LLC members, investors, and employees associated with ownership of the land in question to avoid a repeat of such conflicts of interest. A fellow managing member of the related company GROUP II U26 VC, LLC was Rudy Guzman. Mr. Guzman had employed the then DHO Campbell as CEO of Mesa del Sol LLC. Moreover, Mr. Guzman’s company, Guzman Construction Services, remains a member of APANM (the Asphalt Pavement Association of New Mexico) and Councilman Dan Lewis remains the Executive Director of APANM, and therefore Councilman Lewis is barred via his Settlement Agreement with the State Ethics Commission from participation in any issue involving an APANM member.

Conclusion

Based upon all of the above, WSCONA respectfully requests the Application should be withdrawn or the acceptance of the Application for hearing before the DHO should be revoked, and the Applicants directed toward submitting a Site Plan — EPC instead.

Sincerely,

Michael T. Voorhees
Vice President
WSCONA