

December 20, 2022

JMD-McMahon, LLC – Doug Peterson doug@petersonproperties.net

**Site: McMahon Market Place Lots 9B, 9C, & 9D - 5750 McMahon Blvd NW
A11E011I – NMR1002NB**

Re: Drainage Ordinance (§14-5-2-11) Violations for Erosion and Sediment Control

A new NOI and ESC Plan were submitted on 12/5/22 for Building Permit, but the site is supposed to already have permit coverage. This prompted an inspection on 12/16/22 where the following conditions were observed. The total remaining area of disturbance was about 2.2 acres on lots 9B, 9C, and 9D, as shown on the Google Earth photo dated 7/6/22 and inspection photos below. The site was inactive with no construction equipment or personnel present. The ground cover was mostly bare dirt and tumble weeds with patches of gravel. The tumble weeds are annual plants, so they don't satisfy the Final Stabilization Criteria CGP 2.2.14, which requires perennial vegetation. Furthermore the Weed Removal Ordinance §9-8-1 requires removal of weeds wider or taller than 4". The following violations were also observed on 12/16/22.

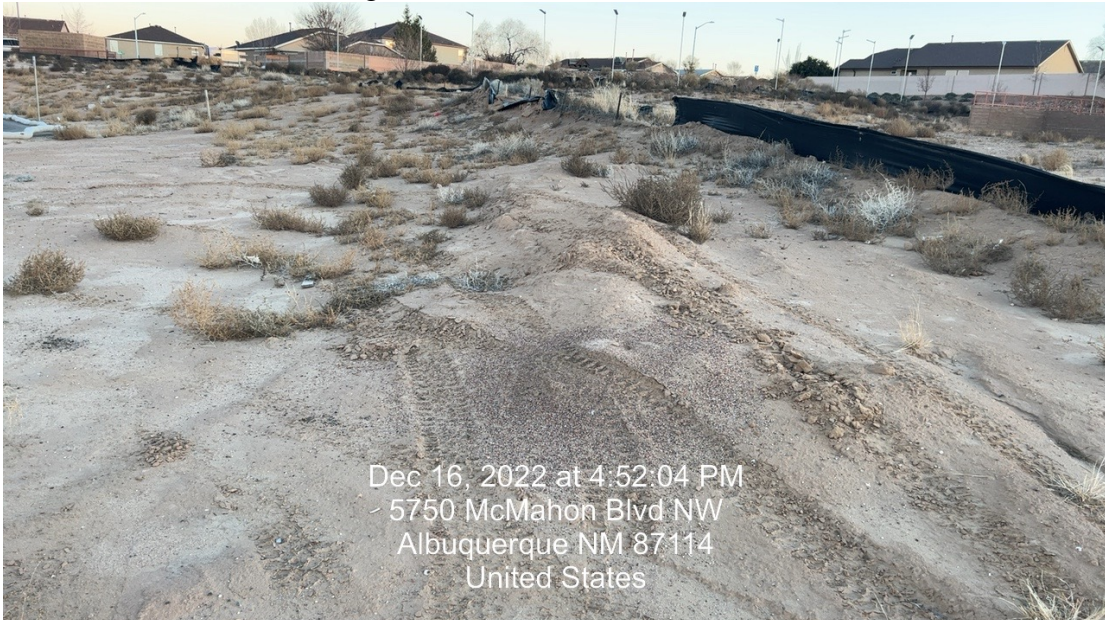
1. Permit coverage under NMR1000WQ and NMR1002NB expired on 2/16/22 before the Final Stabilization Criteria of CGP 2.2.14 was satisfied. The replacement coverage under NMR10059B submitted on 12/5/22 doesn't cover the entire area of disturbance.
2. The permit coverage wasn't posted. The permit number and operator name were missing. Tumble weeds blocked the public view of the sign.



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3. BMPs - Silt fence was falling down.



4. Neither the SWPPP nor any reports were available on-site. Nobody was onsite and the location of the SWPPP wasn't indicated on any sign onsite.
5. Washout was located along the south boundary of Lot 4C and on Lot 4B



6. Inactive portions of the site have not been stabilized in accordance with CGP2.2.14.

Background

This site is part of a 12 acre “Common Plan of Development or Sale” called McMahon Market Place started by Armstrong Development on 8/2011 according to the following Google Earth aerial photo (below). The area of the Common Plan of Development may have been reduced to 10 acres in 2012, when the entire site appears to have been stabilized for a brief period of time.



Google Earth shows the “Commencement of Construction Activities” on the south portion of this site in the aerial photo dated 2/19/2014 (below) which hasn’t satisfied the Final Stabilization Criteria, CGP 2.2.14, in the 8 years since then.



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Property records today show about 9 acres are owned by Doug Peterson, Esq. Managing Member of JMD Partnership, LLC, Managing Member of JMD-McMahon, LLC with about 2.2 acres of bare dirt remaining according to Google Earth 7/6/2022, below.



The City of Albuquerque first issued an ESC permit for this site to JMD-McMahon, LLC in 2014. The first NOIs were for Permit #s NMR12BL48 (McDonalds 2016) and NMR12BM22 (Taco Bell 2017).

Permit # NMR1000WQ was certified on 11/08/2017 by Doug Peterson for JMD-McMahon, LLC for Lots 9C and 9D. The first Notice of Violation (NOV) was sent 1/29/2018 for Concrete Washout, BMPs missing, and Oil Spill in association with Lots 9C and 9D, Hydrotrans # A11E011G. Then two more NOVs were sent on 6/4/21 and 6/16/21 for Posting, SWPPP, Reports, and BMPs in association with Lots 9A, 9B, 9C, and 9D, Hydrotrans # A11E011I. A \$500 Fine was also sent on 6/16/21 but never paid.

Permit # NMR1002NB was certified on 6/30/21 by Doug Peterson for JMD-McMahon, LLC for the McMahon Lots, presumably 9B, 9C, and 9D, with an estimated area of disturbance of 2.5 acres. Coverage under NMR1000WQ and NMR1002NB expired on 2/16/2022 before the Final Stabilization Criteria of CGP 2.2.14 was satisfied.

Permit # NMR10059B was certified on 12/01/2022 by Doug Peterson manager of JMD-McMahon, LLC for “McMahon Market Place Bldg. NW” with an estimated area to be disturbed of 1 acre. That NOI was submitted to the City of Albuquerque SWQ Section of the Planning Department with a SWPPP map showing only Lot 9B, even though Lots 9C and 9D are also still disturbed and owned by JMD-McMahon, LLC.

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Definitions

“Commencement of Construction Activities” – the initial disturbance of soils (or ‘breaking ground’) associated with clearing, grading, or excavating activities or other construction-related activities (e.g., grubbing; stockpiling of fill material; placement of raw materials at the site).

“Common Plan of Development or Sale” – A contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one common plan. The "common plan" of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

Albuquerque’s Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 at link https://codelibrary.amlegal.com/codes/albuquerque/latest/albuquerque_nm/0-0-0-19897 requires the property owner to provide an ESC Plan and the EPA’s Notice of Intent (NOI) to the city for review and approval prior to issuing construction permits and prior to any land-disturbing activity. It also requires compliance with the Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

Required Mitigation:

1. The property owner’s NOI and ESC Plan must be submitted to the City of Albuquerque for review and approval per the above-referenced ordinance.
2. You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way per CGP 1.5.
3. Ensure that all stormwater controls (BMPs), including the silt fence, are installed and maintained and remain in effective operating condition during permit coverage per CGP 2.1.4. If at any time you find that a stormwater control needs routine Maintenance, you must immediately initiate the needed maintenance work and complete such work by the close of the next business day. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational, or complete the repair, by no later than seven (7) calendar days from the time of discovery per CGP 5.2.1.
4. The SWPPP, including Self Inspection Reports and Corrective Action Reports, must be kept up-to-date per CGP 7.1 and available on-site per CGP 4.7.3, 5.4.3, and 7.3. If an on-site location is unavailable to keep the SWPPP when no personnel are present, a notice of the plan’s location must be posted near the main entrance of your construction site CGP 7.3.
5. Direct wash water from concrete, paint, and stucco into a leak-proof container per CGP 2.3.4. Remove and dispose contaminated soils and hardened concrete with other waste per CGP 2.2.3.



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6. Stabilize the inactive disturbed areas. Implement and maintain stabilization measures in areas that remain inactive for 14 days or more. Measures must be initiated within 14 days and complete the installation not later than 14 days per CGP 2.2.14.

History of Violations and Escalation Process:

Notice of the following types of violations was sent on the dates noted below:

1. NOI – 12/20/22 (Level 2)
2. Posting – 6/4/21, 6/16/21, 12/20/22 (Level 3)
3. BMPs – 1/29/18 , 6/4/21, 6/16/21, 12/20/22 (Level 3)
4. SWPPP – 1/29/18 , 6/4/21, 6/16/21, 12/20/22 (Level 3)
5. Waste - 6/4/21, 6/16/21
6. Washout - 1/29/18 , 12/20/22 (Level 3)
7. Stabilization – 6/4/21, 6/16/22, 12/20/22 (Level 3)

The City Escalation Process (attached) describes four levels of escalation based on the number of repeats and/or recalcitrant violations of each type.

Per the previous Violation letter dated 6/16/2021, the City is assessing a fine of \$500, and the non-compliance is being reported to the EPA. This fine is for one day, 12/20/2022. Additional days may be added if the violation is not mitigated within seven days. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

If you have any questions, you can contact me at 924-3420 or jhughes@cabq.gov .

Sincerely,

James D. Hughes

James D. Hughes, P.E.
Principal Engineer, Planning Dept.
Development and Review Services