

# CITY OF ALBUQUERQUE

Planning Department  
Alan Varela, Director



Mayor Timothy M. Keller

December 17, 2024

Tinmill LLC (Owner of Part of Lot 21 & all of Lots 22 & 23 Block 3 Tract A unit B North Albuquerque Acres)  
C/O Robert Tinnin Esq.  
4333 Pan American Fwy NE  
Suite A  
Albuquerque, NM 87107-6833

**Sites: Lot 24-A Blk 3 Plan for Lots 24-A and 24-B Block 3 Tract A Unit B North Albuquerque Acres – Rocky Ledge Properties LLC - B18E026**  
**Part of Lot 21 & all of Lots 22 & 23 Block 3 Tract A Unit B North Albuquerque Acres – Tinmill LLC**

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

Mr. Tinnin;

The City of Albuquerque Stormwater Quality Section performs routine Erosion and Sediment Control (ESC) Inspections for active construction sites. The City recently performed one of these inspections for the construction activity at 5605 Venice Ave NE, adjacent to your property on the west.

During that inspection, it was observed that the contractors have been using your property as a parking and staging area resulting in soil disturbance on your property without any protective stormwater controls. The City received and approved an ESC Plan submitted by the owner of the construction site, but that plan did not include any activity on your property.

Since the City holds the property owners responsible for any violations of the EPA's Construction General Permit (CGP) and City Ordinance §14-5-2-11 (included), you are being notified of unapproved construction activity on your property. A Notice of Violation (NOV) is being issued for both property owners and is included with this package. The intent is to ensure that stormwater controls are implemented for active land disturbing activities and that the criteria for Final Stabilization listed in CGP Part 2.2.14 will be met at the construction's end.

The NOV has details and options for mitigation of these violations. If these violations are not mitigated by the next City stormwater inspection, financial penalties may occur as detailed in the Escalation Policy (included).

If you have any questions, please contact me at 924-3325 or [cenglish@cabq.gov](mailto:cenglish@cabq.gov).

Sincerely,

*Chancellor English*

Chancellor English, CPESC  
Erosion and Sediment Control Specialist, Stormwater Quality - Planning Dept.

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Rocky Ledge Properties LLC – Bill Hoberg, [billh@glass-rite.com](mailto:billh@glass-rite.com) – 505-300-2420

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

Mr. Hoberg and Mr. Tinnin;

The Storm Water Quality (SWQ) Section of the City of Albuquerque conducted an Erosion and Sediment Control (ESC) inspection of the site on 12/13/24 to determine compliance with City Ordinance § 14-5-2-11 (attached) and the Environmental Protection Agency's (EPA's) Construction General Permit (CGP) [2022 Construction General Permit \(CGP\) | US EPA](#).

During the City's inspection, construction vehicles were observed parking and staging on the neighboring property of the Glass Rite construction site destroying vegetation, disturbing the soil, and causing sediment track-out. This land disturbance does not appear on the ESC Plan and Landscape Plan submitted to the City by Rocky Ledge Properties LLC, nor was an NOI for the neighboring property owner (Tinmill LLC) submitted, meaning the construction activity (equipment staging and vehicle parking) on this property was not approved by the City. Both the acts of starting construction activities without approval from the City and starting construction without implementing stormwater controls (BMPs) result in the immediate escalation and the issuance of this Formal Notice of Violation as addressed in the Escalation Policy (attached).

Usually, there are two options when a construction site disturbs the neighboring property due to construction activities. These typical options are as follows:

1. The owners of each property reach an agreement for land use, and the NOIs for each property owner are submitted to the City, along with an ESC Plan and Landscape Plan detailing the entirety of land disturbance including the proper stormwater controls and stabilization measures, or
2. The construction entity ceases the use of any unowned property, removes all equipment and/or materials from said property, and stabilizes any land disturbance caused by their construction activities according to the criteria in CGP Part 2.2.14.c.

The City leaves the decision to the property owners, as long as it satisfies the requirements detailed in the CGP and City Ordinance.



## Escalation Process for Drainage Ordinance Violations during the Construction Phase

Mayor Tim Keller

**The City Ordinance includes several specific means of enforcing the City's regulations including but not limited to § 14-5-2-11(C)(3).**

*The city will utilize sanctions and penalties to enforce upon violations of permit requirements.*

*Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.*

**The four levels of escalation apply to each specific violation type (e.g. sediment in the street, BMP maintenance, waste, washout, self-inspection reports, posting, expired permit, stabilization, etc...). Each recalcitrant or repeat offence for a particular violation type results in escalation to the next level.**

### **1<sup>st</sup> Level - Optional Informal Warning w/o Fine (not required by Ordinance) w**

- E-mail with explanation of violation(s) with a corrective action date. Standard mitigation time is seven days. Additional time may be given at the City's discretion<sup>(1)</sup>.
- This step is skipped if land disturbance began without City approval and/or without BMPs, the

### **2<sup>nd</sup> Level - Formal Warning w/o Fine – (1<sup>st</sup>) Notice of Violation (NOV) Letter**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 3<sup>rd</sup> Level). Additional time to mitigate may be given at the discretion of the City<sup>(1)</sup>.
- Level 2 applies to the second time a particular violation type is noted during a City inspection (first repeat violation).
- Level 2 also applies to the first time for either of the following two egregious violation types: either starting land disturbance without approval from the City or starting land disturbance without BMPs.

### **3<sup>rd</sup> Level – Formal Notice of Violation w/ Fine for 1 day - (2<sup>nd</sup> & up) NOV Letter**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500 for the first day of violation. Failure to pay the fine may result in additional sanctions. The NOV letter will state that the property owner is subject to a \$500 fine/day if the violations are not mitigated within the specified time frame (escalation to 4<sup>th</sup> Level). Additional time may be given at the discretion of the City<sup>(1)</sup>.

### **4<sup>th</sup> Level – Formal Notice of Violation w/ Fine for each new day of violation since the last day of fine.**

- A NOV letter will be sent to the property owner with an explanation of violation(s), the required mitigation, and an allowance of 7 days (min.) to mitigate. A fine will be issued to the property owner(s) per the Penalty provisions of §§ 14-5-2-1 et seq. typically \$500/day of violation since the last day of fine. The NOV letter will state that the property owner is subject to a \$500 fine/day and additional sanctions if the violations are not mitigated and the fine paid within the specified time frame.
- The EPA is typically notified when NOV's with fines are sent.

- 1) Additional time is typically not granted unless the owner is cooperative and makes significant progress mitigating the violations within the specified time frame (3 out of 4 violations mitigated).

## **§ 14-5-2-11 CONSTRUCTION SITE RESPONSIBILITY BY PROPERTY OWNER.**

(A) For projects that disturb one acre or more, or less than one acre but are part of a larger common plan of development exceeding one acre, the property owner is to provide the Construction General Permit (CGP) Electronic Notice of Intent (eNOI) documentation that contains the property owner name and contact information a minimum of 14 days prior to earth disturbance and prior to obtaining Work Order or Building Permit approval. To be accepted, the eNOI is to be properly filled out and certified. If the eNOI is a Low Erosivity Waiver by the contractor, then an Erosion and Sediment Control Permit per § 14-5-2-11(B) is to be approved by the city.

(B) For projects that are less than one acre and are not part of a larger common plan of development, but meet the criteria as specified in § 14-5-2-12(B)(6), an approved Erosion and Sediment Control Permit is required prior to earth disturbance, Work Order approval and Building Permit approval.

(1) The Erosion and Sediment Control Permit or eNOI holder must be either the owner of the property or an authorized agent of the owner in order for the permit to legally cover the activities occurring at the site. If the permit holder is other than the owner, evidence of delegation of authority acceptable to the city shall be provided prior to issuance of a permit by the city.

(2) A project will be approved for earth disturbance, work order, or building permit only upon approval of plans and conditions by the City Engineer.

(C) Construction site inspections and quality controls shall include:

(1) Self-inspections by permittee. At a minimum a routine compliance self-inspection is required to review the project for compliance with the Construction General Permit once every 14 days and after any precipitation even of 1/4 inch or greater until the site construction has been completed and the site determined as stabilized by the city. Reports of these inspections shall be kept by the person or entity authorized to direct the construction activities on the site and shall be conducted during progress of the work, during work suspensions, and until final acceptance of site stabilization by the city. An owner's or his/her agent's failure to properly maintain records shall subject that owner to the penalty provisions of §§ 14-5-2-1 et seq.

(2) City compliance inspections. The city will conduct routine compliance inspections of projects for compliance with the Construction General Permit. The city will conduct routine compliance inspections of all construction projects cumulatively disturbing one acre or more or as specified in § 14-5-2-12(B)(6) for compliance with the Construction General Permit. Site inspections will be followed by any necessary compliance or enforcement action to ensure corrective action has occurred. Corrective action is to be completed within seven days or the owner is subject to escalation per §§ 14-5-2-1 et seq. All projects will be inspected at completion for confirmation of stabilization.

(a) Construction site compliance. If the city finds that the site is not in compliance with the Construction General Permit and that stormwater controls will not prevent sediment and waste from entering the city's drainage system and/or leaving the construction site the city may direct the owner or his/her agent by written order to come into compliance. If deficiencies are required to be mitigated, the owner or his/her agent shall be verbally notified with a follow-up written confirmation occurring later. It shall be the duty of the owner or his/her agent to immediately take all necessary steps to prevent such migration of sediment and waste off the premises or from entering receiving waters. Delivery of an order by the city to the owner or his/her agent shall be deemed to be notice thereof, and binding upon the owner. An owner's or his/her agent's failure to substantially comply with the order shall subject that owner to the penalty provisions of §§ 14-5-2-1 et seq.

(b) Maintenance of control measures. The property owner or the owner's agent carrying out the Construction General Permit requirements shall maintain all control measures, retaining walls, structures, plantings, and other protective devices. Should the applicant or any other subsequent property owners fail to maintain the temporary control facilities, retaining walls, structures, plantings, and other protective devices, the city reserves the authority to enter affected property, provide needed maintenance, and to charge the owner for the work performed by the city or its contractors and to place a lien on the property to cover the costs of said actions. Such municipal lien shall be a statutory lien against the real property. This provision is in addition to the city's ability to assess penalties or pursue any other remedies as necessary to effectuate the purpose of §§ 14-5-2-1 et seq.

1. The maintenance of facilities constructed at private expense on public property is the responsibility of the owner or owner's agent until permanent facilities are in place.

2. The developer shall be responsible for maintaining or replacing temporary crossing structures for a period of six years or until a permanent structure is built, whichever comes first. The city shall maintain temporary crossings which are designed and built such that they may be directly incorporated into the ultimate facilities.

(3) The city will utilize sanctions and penalties to enforce upon violations of permit requirements. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

(D) Post-construction maintenance shall be performed as follows:

(1) Except as otherwise noted herein, all public stormwater facilities shall be maintained by the city or other public body. The maintenance of multiple use facilities to which the general public is denied access shall be the responsibility of the owners and shall be performed to City Engineer standards. The City Engineer may allow private maintenance within public right-of-way or easement provided that adequate guarantees and indemnifications are supplied.

(2) Private stormwater facilities:

## Relevant Sections of the Construction General Permit

### 2.1.3 Complete installation of stormwater controls by the time each phase of construction activities has begun.

- a. By the time construction activity in any given portion of the site begins, install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities.<sup>16</sup>
- b. Following the installation of these initial controls, install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.

### 2.2.3 Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas.<sup>20</sup>

- a. The perimeter control must be installed upgradient of any natural buffers established under Part 2.2.1, unless the control is being implemented pursuant to Part 2.2.1a.ii-iii;
- b. To prevent stormwater from circumventing the edge of the perimeter control, install the perimeter control on the contour of the slope and extend both ends of the control up slope (e.g., at 45 degrees) forming a crescent rather than a straight line;
- c. After installation, to ensure that perimeter controls continue to work effectively:
  - i. Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control; and
  - ii. After a storm event, if there is evidence of stormwater circumventing or undercutting the perimeter control, extend controls and/or repair undercut areas to fix the problem.

### 2.2.14.c Final Stabilization Criteria (for any areas not covered by permanent structures):

- i. Establish uniform, perennial vegetation (i.e., *evenly distributed, without large bare areas*) to provide 70 percent or more of the vegetative cover native to local undisturbed areas; and/or
- ii. Implement permanent non-vegetative stabilization measures<sup>46</sup> to provide effective cover of any areas of exposed soil.

#### iii. Exceptions:

- (a) **Arid, semi-arid, and drought-stricken areas** (as defined in Appendix A). Final stabilization is met if the area has been seeded or planted to establish vegetation that provides 70 percent or more of the vegetative cover native to local undisturbed areas within three (3) years and, to the extent necessary to prevent erosion on the seeded or planted area, non-