

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

January 16, 2024

Robert Montgomery
Raising Cane's Restaurants, LLC
rmontgomery@raisingcanes.com - (972) 769-3364

Teresa Costantindis, Executive VP for Finance and Administration
The Regents of the University of New Mexico
MSC06-3595
1 University of New Mexico
Albuquerque NM 87106

Site: Raising Cane's Restaurant at 1401 Gibson Blvd SE (L15E051A)

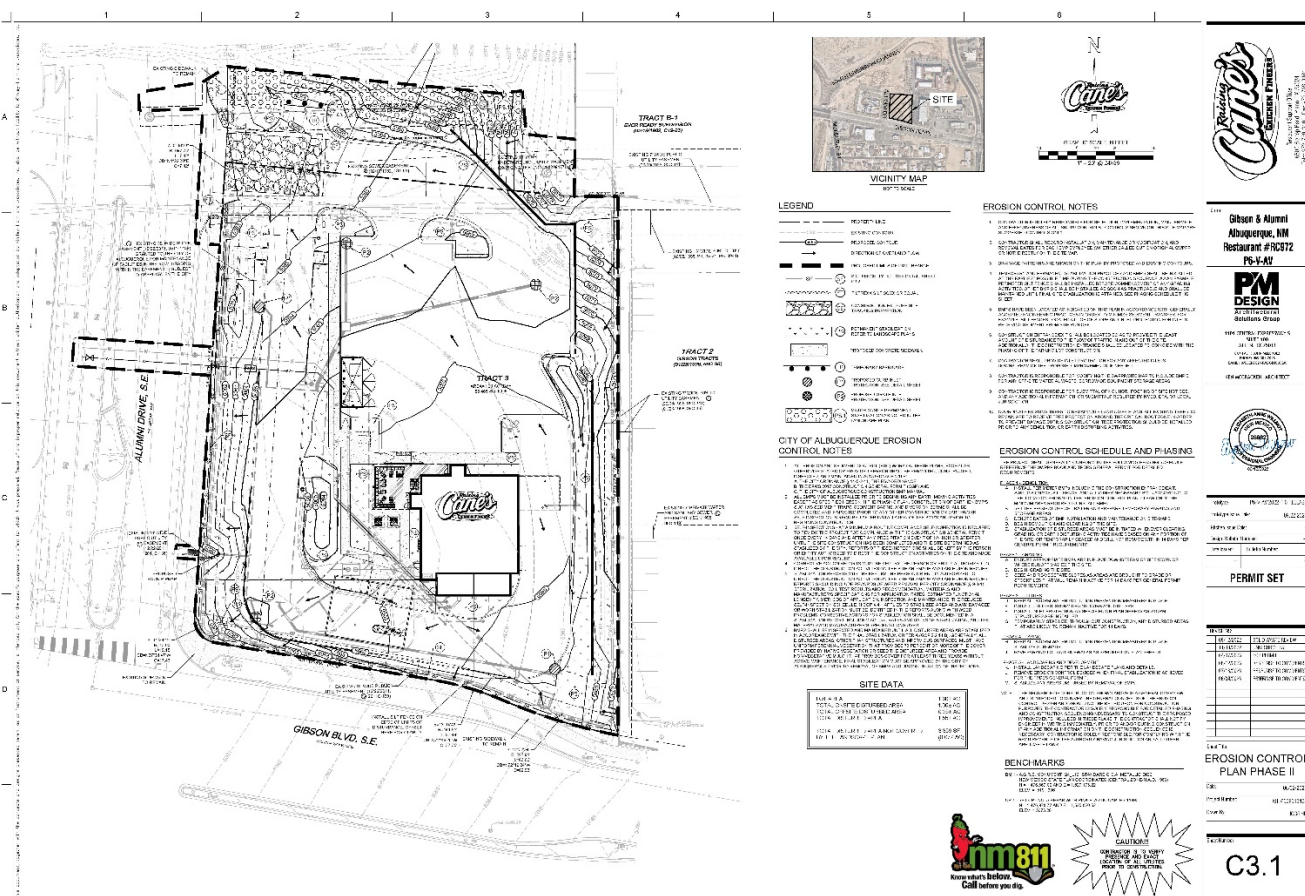
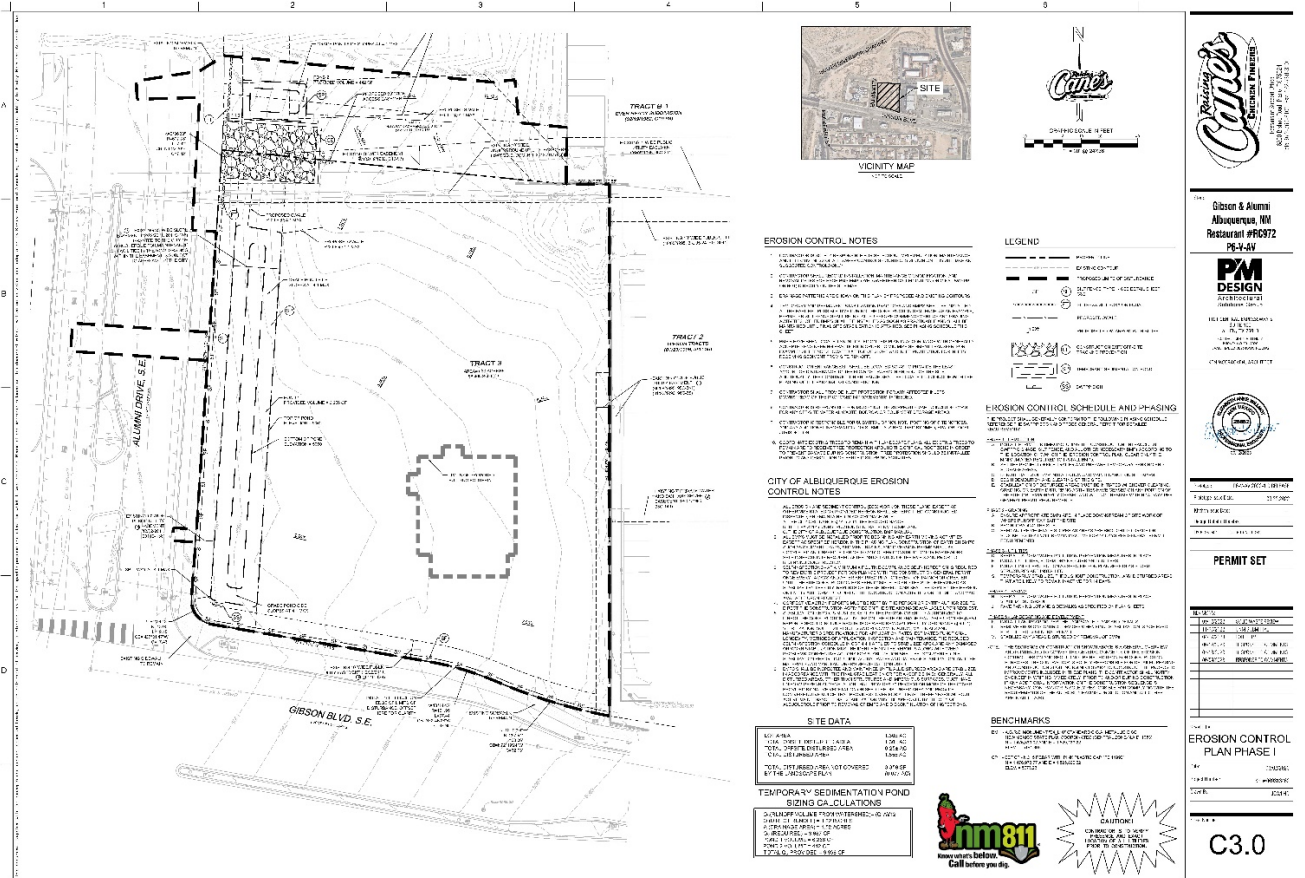
Re: Drainage Ordinance (14-5-2-11) Violations for Erosion and Sediment Control

To Mr. Montgomery,

This is the first Notice of Violation (NOV#1) of the ESC Ordinance § 14-5-2-11 and the EPA's Construction General Permit (CGP) at this site. Construction support activities (see blue area in photo to right) associated with the Raising Cane's building permit are being conducted on a 0.4-acre portion of Alumni Dr. SE public right of way and a 1.0-acre portion of Tract 5 of the Plat of UNM Gibson Commercial District owned by the Regents of the University of New Mexico, without submitting the property owner's Notice of Intent (NOI) and ESC Plan to the City of Albuquerque Storm Water Quality SWQ Section, and without constructing Erosion and Sediment Controls/Best Management Practices. These violations were noted during a routine City inspection on 01/10/24.

1. **NOI** - The property owner, The Regents of the University of New Mexico, failed to file their NOI 14 days before commencing construction activities on Tract 5 in violation of CGP 1.4.3 and City Ordinance § 14-5-2-1. The area of construction support activity on Tract 5 wasn't shown on the SWPPP Map in violation of CGP 7.2.4.vii, and it wasn't submitted to the City of





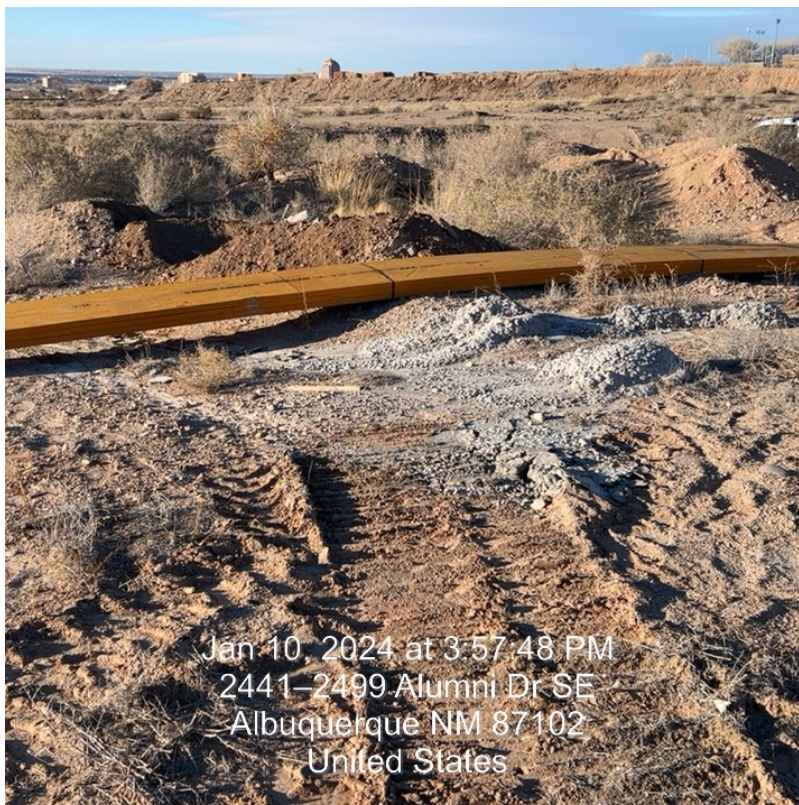
CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

2. **ROW encroachment** - Conducting unauthorized Construction Support Activities in the City's Public Right of Way, Alumni Dr. SE, including 2 Conex boxes, Trusses, and Concrete Washout.



3. **BMPs** - The stormwater controls were missing from Tract 5 north of the raising Cane's site in violation of CGP 2.1. Specifically, perimeter controls were missing in violation of CGP 2.2.3 at the Construction Support Activity on Tract 5.



Albuquerque's Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 (attached) 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](https://www.epa.gov/construction/construction-general-permit).

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

Required Mitigation:

1. **NOI** – You must submit the Tract 5 property owner's NOI and ESC plan to the City of Albuquerque per Ordinance § 14-5-2-11, along with the application forms and fees. Alternatively, you may remove all Construction Support Activities from Tract 5, then satisfy the Final Stabilization Criteria of CGP 2.2.14.C.ii by covering the bare dirt portion of Tract 5 with gravel.
2. **ROW Encroachment** – You must remove all Construction Support Activities from the City's Public Right of Way at Alumni Dr. SE, including but not limited to the 2 Conex boxes, Trusses, and Concrete Washout. Then you must immediately satisfy the Final Stabilization Criteria of CGP 2.2.14.C.ii by covering the bare dirt portion of the right-of-way with gravel.
3. **BMPs** – You must ensure that stormwater controls (BMPs) for Tract 5 are designed, installed, and maintained as required in Parts 2.2, 2.3, and 2.4 to minimize the discharge of pollutants in stormwater from construction activities as required by CGP 2.1. You must Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas, as required by CGP 2.2.3. When the problem requires a new or replacement control or significant repair, install the new or modified control and make it operational or complete it by no later than seven (7) calendar days from discovery per CGP 5.2.1.

History of Violations:

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

1. NOI – 1/16/24 (Level 2)
2. Right of Way Encroachment 1/16/24 (Level 2)
3. BMPs – 1/16/24 (Level 2)
4. Posting – 1/16/24 (Level 1)
5. SWPPP – 1/16/24 (Level 1)
6. Sediment - 1/16/24 (Level 1)
7. Washout - 1/16/24 (Level 1)

The City Escalation Process (attached) describes four levels of escalation based on the number of repeats and/or recalcitrant violations of each type. Failure to establish BMPs or to file an NOI prior to the commencement of construction activities is an egregious violation, so the City skips the level 1 and starts at a level 2 notification.

If the Level 2 violations are not mitigated within seven days, the property owner is subject to a fine of \$500/day per the City's Drainage Control Ordinance, and the non-compliance will be reported to the EPA. Repeat violations are also subject to a fine of \$500/day.

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

Sincerely,

James D. Hughes

James D. Hughes, P.E., CPESC, CFM
Principal Engineer, Stormwater Quality
Planning Dept.