

CITY OF ALBUQUERQUE

Planning Department
Alan Varela, Director



Mayor Timothy M. Keller

March 12, 2025

CFT NV Developments LLC – David Lou - David.Luo@CherngFT.com – 626-372-8526

**Site: Panda Express at 2040 Gibson Blvd SE (M15E021F) NMR100738
Lot C-2 and Lot C-1 Lovelace Heights Addition**

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

Mr. Lou and Mr. Silverstein,

The Storm Water Quality (SWQ) Section of the City of Albuquerque conducted an Erosion and Sediment Control (ESC) inspection of the site on 3/12/25 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](#). This was a follow-up to an inspection conducted by the city on 2/13/25 and reported on 2/19/25.

The Panda Express site is part of a Common Plan of Development or Sale (CPDOS) that totals approximately 6.5 acres in total area. City Ordinance §14-5-2-11 (attached) requires property owners to obtain Construction General Permit (CGP) coverage from the EPA and submit both the Notice of Intent (NOI) and an Erosion and Sediment Control (ESC) Plan to the City of Albuquerque Stormwater Quality Section (SWQ) for approval 14 days before beginning land-disturbing activities on any part of the CPODS.

The specific violations on 3/11/25 are as follows.



1. **NOI** - Construction activities began before the City SWQ Section approved the property owner's ESC Plan and NOI violating Albuquerque's City Ordinance § 14-5-2-11(a). The City has rejected two ESC and NOI applications with comments that must be addressed before city approval.
2. **Posting** - CGP coverage was not posted so it is visible from the public road nearest to the active part of the construction site, using a font large enough to be readily viewed from a public right-of-way in violation of CGP 1.5.
3. **SWPPP** The up-to-date SWPPP and /or self-inspection reports were unavailable on-site during the inspection in violation of CGP Parts 4.7.3 and 7.3. The superintendent was on-site, but could not provide the SWPPP.
4. **BMPs** – The silt fences downstream of the land-disturbing activities were not installed per stormwater quality standard specifications in violation of CGP 2.1.2. They weren't on contour and were not embedded. A silt fence isn't an effective control at the two concentrated discharge points. Other planned controls, ponds and berms, were missing from the two discharge points along the west edge of the property.
5. **Sediment** – was intentionally discharged onto the adjacent paved parking lot, Lot C-1, without any controls to prevent it from washing downstream. Then, a leaf blower turned it into a cloud of dust, which dissipated into the air.

Required Mitigation:

1. **NOI** - The property owner's NOI and ESC Plan must be submitted to the City of Albuquerque for review and approval per Albuquerque's Erosion and Sediment Control (ESC) ordinance § 14-5-2-11 (attached). CFT NV Developments LLC, the owner of Lot C-2, has an Easement on Lot C-1 and has legal control of both lots, so only one NOI, ESC Plan, and SWPPP are required.
2. **Posting** - 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. 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
4. **BMPs** – Remove the sediment from the paved portions of Lot C-1 and construct onsite controls in accordance with the ESC Plan Comments dated 3/11/25.
5. **Sediment** - Where sediment has been tracked from your site onto adjacent pavement, remove the deposited sediment by the end of the same business day. Remove the sediment by sweeping, shoveling, or vacuuming these surfaces or using other similarly effective means of sediment removal. You are prohibited from hosing or sweeping sediment downstream per CGP 2.2.4.d.

History of Violations:

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

1. **NOI** - 2/19/25, 3/12/25 (Level 3)
2. **Posting** - 2/19/25, 3/12/25 (Level 2)
3. **SWPPP** - 2/19/25, 3/12/25 (Level 2)
4. **BMPs** - 2/19/25, 3/12/25 (Level 3)
5. **Sediment** - 2/19/25, 3/12/25 (Level 2)

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

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Per the previous Violation letter dated 2/19/25, the city is assessing a fine of \$500 for the current level 3 violations, and the non-compliance is being reported to the EPA. This fine is for one day, 3/12/25. Additional days may be added if the violation is not mitigated within 7 days. Progressive enforcement escalation procedures will be used and strictly enforced for recalcitrant or repeat offenders.

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

Sincerely,

James D. Hughes

James D. Hughes, P.E.
Principal Engineer, Hydrology/Stormwater Quality
Planning Dept.