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HAND-DELIVERED (with 10 copies)

Dan Serrano, Chair (hand-delivered)
Russell Brito, Division Manager (via email rbrito@cabq.gov and hand delivery)
Environmental Planning Commission
City of Albuquerque
600 Second Street, 3rd Floor
Albuquerque, NM 87102

Re: OC-19-31 - Remand for Supplemental Findings on Two Issues
AC-17-7; Project #1011232; 17EPC-40011
Rio Grande Blvd. NW at I-40, between Alameda Drain and Campbell Ditch

Dear Chair Serrano and Commissioners:

With attorney Tim Flynn-O'Brien I represent Garcia Real Estate Investments, LLC, G3 Investors, LLC, Dos Vientos, LLC, and Sinclair Properties, LLC ("**Garcia Entities**"), who are the successful rezone applicants in this two-issue, **record-only remand from District Court** for supplemental findings.

I. BACKGROUND

In 2017, the Garcia Entities applied for a zone change for property located at approximately I-40 and Rio Grande Blvd. NW, between the Alameda Drain and the Campbell Ditch. The zone change was decided under the City's previous Zoning Code. This remand is therefore also subject to the previous Zoning Code, rather than the City's new IDO. This is a record-only remand, **limited to two issues**, and limited to the Garcia Entities and the District Court appellant, Darlene Anaya ("**Anaya**").

The zone change was approved by EPC on July 13, 2017 and by the City Council on October 17, 2017. The zone change created an 11.62 acre Village Center site by: (1) down-zoning 5.29 acres of M-1 to C-2, (2) rezoning 6.32 acres of adjoining R-1 to C-2, and (3) rezoning 7.78 acres of adjoining R-1 to R-2 (as a buffer or step down zone). (Please see the before/after map of the subject property, Exhibit 1 in the Appendix provided with this letter.)

The zone change created an 11.61 acre C-2 ("Community Commercial") village center site for a grocery store and other neighborhood amenities along I-40, with three access points from Rio Grande Blvd. through direct frontage on Rio Grande also owned by the Garcia Entities.

The M-1 property directly adjoined R-1 zoned property prior to the rezoning. The rezoning eliminated the M-1 zoning. The new C-2 site is now completely buffered by R-2 from all nearby R-1 property. The R-2 buffer is also entirely owned by the Garcia Entities.

EPC made findings and approved the zone change after a lengthy public hearing on July 13, 2017. Anaya, a San Francisco resident who owns an interest in some family R-1 property near the site, appealed from EPC to the City Council. The Council referred Anaya's appeal to the City's Land Use Hearing Officer ("LUHO"). The LUHO held another lengthy hearing on September 21, 2017, and recommended adoption of the EPC's rezone approval in a 23 page decision, containing

additional findings and dated October 2, 2017. The City Council adopted the LUHO recommendation by a vote of 7-2 on October 17, 2017, finding the rezoning to be in compliance with City Res. 270-1980.

Anaya subsequently appealed the City Council decision to Bernalillo County District Court, alleging nine (9) separate legal errors. District Court Judge Shannon Bacon rejected seven (7) of Anaya's claims of error **and did not overturn the rezoning**, but remanded for supplemental findings on two issues, as follows:

“[F]or additional consideration and reasoned decision making in accordance with resolution 270-1980, §§ 1 (C) and 1 (E): **(1)** whether the proposed C-2 zone is in significant conflict with purported NVAP [North Valley Area Plan] limitations on commercial development and **(2)** whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community.”¹

Anaya did not challenge the R-2 rezoning in her appeal. Nor did she challenge the downzoning of M-1 to C-2. This remand therefore concerns only the 6.32 acres rezoned from R-1 to C-2. As noted, this is a record-only remand, limited to two issues and the District Court parties. The previous record including the EPC transcript of July 13, 2017 and LUHO transcript of September 21, 2017 should be reviewed in connection with this remand.

II. SUMMARY OF GARCIA ENTITIES' POSITION ON TWO REMAND ISSUES

As noted, the District Court requested further findings clarifying (1) why C-2 rezoning is not in conflict with “purported” NVAP limitations on commercial zoning in this area, and (2) clarifying why the specific permissive uses listed under C-2 will not be harmful to adjacent property, the neighborhood or the community.

The C-2 rezoning is **not in conflict with the NVAP** because the NVAP does not limit commercial development to a specific area and, moreover, the rezoning furthers the NVAP which specifically calls for commercial development in this very area along I-40, which it designates as “Central Urban,” and because the NVAP, the 2001 amendments to the City's previous 1989 Comp. Plan, as well as the City's controlling 2017 Comp. Plan, all call for “village center” and “centers and corridors” commercial development in this area adjacent to I-40 and Rio Grande Blvd.

The **C-2 permissive uses will not be harmful** to adjacent property owners, the neighborhood or the community, because (1) all C-2 uses will be buffered from all R-1 property with an R-2 buffer owned entirely by the Garcia Entities, (2) because the C-2 rezoning removes a previous intensity mismatch where 5.29 acres of M-1 property was directly adjacent to R-1, (3) because the rezoning creates a properly scaled village center infill site for a much needed modern grocery store, (4) because the village center and centers and corridors commercial redevelopment objectives expressed in the City's controlling 2017 Comp. Plan and other Plans for the area operate as a finding that C-2 Community Commercial zoning here is not harmful, as well as (5) for each of the specific reasons given in the table of specific C-2 permissive uses which is provided in the applicable section of this letter below.

III. RELATIONSHIP BETWEEN 2017 COMPREHENSIVE PLAN AND NVAP

The NVAP was a Rank II Plan adopted in 1993. The City's original (1989) Comp. Plan was the Rank I Plan in effect at the time the NVAP was adopted. The 1989 Comp. Plan was amended in 2001. The 2001 Comp. Plan provided that the area around Rio Grande at I-40 “shall allow a full

¹ See Bacon Memorandum Opinion and Order dated January 7, 2019 at p. 15.

range of urban land uses” and is appropriate for mixed use infill. (See 2001 Comp. Plan, Section §2.B.5, Note at II.6 at page II-33; id at §2.B.5 Policies a, e, and j.). The new 2017 Comprehensive (Rank I) Plan, which controls this rezoning, replaced the 2001 Plan and adopted a “centers and corridors” approach to development, encouraging mixed use redevelopment of underutilized property within the urban core of the City. The 2017 Comp. Plan specifically contemplates mixed use commercial development at Rio Grande and I-40, due to the convergence of multiple existing transportation modes and corridors, including walking and bicycle pathways (such as the Alameda Drain and Campbell Ditch).

The NVAP contained only general guidelines for north valley development, dating to 1993, without actual legal zoning mandates, rezoning or use restrictions. Despite adoption of subsequent new Comprehensive Plans, the NVAP was never amended. One of the reasons for the new 2017 Comp. Plan was that previous overlapping Sector Plans like the NVAP were not coordinated and often contained ambiguous and conflicting policies. See R-16-108 - Resolution to adopt 2017 Comp. Plan.

The 2017 Comp. Plan incorporated aspects of some of the City’s Rank II Sector Plan goals and policies (like NVAP), but generally superseded and eliminated many guidelines from previous Rank II Sector Plans. (See R-16-108 at Section 2, Paragraph 6.) The 2017 Comp. Plan is expressly intended to “guide the implementation, enforcement, and administration of land use plans and regulations that reflect current trends and priorities as well as the future vision for growth and development.” (Id. Section 2, Paragraph 9. B.) The 2017 Comp. Plan provides, via ordinance, that “other adopted City and County plans are subordinate to and must be consistent with this Comp. Plan.” 2017 Comp. Plan §1.6 at page 1-8. This means any interpretation conflicts between the NVAP and the 2017 Comp. Plan are to be resolved in favor of the 2017 Comp. Plan. The NVAP was eventually repealed altogether by adoption of IDO, after the instant rezoning.

IV. THE C-2 REZONING IS NOT IN SIGNIFICANT CONFLICT WITH THE NVAP

This C-2 (“Community Commercial”) zoning is not in significant (or any) conflict with the NVAP, because **the NVAP does not limit commercial development at this I-40 location**. In fact, the NVAP encourages “village center” commercial development at this location on I-40, designated “central urban” in the NVAP. The NVAP does not confine new commercial development of this type to areas along I-25, as Anaya purported to the District Court.

To determine whether this C-2 rezone “significantly conflicts” with the NVAP, the first step is to determine the intent of the NVAP (a Rank II Plan). See *Smith v. Board of County Comm’rs*, 2005 NMSC-12, ¶18, 137 N.M. 280, 110 P.3d 496. Anaya argued in the District Court that the following language in the NVAP describing “preferred scenarios” in the 1989 City Comprehensive Plan precludes new commercial development along I-40:

“Larger scale community or regional commercial development would be located in the available areas within the north I-25 corridor.” NVAP at p. 38.² See Appendix Exhibit 2.

The quoted language is not a NVAP goal or policy but a description of a preferred scenario in the 1989 (now repealed) Comprehensive Plan. See NVAP beginning at p. 35 in Appendix Exhibit 2. Anaya’s interpretation of this quote as barring new commercial development along I-40 is wrong and conflicts with the actual “Goals” section of the NVAP, which expressly calls for new

² This is apparently what Judge Bacon described as the “purported” limitation on commercial development under the NVAP, as alleged by Anaya. See Bacon Memorandum Opinion at pp. 7 and 15.

commercial development to be located along selected portions of I-40 such as this. See NVAP at p.6, No. 11. The Goals section of the NVAP specifically provides that one of its goals was:

“To locate commercial and industrial development within the I-25 corridor, **and selected areas along the I-40 corridor**, especially as an alternative to extensive lower valley commercial/industrial development.” See NVAP Goal No. 11 at page 6 and Appendix at Exhibit 2 (emphasis added).

In the NVAP this area along I-40 is designated “Central Urban,” the most intensive development category in the NVAP. See NVAP at p. 42 and Appendix at Exhibit 2. The NVAP also designates this area as appropriate for a “village center.” See NVAP at p. 37 and Appendix at Exhibit 2. And, incidentally, the 2001 amendments to the 1989 Comp. Plan also identified the intersection of I-40 and Rio Grande as a nexus of important transportation corridors where future “centers and corridors” development should be focused.³

The “preferred scenario” language in the NVAP (on which Anaya relies), and which specifically refers to the former (1989) Comp. Plan, later replaced by the 2001 amendments and then again by the 2017 Comp. Plan, is not probative of any intent in the NVAP to block commercial development at Rio Grande and I-40.

The rezone area on I-40 is quite obviously one of the “selected areas” along I-40 where commercial development of this type is expressly intended by the NVAP under NVAP Goal No. 11. The NVAP does NOT limit commercial development at this location as “purported” by Anaya. To preclude commercial development in this area on I-40, in reliance on the excerpted “I-25” language relied upon by Anaya, would render the NVAP Goal No. 11 language meaningless.

To the extent anyone might argue that there is ambiguity in the NVAP with respect to commercial development along I-40 at Rio Grande because of the 1989 Comp. Plan “preferred scenario” language relied upon by Anaya, any such ambiguity is resolved by reference to the new 2017 Comp. Plan which supersedes the NVAP and governs this rezoning. This area at I-40 and Rio Grande is specifically called out for village center commercial development in the 2017 Comp. Plan (as well in the NVAP sections identified above), due to the proximity of multiple important transit corridors at Rio Grande and I-40. The 2017 Comp. Plan makes it plain that commercial redevelopment is desired at Rio Grande and I-40.

In addition, this zone change at I-40 and Rio Grande furthers specific goals and policies in the 2017 Comp. Plan, including (1) promoting desired growth in this location, (2) fostering existing major transit corridors while minimizing negative impacts on nearby neighborhoods by providing a step-down transition from more intense commercial near I-40 to medium density residential to SF residential, (3) promoting desirable land use by facilitating redevelopment, and (4) allowing a wider variety of housing options than currently exist in an area where a mix has already been established, as well as the policy concerning buffers and transitions. See Planning Department EPC testimony at Record 130-133 and 182 in Appendix Exhibit 3. This interpretation is also

³ Even if the Anaya language were in the form of an NVAP goal and the 1989 Comp Plan were still in effect, the resulting C-2 zoned area in this case is by any reasonable and objective measure a “medium scale” neighborhood-oriented village center redevelopment, rather than “large scale” commercial and industrial development more likely to be found along I-25. (Approximately 6.7 acres of R-1 rezoned to C-2, resulting in 11 acres of C-2 when combined with the previous M-1.) This would not result in large scale industrial or heavy commercial use, or a large scale community or a regional commercial development, as is obviously meant by the “preferred scenario” language cited by Anaya.

consistent with other past interpretations of the NVAP. See existing sector Development Plan/Corridor Plan/Design Overlay Summary Sheet for NVAP, prepared by City during consideration of IDO, at #644 page 5 of 15, concerning location of commercial development within the I-25 corridor **and selected areas along I-40**; there was no reference to any policy exclusively limiting commercial development to I-25 corridor; this area remained Central Urban “the most intense central urban core of the city.” See Appendix Exhibit 3 at Record 182, and Appendix Exhibit 4 at pp 142-144.

That this new commercial development furthers the 2017 Comp. Plan goals was upheld by Judge Bacon in her affirmance of EPC’s determination that village center infill rezoning in this case justified expanding an “area of change” (the former M-1) into what would otherwise be an “area of consistency” (the former R-1).⁴

Not only does the NVAP expressly encourage commercial infill development of this type along I-40 in this location, any interpretation to the contrary would conflict with the principle that the NVAP as a Rank II Plan is a subsidiary Plan which cannot “override” the superior Rank I 2017 Comp. Plan. Any question or ambiguity must be interpreted consistent with the 2017 Comp. Plan, rather than the interpretation of the NVAP urged by Anaya.⁵

Finally, from a policy perspective, the location of new commercial uses along I-40 (as well as I-25), rather than deeper in the north valley, protects the further reaches of the valley from more intense commercial development, which actually serves the core goal of the NVAP.

V. PERMISSIVE USES IN THE C-2 ZONE ARE NOT HARMFUL TO ADJACENT PROPERTY, THE NEIGHBORHOOD OR COMMUNITY

Judge Bacon’s remand order apparently seeks clarification that the City considered each of the specific C-2 permissive uses allowed under former § 14-16-2-17(A) (2017) in making its no harm determination under Res. 270-1980. Each of the C-2 permissive uses is listed in the following Table. Analysis of why each permissive use will not be harmful is provided in the right-hand column in the Table.

Table of C-2 Community Commercial Permissive Uses under (former) § 14-16-2-17(A)

Sub #	Use	Reason Not Harmful
(1)	Antenna (up to 65 feet)	No change; already allowed in R-1 (14-16-2-6(A)(2)(d)) as well as pre-existing M-1; added acreage does not materially impact intensity
(2)	Clinic	Useful neighborhood service; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; a mix of uses is appropriate and required in “village centers” and “central urban” area under City Plans

⁴ See Bacon Memorandum Opinion at pp. 6-7.

⁵ That the 2017 Comp Plan controls over any possible contrary inference in the NVAP is confirmed by the fact that when the NVAP was rescinded in its entirety with the City’s adoption of IDO via R-17-213 at the end of 2017, the Council recognized that the NVAP was adopted in 1993 and never amended (id. P. 4), despite the fact that the 1989 Comp. Plan on which it was based was amended in 2001 to adopt a “centers and corridors” vision, and that the City intended to update Sector Plans every 10 years but never did so with NVAP.

(3)	Copying, blueprinting	No harmful impact; useful service; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2
(4)	Institution (club, day-care, library, school, museum)	Useful neighborhood services; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses appropriate to and required in “village centers” and “central urban” area under applicable City Plans
(5)	Office	No adverse impact; useful neighborhood services; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses is appropriate under applicable City Plans
(6)	Park-and-ride temporary facilities	Useful neighborhood service; buffered from R-1 by R-2; mix of uses appropriate and required in “village centers” and “central urban” area under applicable City Plans
(7)	Public utility structure	Useful/necessary service; already allowed in R-1 (14-16-2(6)(A)(8))
(8)	Residential uses permissive in R-3 Zone (subject to conditions)	No adverse impact; existing and accepted adjacency
(9)	Sign, off-premise (subject to conditions)	Already existing use in M-1 along freeway; additional acreage does not materially change impact; unlikely use in this village center; buffered from R-1 by R-2; other off-premise sign zoning conditions and regulations protect
(10)	Sign, on-premise (subject to conditions)	Useful/necessary for village center vendors/services/customers; no adverse impact; buffered from R-1 by R-2
(11)	Radio or television studio or station	Unlikely use in village center; no or de minimis impact; buffered from R-1 by R-2; mix of uses appropriate in “central urban” area under City Plans
(12)	Recycling bin (accessory use)	Useful neighborhood service; no adverse impact
(13)	Retailing of consumer products and services	Useful and needed in neighborhood; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande; buffered from R-1 by R-2; mix of uses desirable in “village center” and “central urban” area under City Plans
	Excluding:	
	• Adult amusement/adult book stores §14-16-2-17(A)(13)	N/A – Excluded
	• Hospitals for humans §14-16-2-17(A)(13)	N/A – Excluded
	• Transit facilities §14-16-2-17(A)(13)	N/A – Excluded
	• Auto dismantling §14-16-2-17(A)(13)(s)	N/A – Excluded
	• Sheet metal working §14-16-2-17(A)(13)(s)	N/A – Excluded

	<ul style="list-style-type: none"> Tire retreading §14-16-2-17(A)(13)(s) 	N/A – Excluded
	Including, subject to specified conditions:	
(13)-a	<ul style="list-style-type: none"> Alcoholic drink sales for consumption off-premises (subject to conditions) 	Useful/necessary for modern grocery store in village center; zoning conditions and State liquor regulations protect; already allowed in LD-MUD-2 along Rio Grande; buffered from R-1 by R-2
(13)-b	<ul style="list-style-type: none"> Vehicle sales, rental, service, repair and storage (subject to conditions, excluding truck terminal) 	Already allowed in M-1 (including truck terminal in M-1); additional acreage does not materially change impact; buffered from R-1 by R-2; unlikely use in this village center; vehicle repair still a useful and already existing use in this neighborhood
(13)-c	<ul style="list-style-type: none"> Banking, loaning money, including pawn 	Useful neighborhood service; buffered from R-1 by R-2
(13)-d	<ul style="list-style-type: none"> Building materials (subject to conditions) 	Useful neighborhood service; unlikely in this village center; zoning conditions protect; already allowed in M-1 (plus many more intense M-1 uses); additional acreage does not materially change impact
(13)-e	<ul style="list-style-type: none"> Temporary circus or carnival operation (only 7 days per year) 	De minimis (7 days/yr); unlikely use; outdated use; impractical use
(13)-f	<ul style="list-style-type: none"> Drive-in restaurant (subject to conditions) 	Useful neighborhood service; zoning conditions protect; buffered from R-1 by R-2
(13)-g	<ul style="list-style-type: none"> Dry cleaning, laundry, clothes pressing (subject to conditions) 	Useful neighborhood service; zoning conditions protect
(13)-h	<ul style="list-style-type: none"> Flowers and plants 	Useful neighborhood service; no adverse impact
(13)-i	<ul style="list-style-type: none"> Gasoline, oil, and liquefied petroleum gas retailing (excluding truck terminal) 	Useful neighborhood service; already allowed in M-1 (including truck terminal in M-1); additional acreage does not materially change impact; zoning conditions protect; buffered from R-1 by R-2
(13)-j	<ul style="list-style-type: none"> Golf driving range, miniature golf course, baseball batting range (subject to conditions) 	Unlikely use; impractical, uneconomic use; zoning conditions would protect; buffered from R-1 by R-2
(13)-k	<ul style="list-style-type: none"> Hospital for animals (subject to conditions) 	Useful neighborhood service; buffered from R-1 by R-2
(13)-l	<ul style="list-style-type: none"> One mobile home for watchman or caretaker on same lot with otherwise permitted commercial uses (subject to conditions) 	Useful service; unlikely use, except during construction
(13)-m	<ul style="list-style-type: none"> Parking lot, as regulated in O-1 zone 	Useful/necessary service; buffered from R-1 by R-2
(13)-n	<ul style="list-style-type: none"> Pet shop 	Useful neighborhood service; buffered from R-1 by R-2
(13)-o	<ul style="list-style-type: none"> Restaurant, including outdoor seating 	Useful service needed in neighborhood; buffered from R-1 by R-2; already allowed in LD-MUD-2/LD-

		MUD-1 along Rio Grande (e.g. Range Restaurant/Cutbow Coffee)
(13)-p	<ul style="list-style-type: none"> Sample dwelling unit used to sell similar dwelling units 	Useful service; unlikely use; buffered from R-1 by R-2
(13)-q	<ul style="list-style-type: none"> Second-hand store (subject to conditions) 	Useful service; unlikely use; no adverse impact; buffered from R-1 by R-2
(13)-r	<ul style="list-style-type: none"> Stand or vehicle selling fruit, vegetables or nursery stock, up to 90 days per year 	Useful service; de minimis impact; buffered from R-1 by R-2
(14)	Temporary storage incidental to on-site construction	Useful/necessary service during construction; buffered from R-1 by R-2
(15)	Wholesaling of jewelry	No or de minimis impact; already allowed in LD-MUD-2/LD-MUD-1 along Rio Grande frontage; buffered from R-1 by R-2
(16)	Otherwise permitted uses but in a tent, temporarily for 7 days twice per year	De minimis impact (7 days/2x per yr.); unlikely use; uneconomic use; buffered from R-1 by R-2
(17)	Wireless telecommunications facility (subject to conditions)	No change because already allowed in R-1 (14-16-2(6)(A)(10)) as well as pre-existing M-1; added acreage does not materially change intensity

Initially, none of these C-2 permissive uses is inherently harmful or hostile to a neighborhood or community. Each such use coexists with adjacent and nearby residential neighborhoods in many areas throughout Albuquerque. These C-2 permissive uses are beneficial rather than harmful to a neighborhood and community because they provide necessary “community commercial” goods and services in proximity to where people live, reducing trips and offering complementary services in a central location.

Community commercial uses are specifically compatible with this neighborhood due to the “village center” and “centers and corridors” objectives expressed in the City’s controlling 2017 Comp. Plan for I-40 at Rio Grande (as well as earlier Plans for the area, as discussed above). The “village center” and “centers and corridors” objectives for this location should be viewed as an express City determination (and finding) that C-2 permissive uses belong in this area and are not harmful to the neighborhood or community, as meant by Res. 270-1980. Moreover, this neighborhood already has such mixed-use commercial zoning along Rio Grande in direct proximity to the neighborhood, e.g. LD-MUD-2 and LD-MUD-1 under the 2012 Los Duranes Neighborhood Plan.⁶

In this case, the additional 6.32 acres of C-2 zoning allows a neighborhood scale infill redevelopment site to be built containing a modern grocery store, something many neighbors told EPC they want. The additional 6.32 acres of C-2 does not materially increase the intensity or impacts on the neighborhood arising from C-2 permissive uses, in comparison to the existing LD-MUD-2, LD-MUD-1 and especially existing M-1 zoning. EPC should expressly so find.

Further, all C-2 permissive uses will be buffered by R-2 from all nearby R-1 property. No property owned by anyone other than the Garcia Entities themselves will adjoin the new C-2 property. The

⁶ In adopting the Los Duranes (Rank III) Neighborhood Plan for the Rio Grande Blvd. frontage, in April, 2012, the City Council found that “the proposed zoning in the LDSDP does not contain uses that would be harmful to adjacent properties, neighbors or the community,” and that “the new mixed use zones broaden rather than intensify the types of land uses that are allowed, and enable cohesive development with a mix and location of uses that are sensitive to adjoining uses and zoning.” See R-11-279 §1(L)(E).

new R-2 buffer will provide an appropriate transition between the new C-2 acreage and all nearby R-1 property.

Other provisions of the Zoning Code and City Ordinances (including IDO) will also give additional protection against impacts to the neighborhoods and community arising from the C-2 permitted uses, such as sign regulations, liquor sales proximity regulations, fire safety regulations, and wall and landscaping requirements, to name a few.

This C-2 rezoning is compatible with, beneficial to, and not harmful to, the neighborhood and community, finally, because it eliminates a previous intensity mismatch between the large 5.29 acre M-1 site along I-40 and the directly adjacent R-1 zoned land. For comparison, the following table shows the much more intense permissive uses allowed in the 5.29 acre M-1 zone, directly adjacent to the R-1, without any buffer:

M-1 permissive uses under § 14-16-2-20(A):

(1)	All C-2 Permissive Uses
(2)	All C-3 Permissive Uses
(3)	All IP (Industrial Park) Permissive Uses PLUS
(4)	Manufacturing
(5)	Adult amusement/adult book stores
(6)	Vehicle dismantling
(7)	Truck terminal
(8)	Commercial agriculture, including poultry and rabbit killing/dressing
(9)	Antenna, unlimited height
(10)	Concrete batch plant
(11)	Storage yard, gravel stockpiling
(12)	Trailer sales
(13)	Bottling plant
(14)	Ice plant
(15)	Cold storage
(16)	Dry cleaning plant
(17)	Construction/farm equipment sales

To head-off a possible red herring argument by Anaya on remand, please note that the 6.32 acres of new C-2 will not be harmful under Res. 270-1980 in reference to traffic. The EPC, LUHO and City have already made such a determination, which is supported by ample substantial evidence in the record. Although a Traffic Impact Study (TIS) was not required for this zone change, the Garcia Entities had a preliminary TIS completed anyway at the suggestion of neighbors and rezone opponents like Anaya. The TIS showed sufficient capacity on Rio Grande to handle the additional trips which would be generated by the additional 6.32 acres of C-2 zoning. The TIS also included engineering recommendations to mitigate traffic impacts. No counter TIS was offered by Anaya or any other opponents.

Among other things, the TIS indicated that 6.32 acres of additional C-2 zoning will yield significantly less relative traffic impact than the worst-case scenarios imagined by Anaya and development opponents, because the proper traffic comparison is with existing zoning, not vacant land. Much of the assumed new commercial development can already be implemented under

existing zoning in the M-1 area along I-40 and the LD-MUD-2 and LD-MUD-1 frontage along Rio Grande Blvd. The marginal or relative traffic impact of the additional 6.32 acres of C-2, coupled with the down-zone 5.29 acres of M-1 to C-2, is the relevant traffic comparison. And an approved site development plan, accompanied by a final and approved TIS containing traffic engineering and mitigation requirements, will be mandatory as part of any subsequent development.

VI. CONCLUSION

The Garcia Entities request that EPC enter supplemental findings containing clarifications sufficient to satisfy Judge Bacon's Memorandum Order and explaining more specifically why the C-2 rezoning is not in conflict with the NVAP, and why the new 6.32 acres of C-2 permissive uses will not cause harm to adjacent property, the neighborhood or the community, pursuant to Res. 270-1980.

Although this zoning case was decided under the old Zoning Code, the new C-2 zoned area will obviously automatically convert to MXM (mixed use moderate intensity) under IDO, given that MXM has replaced C-2 under IDO.

One condition of EPC's rezoning approval was that the property be replatted according to the new zoning boundaries within 6 months, subject to one 6 month extension. This has now been done, since the 12-month period was scheduled to lapse while Anaya's appeal was pending in District Court.

The Garcia Entities reserve any additional procedural arguments for discussion at a hearing.

Thank you.

Respectfully submitted,

JASON KENT, P.C.



Jason W. Kent
For Zoning Applicant Garcia Entities

JWK/sks
Enclosures as stated

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