

## APPLICANT INFORMATION

## **Lehner, Catalina L.**

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**From:** Jim Strozier <cp@consensusplanning.com>  
**Sent:** Tuesday, February 11, 2020 8:20 AM  
**To:** Lehner, Catalina L.  
**Cc:** Brito, Russell D.; Aranda, James M.; Williams, Brennon; C.K. Scott; Brian McCarthy; Mackenzie Bishop; Jenica Jacobi; Bill Chappell; Santiago Aceves; Michael Balaskovits; Chris Green  
**Subject:** Poole Property - Site Plan - EPC Remand 48 hour rule submittal (1 of 2)  
**Attachments:** Letter to EPC\_ Project# 2018-001402, Case# SI-2018-00171 02.10.20.pdf; Overlook at Oxbow Staff Report Response Letter.pdf

Catalina,

We are transmitting the following information for distribution to the EPC regarding Project #2018-001402:

1. Letter and attachments from Jenica Jacobi, Rodey Law Firm;
2. Letter from Jim Strozier, Consensus Planning in response to the staff report;
3. Updated Site Plan with minor corrections to individual pads on Lots B-1, B-25 and 26; addition of dimensions to document compliance with the setback requirements; and adjustment to remove the small area (less than 35 feet in width) from the open space calculation for Cluster B;
4. Excel spreadsheet showing the lot size calculation analysis; and
5. Applicant proposed findings and conditions.

Thank you. Please contact me if you have any questions.

Please confirm receipt of these two emails.

Jim Strozier, FAICP  
Consensus Planning, Inc.  
302 8<sup>th</sup> Street NW  
(505) 764-9801

=====  
This message has been analyzed by Deep Discovery Email Inspector.

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**Subject:** Poole Property - Site Plan - EPC Remand 48 hour rule submittal (2 of 2)  
**Attachments:** Applicant Proposed Findings and Conditions 2.10.2020 (clean version).pdf; Lot Reduction OS Calculations.pdf; Overlook at Oxbow\_2-10-2020.pdf

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February 10, 2020

**VIA ELECTRONIC MAIL**

Dan Serrano, Chair & Commissioners  
Environmental Planning Commission  
City of Albuquerque  
600 2<sup>nd</sup> St. NW  
Albuquerque, NM 87102

RE: Project# 2018-001402, Case# SI-2018-00171

Dear Chair Serrano and Commissioners:

This firm represents the Applicant, Gamma Development, LLC. We appreciate the thoughtful consideration that the EPC has given to this project thus far. It is unfortunate that opponents of the project have grasped at every opportunity to needlessly delay and derail this application, including the most recent appeal of a declaratory ruling. It is disappointing that city staff have succumbed to this pressure and are recommending further delay on a project that is ready to move forward.

As you are aware, this project has been pending since July 2018, with extensive work between the developer and city staff developing a high quality project. The EPC approved the project on March 14, 2019. The opponents to the project appealed this decision to City Council, alleging dozens of defects with the application and process. The City Council rejected most of these complaints and remanded the application to the EPC with only four remand instructions.

It is completely unnecessary to resolve the appeal of the declaratory ruling in order to consider the pending application because (i) the narrow issue elucidated in the declaratory ruling is not relevant to consideration of the application; and (ii) the content of the declaratory ruling overlapped with the appeal of this application and has already been resolved by City Council. Deferral in this matter serves no purpose but unnecessary delay and expense to the developer.

Dan Serrano  
February 10, 2020  
Page 2

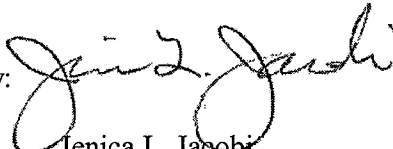
The declaratory ruling requested was only about the definition of a project site and the application of setbacks to that definition in the context of this application. See request for declaratory ruling attached hereto as Exhibit A. The declaratory ruling found a narrower definition of project site that the Applicant originally requested. See declaratory ruling attached hereto as Exhibit B. The current site plan complies with this narrower definition, and would also comply with a more expansive definition of site plan. Therefore, the outcome of an appeal is irrelevant. The Land Use Hearing Officer found on page 15 of his recommendation that each cluster was a project site needing to meet setback requirements, consistent with the declaratory ruling. See recommendation attached hereto as Exhibit C. Although this section of the LUHO report was not explicitly adopted, the first remand instruction from City Council also agrees with this interpretation, instructing “the minimum separation between clusters must include the combination of the relevant setback as applicable to each individual cluster.” The narrow issues of the declaratory ruling have been examined at length already and are not an issue to this application.

The opponents have been clear at every point that no revisions to this application will satisfy them. They have known about this declaratory ruling since May 20, 2019, but have waited until now to appeal in order to interfere with the pending application. They want the property to remain undeveloped open space. It is disappointing to see city administration cater to this unreasonable demand, particularly where the property is not even on a city acquisition list and has no funding. This is not consistent with the IDO and the inherent property rights of the owner and developer. The developer has fully complied with the IDO and City Council’s remand instructions and deserves a prompt, fair hearing on its application.

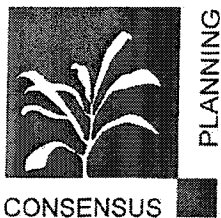
We appreciate the integrity of the Commissioners and their careful, non-partisan work. Thank you for your careful consideration of this matter.

Sincerely,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By:   
Jenica L. Jacobi

JLJ:dv



Landscape Architecture  
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April 3, 2019

Mr. Jacobo Martinez  
Code Enforcement Officer  
City of Albuquerque  
600 2<sup>nd</sup> Street, NW  
Albuquerque, NM 87102

Re: Declaratory Ruling Request

Dear Mr. Martinez:

The purpose of this letter is to request a written declaratory ruling on behalf of Gamma Development, LLC regarding the application of IDO Section 14-16-4-3(B)(2)(b) and its applicability to the proposed residential development of the Overlook at Oxbow project, zoned RA.

The use, as proposed and as approved by the Site Plan – EPC, Project #2018-001402, SI-2018-00171, is a cluster development containing two areas of clustered homes. Cluster Development is a permissive use in the RA zone. The specific concern is related to how this regulation is applied to the property. Section 14-16-4-3(B)(2)(b), which states:

*Zone district lot and setback requirements, including contextual standards in Section 14-16-5-1(C)(2), shall apply to the **project site** as a whole, but not to individual dwellings (emphasis added).*

Project Site is a defined term in the IDO as follows:

*A lot or collection of lots shown on a subdivision – Minor or Major **or on a Site Plan**. This term refers to the **largest geography specified in the earliest request for decision on the first application related to a particular development**. For example, if a large parcel is subdivided and submitted for development in phases, any regulation referring to the project site would apply to the entirety of the land in the original parcel included in the Subdivision application (emphasis added).*

#### PRINCIPALS

James K. Strozier, AICP  
Christopher J. Green, PLA,  
ASLA, LEED AP  
Jacqueline Fishman, AICP

The Site Plan – EPC covered the entire 22.75-acre site. Gamma Development has not submitted an application for a smaller development site. In fact, the first submittal made to the City under the IDO was for a sketch plat, that also considered the entire 22.75-acre property. The EPC considered the Site Plan application with the understanding that that the two clustered areas each constituted a separate “project site” for the purpose of Section 14-16-4-3(B)(2)(b). This interpretation does not appear to be consistent with the plain

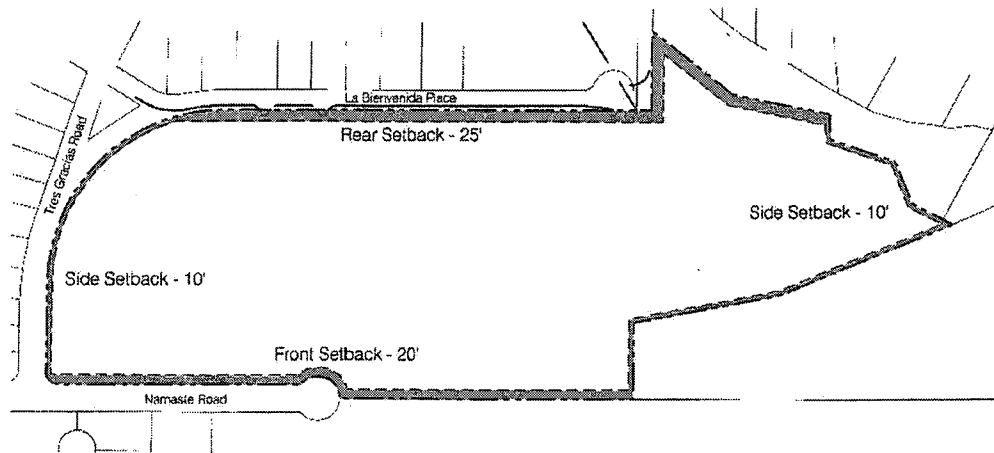
**EXHIBIT A**



CONSENSUS

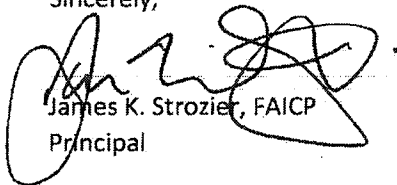
PLANNING

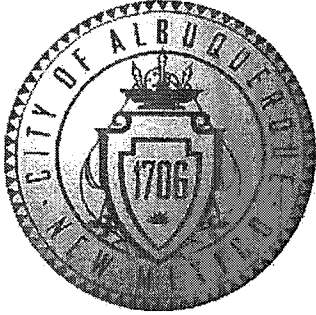
language of the IDO and its definition of project site. Therefore, we are requesting a declaratory ruling about what constitutes a project site for purpose of this 22.75 acre Site Plan and the application of Section 14-16-4-3(B)(2)(b) setbacks to this development. If the 22.75 acres comprises one project site, does that also give us the flexibility to define, what the front, side and rear of the property is for the purposes of this regulation? Our preference would be that the southern property line be considered the front of the project site as a whole with the east and west property lines being the sides, and the northern property line being the rear. The following diagram shows how this would be applied to the project site as a whole:



Based on the above information, we respectfully request a written declaratory ruling as to how the cluster setback regulations will be applied to this property. Please do not hesitate to contact me if you have any questions or require any additional information.

Sincerely,

  
James K. Strozier, FAICP  
Principal



**CITY OF ALBUQUERQUE**  
**Albuquerque, New Mexico**  
**Planning Department**

Mayor Timothy M. Keller

**INTER-OFFICE MEMORANDUM**

April 22, 2019

**TO:** David Campbell, Planning Director

**FROM:** Jacobo Martinez, Code Compliance Manager *h*

**Subject:** Consensus Planning Declaratory Ruling Request

This is a request for a declaratory ruling made by Consensus Planning concerning the application of Integrated Development Ordinance "IDO" Section 14-16-4-3(B)(2)(b) and its applicability to a proposed residential development of the Overlook at Oxbow project. More specifically, this is a request of a declaratory ruling of what constitutes a project site and a site plan for the proposed cluster projects and how should set backs pursuant to 14-16-4-3(B)(2)(b) be applied.

**Background**

The proposed site plan has been reviewed by the EPC through the Site Plan-EPC process (Project #2018-001402, SI 2018-00171). The site plan proposes two cluster development projects (Cluster A and Cluster B). EPC has approved the Site Plan with conditions specific to set backs. Condition #5 pursuant to the approved site plan states:

# 5. Setbacks at the perimeter of each cluster are required to be per the underlying R-A Zone District as follows:

- Front, minimum 20-feet
- Side, minimum 10-feet
- Rear, minimum 25-feet – this affects all rear lots facing Namaste Road NW, Tres Gracias Road NW, La Bienvenida Place NW,

If this results in a Major change to the Site Plan, it will be required to be reviewed and approved again by the EPC. The common open space must retain a minimum length and width of 35 feet if lots are adjusted for setbacks per 14-16-4-3(B)(2)(d)1.

**Dwelling, Cluster Development**


- Pursuant to the IDO Definitions
  - Dwelling, Cluster Development: A development type that concentrates single-family or two-family dwellings on smaller lots than would otherwise be allowed in the zone district in return for the preservation of common open space within the same site, on a separate lot, or in an easement.



- Dwelling, Cluster Development is permitted in the R-1, R-C, R-T, R-ML, ad MX-T zoning categories.
- Dwelling, Cluster Developments are governed by the Use Specific Standard 4-3(B)(2).
- Pursuant to 4-3(B)(2)(a):
  - Minimum project size for this use is 1 acre.
- Pursuant to 4-3(B)(2)(b):
  - Zone district lot and setback requirements, including contextual standards in Subsection 14-16-5-1(C)(2), shall apply to the project site as a whole, but not to individual dwellings.
- Pursuant to 4-3(B)(2)(d):
  - The cluster development project site shall include a common open space set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any combination thereof allowed in the zone district, and for the use and enjoyment of the residents.
- Pursuant to the IDO Definitions:
  - Project Site: A lot or collection of lots shown on a Subdivision – Minor or Major or on a Site Plan. This term refers to the largest geography specified in the earliest request for decision on the first application related to a particular development. For example, if a large parcel is subdivided and submitted for development in phases, any regulation referring to the project site would apply to the entirety of the land in the original parcel included in the Subdivision application.
- Pursuant to the IDO Definitions:
  - Site Plan: An accurate plan that includes all information required for that type of application, structure, or development.

## Conclusion

Pursuant to the IDO, a Dwelling, Cluster Development is a project site. The proposed site plan that has been reviewed and approved by the EPC shows two Dwelling, Cluster Development project sites. A single site plan may show multiple project sites to be reviewed for approval. Each project site must meet the Use Specific Standards as defined by the IDO. Therefore, each proposed Dwelling, Cluster Development shall meet the requirements established by 4-3(B)(2)(b) Zone district lot and setback requirements.



Jacobo Martinez, Manager  
Code Compliance Division  
Planning Department

**BEFORE THE CITY OF ALBUQUERQUE  
LAND USE HEARING OFFICER**

**APPEAL NO. AC-19-6 and AC-19-7**

**Project #PR-2018-001402; SI-2018-00171; VA-2019-00103**

**THOMAS P. GULLY, Appellant in AC-19-6,**

**TAYLOR RANCH NEIGHBORHOOD ASSOCIATION,  
Appellants in AC-19-7,**

**And**

**GAMMA DEVELOPMENT, LLC, and  
CONSENSUS PLANNING, Party Opponents.**

**1     I.     BACKGROUND & HISTORY**

2            This matter concerns two separate appeals that arise from the same facts, a single  
3   application and decision of the Environmental Planning Commission (EPC). Other than  
4   consolidation herein, each appeal was heard individually at the Land Use appeal hearing.  
5   Based on proximity to the application site, which is the subject of the EPC's decision, the  
6   Appellants have standing to appeal. Mr. Gully is representing himself in his appeal. The Taylor  
7   Ranch Neighborhood Association (TRNA) is represented by separate counsel. Gamma  
8   Development, LLC (Gamma) is the purchaser or owner of the application site which  
9   encompasses 22.75 acres of land located between La Bienvenida Place NW and the Oxbow

10 Open Space (the “application site”). The Oxbow Open Space is designated as City Major  
11 Public Open Space (MPOS). Gamma’s planning agent is Consensus Planning, and both are  
12 represented by counsel in these consolidated appeals.

13 The record of these consolidated appeals is remarkable for its size and for the substantive  
14 issues of presented in these appeals.<sup>1</sup> The relevant and undisputed factual history begins in  
15 July 2018. Because Appellants have raised several issues regarding the processes of City  
16 Staff’s handling of the application, the relevant and undisputed factual history is  
17 comprehensively laid out below.

18 On July 23, 2018 Gamma’s planning team (which included planners with Consensus  
19 Planning) met with City Planning Staff for a Pre-Application Meeting regarding a proposal for  
20 a “cluster development” project [R. 698]. Under IDO § 14-16-6-4(B), pre-application meetings  
21 are required for any subdivision of land and for applications for site plans that are submitted  
22 to the EPC [IDO, § table 6-1-1]. Subsequently, on August 13, 2018, City Zoning and Planning  
23 Staff, the City Engineer, a representative from the City Open Space Division (OSD), and  
24 Consensus Planning Staff and their team of builders all met to discuss “Site Plan and IDO  
25 Process Review” issues [Supp. R. 16-17].<sup>2</sup> The specific details of the meeting discussion were  
26 memorialized in the “Meeting Minutes” [Supp. R. 16-17]. Notably, the record includes over  
27 100 email communications between City Staff and Consensus Planning Staff. More will be  
28 discussed regarding the substantive content of these email communications [Supp. R. 2-487].

29 After the first two meetings with City Staff, Consensus Planning and the seven affected

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1. As describe below, at the Land Use Appeal hearing, TRNA’s counsel was allowed to supplement the record with an additional 595 pages. The supplemented material comprises mostly email communications between the City Planning Staff and Consensus Planning Staff from August 8, 2018 to March 30, 2019.

2. In this second meeting, the Zoning Enforcement Officer (ZEO) also was included.

neighborhood associations met to discuss the proposed project(s) in a Facilitated Meeting on August 20, 2018 [R. 739].<sup>3</sup> Under the IDO, § Table 6-1-1, because of the components of the proposed site plan, a Facilitated Meeting is mandatory.

Because the application site is larger than 5-acres in size and is adjacent to a City designated MPOS, and because EPC review is required, the Planning Director must first “concur with the request” presumably for the completeness of the application and for EPC review [IDO, § 14-16-6(H)(1)(b) 3 and 4]. Accordingly, on September 4, 2018, Consensus Planning Staff sought the approval from the City Planning Director to present the site plan for EPC review [R. 19]. On September 17, 2018, the Planning Director gave his approval to proceed to the EPC [R. 703]. At this time, the EPC hearing on the site plan application was scheduled for November 8, 2018 [R. 1286]. It should be noted for the City Council that in early September 2018 email communications between the applicant, City Staff, including OSD Staff, and Staff from the City’s Hydrology Division demonstrates that concerns were raised regarding effects of the proposed projects on the abutting MPOS [Supp. R. 38 - 116].

On September 27, 2018, Consensus Planning submitted its application to the EPC for site plan review and for a connectivity variance to the proposed internal street layout [R. 692].<sup>4</sup> The initial site plan comprised of two “projects” within the 22.75-acre site plan [R. 693]. One project was for a cluster development of 50 single family dwelling units lots on 14.36-acres with 4.37 acres designated for open space. The second project on the site plan consisted of 23-

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3. The seven neighborhood associations are: Andalucia HOA, La Luz Landowners Association, Oxbow Village HOA, Rancho Sereno Neighborhood Association, SR Marmon Neighborhood Association, TRNA, West Side Coalition of Neighborhood Associations.

4. The street connectivity variance was ultimately sent to the Development Review Board (DRB) and was the subject of a separate appeal (AC-18-20) that was ultimately remanded back to the DRB. That remand order is in the record at Supp. R. 567.

49 single family dwelling lots with a minimum square footage of 10,890 on 8.39 acres within the  
50 project site [R. 691].

51 On October 10, 2018, the record reveals that Consensus Planning, City Staff and  
52 representatives of the La Luz and Bosque Montano homeowners associations held a meeting  
53 to discuss the site plan [R. 749]. A similar meeting took place on October 23, 2018 but with  
54 the representatives of the TRNA [R. 769]. On October 24, 2018, Brandon Gibson, Associate  
55 Director and Acting Open Space Superintendent of the City Parks and Recreation Department  
56 submitted a letter to the EPC outlining several concerns and made several recommendations  
57 for the protection of the sensitive lands on the site and in the abutting MPOS [R. 642-647].

58 The record shows that the EPC had conflicting City Planning Staff Reports at its  
59 November 8, 2018 public hearing on the subject application. The City Planner recommended  
60 in one Staff Report that the EPC defer its hearing and in another similar report she  
61 recommended that the EPC approve the application [R. 1288 and Supp. R. 496].  
62 Notwithstanding the conflicting Reports, the EPC deferred its public hearing [R. 1286]. I note  
63 that in an October 31, 2018 email to City Planning Staff, the record shows that Consensus  
64 Planning requested a deferral so that its Staff can more “adequately address” the issues raised  
65 by City Staff [R. 1289]. Notably, too, a primary basis for the deferral appears to be because  
66 the applicant “needs to fully address Sensitive Lands issues prior to the EPC hearing...”  
67 including protection of the adjacent waterway, presumably from water-runoff [R. Supp. R. 81,  
68 83].

69 Apparently, the EPC hearing was deferred to the December 13, 2018 EPC docket [R.  
70 1274]. The record in this matter is confusing for events that occurred between the first and

71 second EPC scheduled hearing in this matter. Before the December 2018 hearing, however,  
72 City Planning Staff submitted its supplemental updated Report to the EPC and recommended  
73 that the EPC approve the amended application with numerous conditions [Supp. R. 503-522].  
74 Regarding the amendments to the original application, the December 2018 City Planner's Staff  
75 Report shows that applicant modified the plan from one cluster development on the site with  
76 23 additional RA zone-sized lots to an application with four cluster developments and four RA  
77 zone-sized lots at the project site [Supp. R. 504].<sup>5</sup> The apparent purpose for the modification  
78 was to increase space for buffering the MPOS.

79 Before the EPC hearing, on December 5, 2018, the City Development Review Board  
80 (DRB) approved a variance for the proposed street layout in the site plan. In the interim, the  
81 record reflects that City Planning Staff, Staff from OSD, Staff from the Parks and Recreation  
82 Department and Consensus Planning's team held a meeting on December 12, 2018 to discuss  
83 the application [Supp. R. 246-249]. Despite the recommendation of approval with conditions  
84 in the Staff Report, on December 13, 2018 the EPC again deferred its hearing on the matter,  
85 this time for 60 days until its February 14, 2018 docket [R. 1274-1275]. Apparently, although  
86 not clear from the record, issues regarding City Staff's recommended conditions of approval,  
87 as well as details of the site plan, needed to be resolved [Supp. R. 263-267].

88 As a result of the issues raised and the recommendations of City Staff, Consensus  
89 Planning again amended the site plan, presumably to address the concerns, and its Staff sought  
90 to again meet with City Staff to discuss the new site plan and the issues raised [Supp. R. 263-  
91 267]. The supplemental record reflects that City Staff again met with Consensus Planning Staff

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5. RA zone-size lots are lots that are 10,890 sq. ft. or less in size.

92 in early January 2019 to discuss OSD recommendations and City Staff's recommended  
93 conditions to the EPC [Supp. R. 286].

94 On January 17, 2019, Consensus Planning submitted its amended site plan to all City  
95 Staff involved in the review process for their review before the February 14, 2019 EPC public  
96 hearing [Supp. R. 295]. At this time, along with review by the City's Engineers, Staff from  
97 OSD, Staff from the various sections of the Planning Department, and the Parks and Recreation  
98 Department, the City Forester also became involved in the review process for review of the  
99 extent to which existing trees and vegetation at the site can and should be preserved [Supp. R.  
100 301].

101 The Supplemental Record reflects that on or about February 5, 2019, documents labeled  
102 "public comments" were submitted to City Planning Staff by the TRNA's counsel and were  
103 placed in the record for EPC review [Supp. R. 323]. The record shows that at about this time  
104 the City Forester conducted a site inspection to "evaluate the condition of existing trees on the  
105 property" and to ascertain which trees can and should be preserved and or replaced [R. 442,  
106 Supp. R. 349]. Apparently, after the site evaluation and after a meeting between the City  
107 Forester and Consensus Planning Staff on February 6, 2019, Consensus Planning Staff  
108 supplemented the record with additional documentation including exhibits identifying  
109 sensitive areas at and around the site [Supp. R. 325, 329, 331]. It is clear from the record that  
110 the site plan had been again modified by February 7, 2019 [Supp. R. 333].

111 Over objections from Consensus Planning Staff, by February 8, 2019, the City Planning  
112 Director advised Consensus Planning (via email) that because the additional documentation  
113 and modified plans were submitted late, City Planning will recommend to the EPC that it again

114 defer a public hearing of the merits of the application [Supp. R. 339, 340-347]. The record  
115 shows that Consensus Planning objected to another deferral. [Supp. R. 340]. In the meantime,  
116 City Staff continued their review of the modified site plan [Supp. R. 348-424, R. 456]. At the  
117 EPC's February 14, 2019 public hearing on the application, the EPC deferred its merits review  
118 and hearing on the matter to its March 14, 2019 public hearing docket [R. 435].

119 Then, on March 4, 2019, in a letter dated March 1, 2019, presumably as a result of the  
120 numerous ongoing reviews and issues raised by City Staff and others, including Appellants,  
121 Consensus Planning again modified its site plan, changing the cluster designs to create  
122 additional open space at the site and an increased buffer along the eastern and southern edges  
123 of the site, presumably to better protect a steep bluff in the MPOS [Supp. R. 426, R. 151-161].  
124 The final site plan submitted to the EPC includes two abutting cluster developments (Clusters  
125 "A" and "B") that have increasing densities on the western side of the development. The two  
126 cluster developments have lot densities ranging from 5,500 to 12,000 [R. 101] and have an  
127 overall density of 3.2 lots per acre on the 22.75-acre site plan [R. 429]. Cluster "A" has 36 lots  
128 and Cluster "B" has 40 lots [ R. 429]. Each cluster has private open space totaling 7.38 acres  
129 of land which primarily sits at the eastern side of the application site. [See color coded site  
130 plan at R. 428-430.]

131 Before the March 14, 2019 EPC hearing, City Planning Staff submitted to the EPC its  
132 revised Staff Report [96-137]. In the Report, City Planning Staff recommended that the EPC  
133 approve the site plan but with nearly 50 conditions [R. 127-129]. On March 14, 2019, the EPC  
134 held its public hearing, and after hearing testimony and arguments, it adopted the conditions  
135 recommended by Planning Staff and approved the site plan [R. 87-93]. As described below,



the EPC's approval requires that the site plan be modified. These two timely appeals followed [R. 19 and 47]. A Land Use appeal hearing on both appeals was held on May 20, 2019. At the hearing, the TRNA Appellants supplemented the record with an additional 595 pages of documents.

In their appeals, Appellants raise over 20 issues of error. Many of the points of alleged error can be merged into a dozen or so general categories. Beginning with the issues raised in AC-19-6, Mr. Gully claims that the EPC erred as a matter of law when it approved the site plan's two cluster developments. Specifically, Mr. Gully claims that because the land use type of "cluster development" is stated in the IDO in its singular form as a noun rather than in its plural form "cluster developments," the IDO prohibits multiple cluster developments in a single site plan. He claims that the rules of statutory construction as described in the New Mexico Supreme Court case of *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, supports his argument. The TRNA joins in Mr. Gully's appeal.

TRNA claims a wider array of appellate issues and errors. Because it is undisputed that the application includes sensitive lands as defined by the IDO, and abuts MPOS, the TRNA claims that the applicant and/ or the City Staff are required to begin the subdivision and site design processes and the review evaluation with an analysis of site constraints related to sensitive lands. The TRNA claims that the City failed to start the review process with an analysis of site constraints and this failure is appealable error. In addition, the TRNA claims that the record is devoid of any analysis of material environmental impacts on the visual, recreational, or habitat value of the abutting MPOS which they claim is required under IDO § 14-16-5-2(H)(2)(b)2. TRNA also alleges that the construction plans as shown in the grading

158 and drain plans provide inadequate mitigation measures for protecting the MPOS.

159 TRNA also alleges several other deficiencies with the site plan. They claim that the  
160 proposed streets have insufficient access to the adjacent subdivision, the streets contravene the  
161 block size requirements of the IDO, that the proposed lots violate density requirements of the  
162 IDO, and that portions of the designated open space cannot qualify as open space because of  
163 size and/ or because of its proposed use on the spaces reserved for open space.

164 The next general category of errors alleged by TRNA are alleged Open Meeting Act  
165 (OMA) violations. Specifically, the TRNA alleges that City Staff necessarily made policy  
166 decision regarding the site plan that brings it into the fold of the OMA. Similarly, Appellants  
167 contend that City Staff engaged in meetings with the applicant as a policy-making body which  
168 violates the OMA. The TRNA also claims that at the March 14, 2019 EPC hearing, the EPC  
169 violated the OMA when it “closed” its meeting and considered the site plan off the record.  
170 Finally, the TRNA alleges that the EPC denied the opponents of the application due process  
171 because the Chair did not allow adequate cross-examination at the hearing.

172 As discussed in more detail below, I find that the City Staff did not acted inappropriately  
173 in their review, evaluation, and in working with the public and the applicants. The  
174 supplemental record entered into the record by the TRNA is a rare inside look of the internal  
175 operational and managerial review processes City Staff engaged in from July 2018 to days  
176 before the EPC finally approved the application on March 14, 2019. What these internal email  
177 communications also show is that City Staff were not only fully engaged in the MPOS issues  
178 and the IDO issues the application presented, but that City Staff did not act as a policy making  
179 body under the OMA. This is so because of the simple fact that decisions made at the meetings

180 between staff and applicant, if any, were clearly non-binding on the EPC. Appellants have  
181 not shown otherwise.

182 I also find that the EPC findings and its approval of the final site plan is well supported  
183 by the record. Contrary to Appellants' contentions, the record is extensive and includes what  
184 is necessary to support the EPC's decision. And, while the record does not include a singular  
185 formal comprehensive analysis of all site constraints and environmental impacts of the  
186 sensitive lands in and around the application site, the record does include multiple evaluations  
187 of the various site constraints from various City agencies that together satisfy what is required  
188 in the IDO. Moreover, I find that the record provided adequate information and evidence from  
189 which the EPC could determine that *material* impacts of the site on the MPOS are adequately  
190 mitigated.

191 Regarding the alleged OMA and Due Process allegations having to do with the EPC, I  
192 find that the EPC did not violate the OMA in the manners claimed. As described in greater  
193 detail below, the EPC's meeting satisfied what is minimally necessary under the OMA. I also  
194 find that because the EPC gave advanced notice of how it would allow cross-examination at  
195 the hearing, the manner it was allowed was reasonable under the circumstances (described in  
196 greater detail below).

## 198 II. STANDARD OF REVIEW

199 In an appeal, review of a decision from the EPC is a whole record review to determine  
200 whether the EPC acted fraudulently, arbitrarily, or capriciously; or whether the EPC's decision  
201 is not supported by substantial evidence; or if the EPC erred in applying the requirements of

the IDO, a plan, policy, or regulation [IDO, § 14-16-6-4(U)(4)]. At the appeal level of review, the decision and record must be supported by substantial evidence to be upheld. The Land Use Hearing Officer (LUHO) has authority to recommend that the City Council affirm, reverse, or otherwise modify the lower decision to bring it into compliance with the standards and criteria of the IDO, applicable City regulations, and any prior approvals related to the property [IDO, § 14-16-6-4(U)(3)(d)5]. The LUHO has authority to remand an appeal and set out the matters to be reconsidered [IDO, § 14-16-6-4(U)(3)(d)6].

**III. DISCUSSION**

**A. Multiple Cluster Developments Can be Placed in a Single Site Plan Provided Each Development Has the Required Setbacks.**

It is undisputed that the single site plan approved and modified by the EPC includes two cluster developments. Appellants contend that the IDO prohibits this. Although Appellants agree that there is no explicit prohibition in the IDO for placing multiple cluster developments in a single site plan, they contend that such a prohibition is implied in the terms “cluster development” in the IDO. Specifically, Appellants contend that because all references in the IDO to a cluster development are in the singular form of the land use type, under the rules of statutory construction, a “cluster development” must mean that only one cluster development can be allowed in any single site plan.

Is undisputed that there is no express prohibition in the IDO preventing two cluster developments in a single application site or site plan. To suggest that such a probation is *implied* merely from how a land use type is characterized in the IDO is unreasonable and it requires that language be read into the IDO that is not otherwise there.

226 The term “cluster development” in the IDO refers to a type of land use.<sup>6</sup> There are over  
227 50 other land use types and sub-types of land uses identified in the IDO’s Table of Allowable  
228 *Uses* and most of them are specified in their singular forms [IDO, table § 4-2-1]. Certainly,  
229 one cannot realistically apply Appellants’ logic that there is an implied prohibition for each of  
230 the singular forms of land uses referenced in Table § 4-2-1. To do so would lead to absurd  
231 results.

232 Appellants have an answer though. They contend that there are some land uses that are  
233 characterized in their singular forms such as “townhouse” in table § 4-2-1 that are also defined  
234 in other parts of the IDO in their plural forms. It is true that the land use type of “townhouse”  
235 is used both in a singular and in a plural form in various sections of the IDO. Appellants seem  
236 to suggest that if a land use is characterized in a plural form anywhere in the IDO, the implied  
237 prohibition is therefore inapplicable to that land use type. Following Appellants’ logic,  
238 Appellants’ argument fails because the term “cluster development” is also characterized in the  
239 IDO in its plural form in § 14-16-5-4(F)(3)(d).

240 But there is a more practical reason Appellants’ logic is flawed. As mentioned above  
241 under the rules of statutory construction we must refrain from reading language into an  
242 ordinance that is not there. The crux of Appellants’ argument is that in the IDO there is a latent  
243 prohibition hidden in a land use type that is specified in its singular form. Appellants’ argument  
244 runs awry of, and conflicts with, the rules of statutory construction laid out in *High Ridge*  
245 *Hinkle*, 1998-NMSC-050.

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6. In the IDO there are two distinctive definitions used for the term “cluster development.” One is a noun phrase that defines it as a land use type. The other definition is defined as a design technique. See IDO, Definitions, § 14-16-7-1. I presume Appellants are characterizing the use of the former.

At the March 14, 2019 EPC hearing, the City's Zoning Enforcement Officer (ZEO) testified that two cluster developments can be placed next to each other in a single site plan or application site [R. 329-330]. The ZEO is the City's designated person who has the delegated authority to interpret the IDO [IDO, § 14-16-6-4(A)]. The basis of his opinion is that if each cluster development satisfies all provisions in the IDO there are no limiting provisions in the IDO to prevent multiple cluster developments from being placed next to each other [R.330]. I find that the ZEO's interpretation is consistent with the statutory rules of statutory interpretation established by the New Mexico Supreme Court and described in *High Ridge Hinkle*. Accordingly, despite Appellants' best efforts in arguing that there is an implied prohibition, there is no prohibition that can be gleaned merely from the term "cluster development."

Next, Appellants claim that the site plan reviewed by the EPC at its March 14, 2019 public hearing violates the IDO. I agree with the Appellants that the site plan reviewed by the EPC at its March 14, 2019 hearing, without the modifications ordered by the EPC, is in form and in substance a single cluster development that exceeds the allowed number of dwelling units allowed under the IDO. If the EPC had not adopted its Condition Number 5 relating to setbacks, the EPC would have erred. Condition Number 5 essentially requires that the site plan be modified to include RA zone setbacks and that the setbacks must be applied to each of the two cluster developments independently. To the extent that the EPC's conditions, specifically those regarding setbacks, require that the site plan be modified to meet the IDO, I find that the EPC did not err in approving the site plan.

To understand this admittedly complex issue, the relevant IDO provisions must be put

in context. The IDO has numerous regulatory provisions for cluster developments. As stated above, a cluster development is a design technique and it is also a land use type of development [IDO, Part 14-16-7]. As a design technique its purpose is to “concentrate[] buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands.” As a development type, it is the concentration of “single-family or two-family dwellings on smaller lots than would otherwise be allowed in the zone district in return for the preservation of common open space within the same site, on a separate lot, or in an easement.” Under the IDO, a cluster development requires a minimum of 1-acre of land [IDO, § 4-3(B)(2)(a)]. Curiously though, there is no maximum land size for cluster developments. A maximum of 50-dwelling units in a cluster development is allowed [IDO, § 4-3(B)(2)(c)]. There are many provisions regarding lot design and layout of cluster developments that brings perplexity into the issue and which the applicant relied on in creating their two-cluster development site plan.

First, it is clear that the application site is in a RA zone where lots may not exceed 10,890 square feet [IDO, Table 5-1-1]. However, the application site also is in the Coors Boulevard Character Protection Overlay zone (CPO-2). In a CPO-2 zone, “Cluster development design on land above the flood level shall be used to the *maximum extent practicable*, and the floodplain shall be used as open space” (emphasis added) [IDO, § 3-4(C)(5)(a)]. Notably, I find that this provision broadly provides strong policy support for placing multiple cluster developments that meet site design and layout provisions within the CPO-2 Character Overlay Zone and particularly at the application site.

Next, regarding site design and layout requirements, in IDO § 14-16-4-3(B)(2)(b), “zone

district lot and setback requirements, including contextual standards in Subsection 14-16-5-1(C)(2), *shall apply to the project site as a whole, but not to individual dwellings.*” (Emphasis added). At the LUHO hearing, the applicants’ Planner, James Strozier testified that it was this provision that he believed allows the two cluster developments in the site plan to be merged for purposes of setbacks. [See R. 433 for a rendering of the setbacks proposed by the applicants.] This application of setbacks raises a fundamental question regarding what is the “project site.” The applicants believe that the project site is synonymous with the 22.75-acre application site. In support, they point to the definition of a project site in the IDO. In the IDO a project site is:

A lot or collection of lots shown on a Subdivision – Minor or Major or on a Site Plan. This term refers to the largest geography specified in the earliest request for decision on the first application related to a particular development. For example, if a large parcel is subdivided and submitted for development in phases, any regulation referring to the project site would apply to the entirety of the land in the original parcel included in the Subdivision application [IDO, § 14-16-7].

However, it is undisputed that there is no intent to phase the developments at the application site [R. 398]. Thus, the example regarding phasing in the above definition is inapplicable. We are left with the definition of “a collection of lots shown on a subdivision” as the project site. It is also undisputed that a “site area” cannot exceed 50-dwelling units in § 4-3(B)(2)(c). In fact, the cluster development regulations of § 4-3(B)(2), including the 50-dwelling unit limit are limitations for the “project site.” Thus, if setbacks apply to a project site, then isn’t it reasonable that the 50-dwelling unit-limit equally be applicable to a project site as a whole? The answer is yes, because the term must be applied in one consistent manner.

Appellants are correct to cry foul in this regard because the applicants’ rendering of its



316 site plan manipulates the “project site” to maximize density. They applied the term “project  
317 site” to the 22.75 acres as a whole in order to avoid the setbacks required for each cluster  
318 development separately, but then they applied the term “project site” to each individual cluster  
319 development for purposes of the 50-dwelling unit limitation. EPC Condition Number 5  
320 prevents this manipulation.

321         It cannot be emphasized enough that without Condition Number 5, the 50-dwelling unit  
322 limitation for cluster developments in the IDO would be rendered meaningless with the site  
323 plan’s two-cluster developments. EPC Condition Number 5 brings the site plan into  
324 conformance with the 50-dwelling unit limit and with the setback regulations for cluster  
325 developments in the IDO. Thus, I find that the EPC did not err in its final decision with regard  
326 to the clustering of dwelling lots and with approving two cluster developments side-by-side.  
327 However, the setbacks for each development must be established and the site plan must be  
328 modified to satisfy EPC Condition Number 5.

329         Appellants also challenge the cluster *design* depicted in each of the cluster  
330 developments. They suggest that the lots are not arranged as a true clustering of lots and  
331 therefore the design violates the intent, purpose, and meaning of a cluster development.  
332 Specifically, they claim that the design is nothing more than an “arithmo-geographic exercise  
333 to maximize density somewhat akin to gerrymandering a political map.” While I agree that  
334 the design is awkward, I remind Appellants that the design accomplishes several significant  
335 policy goals in the IDO and in the Comprehensive Plan. Notably, the overall purpose of  
336 clustering lots is to bunch up lots to create more space for recreation, or preservation of  
337 sensitive lands and open space. This is a significant purpose that is immensely important at the

338 application site. And because the application site is in the CPO-2 overlay zone clustering is  
339 intended “*to the maximum extent practicable*” [IDO, § 3-4(C)(5)(a)]. Moreover, there are  
340 numerous Comprehensive Plan policy goals and policies encouraging the siting of cluster  
341 developments to preserve sensitive lands and for creating open space. In its final decision, the  
342 EPC identified numerous goals that are satisfied, or were furthered in this case. Appellants did  
343 not challenge any of them in their appeals. I find that they are all applicable [R. 88-89].

344 Appellants, however, have submitted no support for their arguments that the designs of  
345 clusters in the site plan are erroneous under the IDO. After reviewing the IDO, I find that  
346 there are no design standards for how lots are to be assembled and located in a cluster  
347 development. Thus, they can be aligned in a “serpentine” manner. I also find that the design  
348 of each cluster (other than the setback discrepancies resolved with Condition Number 5)  
349 demonstrate that the design satisfies the policy goals noted above in the Comprehensive Plan.

350 It is undisputed that the south-eastern portion of the application site includes sensitive  
351 lands because there is a watershed, and the topography is sensitive land for various reasons.  
352 Among them, there is a steep bluff that is adjacent to the MPOS. The western side of the  
353 application site is less sensitive and is closer to adjacent subdivisions that have higher densities.  
354 The lots in the western portion of the site plan emulate the lot densities to the west, while  
355 creating lower densities for lots that are closer to the MPOS. In addition, the design of the  
356 clusters allows a large portion of private land to be preserved as open space. This open space  
357 abuts the MPOS. Thus, as the EPC found, regardless of the site plan’s “serpentine” design, it  
358 remains undisputed that the design accomplishes the numerous goals and policies of the  
359 Comprehensive Plan.

**B. Site Constraints Related to Sensitive Lands Issues Raised.**

Appellants next claim that the evidence demonstrates that the City and presumably the applicants did not “begin” the subdivision site design and review process with an analysis of the site constraints related to the sensitive lands at or adjacent to the application site. Appellants contend that the Planning Staff abused its discretion.

However, an abuse of Staff discretion is not a legitimate basis for an appeal. Under the IDO, “[t]he criteria for review of an appeal shall be whether the decision-making body” erred [IDO, § 6-4(U)(4)]. The City Council has not delegated to the LUHO authority to review alleged abuses of discretion regarding Staff’s review processes. In this matter, as discussed in more detail in Section H below, for purposes of an appeal, Staff were engaged in their responsibilities as fact finders for the EPC and not as final decision makers. However, because it is undisputed that the application site includes sensitive lands and abuts the MPOS, the issue of analysis of the site constraints of sensitive lands is of great public importance, and it should be explored to determine if there were failures in the review processes that may have boiled over into the EPC’s decision making authority over the application.

It is undisputed that IDO § 5-2(C)(1) requires that sensitive land site constraints be the beginning point of any subdivision site design and review process. Presumably, the purpose of IDO § 5-2(C)(1) is to ensure that the ten identified types or categories of sensitive lands listed in IDO § 5-2(C)(1) can be avoided or protected. These ten categories of sensitive lands are why site constraints must be considered in the subdivision and site design review process.

In general, the totality of the record in this appeal demonstrates that as the application review process progressed, opponents of the application became more engaged in the process.

382 So, too, did City Planning Staff, specifically with issues related to preservation of the sensitive  
383 lands at the site, buffering the MPOS, and identifying and protecting environmental elements  
384 at the site. It may not have happened as quickly as (or in the manner) Appellants contend it  
385 should have; nevertheless, it did happen before the EPC began its substantive public review at  
386 the March 14, 2019 hearing on the matter.

387 The record does reflect however, that even at the initiatory PRT meeting that took place  
388 on July 23, 2018, issues pertaining to sensitive lands was a topic of discussion at least in form  
389 [R. 689-690]. It is undisputed that the “Site Information” portion of the PRT Meeting Notes  
390 has the hand-written word “yes” written next to the line that states “MPOS or Sensitive Lands”  
391 [R. 689]. Moreover, in the 595 pages of supplemental documents submitted by Appellants,  
392 there are well over 100 email communications between the Consensus Planning Staff and City  
393 Staff. Of the 100 plus emails, there are over 50 communications that relate to the applicable  
394 listed sensitive land categories identified in IDO § 5-2(C)(1).

395 After the initial PRT Meeting, as early as August 10, 2018, City Staff made numerous  
396 queries to Consensus Planning about a host of issues related to site constraints at the  
397 application site [Supp. R. 7-12]. As laid out in the history section above, the August 13, 2019  
398 meeting involved discussions about the MPOS regulatory requirements in the IDO [See Supp.  
399 R. 17]. It cannot be disputed that the MPOS to the East and South of the application site  
400 includes at least five of the listed sensitive lands categories in IDO § 5-2(C)(1). The MPOS is  
401 a site constraint because it includes at least five sensitive lands category types listed in IDO §  
402 5-2(C)(1).

403 The mission of the Staff with City Parks and Recreation Department is to protect and to

maintain the MPOS. The Open Space Division (OSD) of the Parks and Recreation Department is particularly tasked with overseeing the MPOS. The record in this appeal demonstrates that City Planning Staff required that the applicants contact and submit their plans to OSD early in the process [Supp. R. 9 and R. 664]. Later in the review process (October 2018), OSD Staff evaluated the site for its sensitive lands, identified issues of concern, negotiated greater protections to the MPOS, and obtained increased open space at the site [R. 642].

In early 2019, the City Forester had become involved in evaluation of the site for one category of sensitive lands listed in IDO § 5-2(C)(1)—large stands of mature trees [§ 5-2(C)(1)(i)]. The City Forester works in the Parks Management Division of the OSD [R. 42]. After a site evaluation, the City Forester drafted a brief report to the City Planner assigned to reviewing the application [R. 442]. Upon receiving the report, the record shows that the City Planner then advised the applicants on February 11, 2019, that the large stands of mature trees must be clearly demarcated for the EPC presentation and the grading plan needs to be reviewed for preservation of trees [Supp. R. 348].

In addition, a clear pattern emerges in the evolution of site plan iteration modifications throughout the entire review process. One need only compare the first proposed site plan with the final one to see that the MPOS, the applicable sensitive lands types listed in IDO § 5-2(C)(1), and open space requirements impacted the design and review process. A comparison of the sketch plan and site plan at R. 425 and R. 426 respectively with the most recent site plan, Open Space exhibit at R. 429 and R. 430 respectively proves this point. As the review process progressed, the site plan was modified several times and with each modification land for open space increased at the site. As open space increased, buffer protection for the sensitive

land types also increased. I find that the sensitive land constraints generally guided the review process and was the primary basis for at least two EPC deferral recommendations from City Planning Staff.

I think it is noteworthy that the record reflects an additional element that may have forced better protections to the sensitive lands in the review process. Early in the process, a vocal public also became involved in the review of the site plan [R. 749-795]. The public's involvement clearly impacted the progress of modifications to the various site plan versions.

**C. Appellants have Not Shown that the Proposed Cluster Developments Will Create Material Negative Environmental Impacts on the Visual, Recreational, or Habitat Values of the Major Public Open Space.**

Appellants next assert that there should have been an analysis of “material negative impacts” as required under IDO, § 5-2(H)(2)(b)2. They further claim that the EPC erred because there was no such analysis. Appellants’ argument assumes that IDO, § 5-2(H)(2)(b)2 requires a formal type analysis of negative impacts. It does not. What the IDO explicitly and clearly requires is that material negative impacts are not created by the proposed subdivision.

The EPC explicitly made several findings regarding how the subdivision impacts the MPOS. First, it found that “[t]he adjacent Major Public Open Space is protected by the Site Plan's private open space buffer” [R. 88]. Next, it found that:

the natural features on the eastern portion of the site adjacent to Major Public Open Space are being preserved via the private open space buffer on the proposed Site Plan, which will also help preserve views into and from the Major Public Open Space [R. 89].

In addition, the EPC found that:

grading is designed to direct stormwater away from the steep slopes at

the southeast of the project site, which will help reserve the adjacent Major Public Open Space for future generations [R. 89].

In addition, it found that the “Bosque will be undisturbed or revegetated to a natural setting” [R. 89]. The EPC also found that the “project has appropriate buffers and transitions from the Major Public Open Space that meet or exceed what is required [ R. 89]. Finally, the EPC found that the site plan “mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable” [R. 90]. I also note that these findings were not disputed by Appellants in these appeals. These findings all concern issues related to how the site plan and subdivision impacts the “visual, habitat or recreational values of Major Open Space” under § 5-2(H)(2)(b)2. Moreover, I find that these findings are supported in the voluminous record with substantial evidence, [See R. 99-122; 138-143; and 153-161.] The record of the hearing also demonstrates that individual EPC members had a robust discussion about the environmental concerns and specifically about protecting the MPOS.

Thus, there is substantial evidence in the record that shows that the EPC considered impacts on the MPOS, and that negative *material* impacts which could be created by the subdivision were either not found, will be resolved, or sufficiently mitigated. I also note that in their appeals the Appellants have not identified or otherwise alleged with any specificity that there are negative material impacts created by the subdivision. In the face of the contrary substantial evidence in the record, without more, Appellants’ claims of error falls short.

**D. Street Connectivity Issues Raised by Appellants Are Matters Properly Before the DRB.**

Appellants have generally raised issues pertaining to the street connectivity requirements

of the IDO as they relate to the site plan. Citing to IDO, § 5-3(E)(2)(a), Appellants generally claim that the IDO requires access to the adjacent subdivisions and that the EPC should reconsider the single access shown on the site plan.

I note for the City Council that the issue of street connectivity was the basis for a variance application regarding the application site in an earlier appeal (AC-18-20). In that matter, the DRB approved a variance to street connectivity. However, in the appeal, the City Council delegated it to the LUHO and after an appeal hearing, the variance decision was vacated and remanded to the DRB with instructions to consider in a new hearing. Moreover, the EPC has the authority to delegate to the DRB technical issues of regarding the internal proposed streets, drainage issues, and many other technical issues of subdivision construction [IDO, § 6-6(H)(2)(d)]. In its decision in these consolidated appeals, the EPC unmistakably was aware of the DRB's actions taken on the street connectivity questions. [See R. 90, Finding 9]. I find that street connectivity issues and issues of the internal streets in general, if any, presented by the site plan are properly before the DRB and not the EPC. These issues are not ripe for appellate review because the DRB has not made any final decision about them that are appealable.

**E. The EPC Erred Regarding Block Length Questions Only Because it did Not Clearly Delegate that Matter to the DRB. The Decision Can be Modified to Remedy the Error.**

Appellants next claim that the block length of the proposed internal local streets depicted in the site plan are contrary to what is allowed in the IDO. Appellants ask that the site plan be remanded to the EPC to address the discrepancies.



502 A subdivision block is defined as “[a]n area that is bounded but not crossed by streets,  
503 railroad rights-of-way, waterways, unsubdivided areas, or other barriers” [IDO, § 5-4(F)(3)].  
504 In addition, the IDO sets general limitations to subdivision block lengths and establishes a  
505 ≤600 length as a *guideline* [IDO, Table 5-4-1]. It is apparent however, that the ≤600 length is  
506 not an unyielding maximum number as Appellants seem to suggest. Table 5-4-1 in the IDO is  
507 only a guideline summary “for reference only” and the Development Review Manual (DPM)  
508 criteria for lengths “shall prevail” in cases of conflict [See IDO § 5-4(E)(3)(a)].

509 In its decision, the EPC set many conditions of approval, and it delegated to the DRB  
510 several well-defined tasks related to many technical site plan issues. In doing so however, the  
511 EPC failed to explicitly delegate to the DRB review of the block length questions regarding  
512 length under the DPM. It cannot be disputed that the DRB is the appropriate body to address  
513 DPM matters regarding block length. The EPC did not address block length in its review of  
514 the site plan nor did it expressly delegate this review to the DRB.

515 Arguably, however, as City Planning Staff have argued, the EPC did delegate *all*  
516 technical issues to the DRB. However, it is not clearly apparent in the official decision of the  
517 EPC that this includes block lengths. Thus, I find that the EPC erred by not explicitly  
518 delegating the issue of block length to the DRB. However, a remand for this single issue is  
519 not recommended or even necessary. In the IDO, the LUHO has authority to recommend that  
520 the City Council “modify the lower decision to bring it into compliance with the standards and  
521 criteria of the IDO” [IDO, § 14-16-6-4(U)(3)(d)5]. I therefore respectfully recommend that the  
522 City Council modify the EPC’s decision to include an additional condition requiring the DRB  
523 to evaluate block length under the DPM standards.

**F. The Site Plan Does Not Violate the IDO requirements for its Designated Area of Consistency**

Next, Appellants allege that because the application site currently has two existing “platted, taxed assessed lots” and residential dwellings, IDO, § 5-1(C)(2)(b) is applicable to the site and the EPC erred because it failed to apply this section of the IDO. Section 5-1(C)(2)(b) states in relevant part:

In any Residential zone district in an Area of Consistency, the minimum and maximum lot sizes for construction of new low density residential development *shall be based* on the size of the Bernalillo County Tax Assessor’s lot, or a combination of adjacent Tax Assessor’s lots, in the block where the new low-density residential development is to be constructed, rather than on the size of the individual subdivision lots shown on the existing subdivision plat. (Emphasis added.)

However, this section is inapplicable to the application site because the paragraph that precedes this paragraph in the IDO, expressly exempts cluster development subdivision types from the contextual lot size requirements of § 5-1(C)(2)(b) [See § 5-1(C)(2)(a)]. Thus, the EPC did not err.

Regarding the designated Area of Consistency, Appellants also allege that because the application site is within a designated area of consistency, the proposed residential developments, must, but do not, reinforce the character and intensity of existing development in the area as required by IDO, § 6-7(F)(3)(b). However, I find that there exists substantial evidence in the record to support the EPC’s finding that the proposed densities and residential uses in the application site are homogenous with the uses and the densities of the adjacent subdivisions around the application site. There is unchallenged substantial evidence in the record to support this finding. City Planner Somerfeldt did the comparable analysis and found:

552 The request for a site zoned R-A is consistent with Goal 4.1, Policy 4.1.1  
553 and Policy 4.1.2. To the west lies the R-1 B zone with a minimum lot size  
554 of 5,000 square feet. To the north lies the R-1 C zone with a minimum lot  
555 size of 7,000 square feet. To the south and the northeast lies the R-ID zone  
556 with a minimum lot size of 10,000 square feet. The subject project's lot  
557 sizes range from approximately 5,500 square feet to over 12,000 square  
558 feet [R. 101].  
559

560 The EPC adopted these findings in its decision and Appellants did not dispute them in these  
561 consolidated appeals. Because the uses are the same (residential), and the densities are similar  
562 to the adjacent subdivisions' densities, the proposed developments in the site plan do not  
563 conflict with the established character or intensities in the areas. Appellants have not put forth  
564 any evidence that would tend to show otherwise. Thus, the EPC did not err in evaluating the  
565 site plan against the backdrop of the designated Area of Consistency requirements.  
566

#### 567 **G. Alleged OMA and Due Process Violations at the EPC Hearing.**

568 As for the OMA, Appellants claim that the EPC defied the OMA when it "closed" its  
569 public hearing to "apparently...facilitate discussions among Commissioners" outside of the  
570 public's eye [Appl. Arg., p. 10]. The Open Meetings Act is a State law designed generally to  
571 keep meetings by decision-making bodies open to the public. Appellants are correct that the  
572 EPC is a "public body" and that the OMA applies to the EPC. However, after reviewing the  
573 record transcript of the March 14, 2019 public hearing, I find that the EPC did not "close" the  
574 hearing to meet privately about the application as Appellants suggest. I also find that without  
575 guesswork, there is insufficient evidence in the record that EPC members had an off the record  
576 discussion regarding the site plan.

577 The record transcript establishes that the EPC took a total of three "breaks" during the

578 extended hearing on the application [R. 401]. And although one can speculate, as do  
579 Appellants, that the purpose of the break was to have an off record “discussion” about the  
580 application, speculation is not the standard to support an appeal. It is substantial evidence,  
581 and the words used by Commissioner McCoy just before the questionable break was taken  
582 requires conjecture to establish an impermissible OMA violation.

583 Appellants do not contend that the transcribed minutes are inaccurate. Commissioner  
584 McCoy stated the following at the public hearing:

585 Commissioner Hudson earlier made a request that we might have a brief  
586 period of time to get our notes together and have a brief discussion before  
587 all of us weighed in finally. And with your very kind remembrance, I  
588 was trying to get a word in. I’d wait until then if that were the will of the  
589 commission [R. 401].  
590

591 Then Chairman Serrano announced that a “break” would be taken [R. 401]. Without  
592 conjecture, this evidence is insufficient to establish that the meeting was closed for an off-the-  
593 record discussion. Commissioner McCoy’s comment can have multiple implications and  
594 meanings, and without additional evidence, it would be inappropriate to engage in speculation  
595 as to intent, and as to what genuinely occurred on the break. I note also that when the EPC  
596 reconvened the meeting, there is nothing in the record that could support Appellants’  
597 allegation.

598 Regarding alleged due process violations, Appellants contend that the EPC Chair did  
599 not allow reasonable cross-examination at the hearing, that representatives of neighborhood  
600 associations were not allowed adequate time to speak under the EPC’s own rules of conduct,  
601 and that these alleged transgressions amount to due process violations. Provided that  
602 fundamental principles of justice and procedural due process are followed, the EPC as a quasi-

judicial body is allowed more flexibility than courts in the judicial branch are allowed with rules that impact due process.

After review of the record, I find that the EPC Chair did fail to follow its own Rules of Conduct regarding the time the Chair is required to give neighborhood association representatives to speak at hearings. In short, EPC Rule B.5, expressly requires that the Chair allow neighborhood representatives five-minutes to speak at hearings. During the March 14, 2019 hearing on the application, it is undisputed that the Chair accorded less than five-minutes to four neighborhood representatives who spoke at the hearing [R. 357, 375, 376, and 377]. When the association representatives protested, the Chair evaded the issue and in one case during the speaker's protest to the two-minute time decision, the Chair advised the speaker that "the clock is running" [R. 357]. Appellants seek a remand for the transgressions.

In reviewing the record, however, I find that the EPC did give advance notice that all speakers would be allowed two-minutes [R. 333]. Perhaps, it was because of the number of interested people that showed up at the hearing that caused the Chair to modify the rules. That is unclear from the record. What is clear is that the EPC hearing in this matter was inordinately long, and the EPC heard from a total of 50 speakers at the hearing. The totality of the record demonstrates that the opponents of the project made their criticisms known. And although the EPC truncated some speakers' time, a remand will not change the outcome just because four speakers did not have all the time they needed to speak. Despite Appellants' arguments, I find that minimal due process was satisfied. I also find that under the circumstances, the EPC balanced due process with making sure the hearing progressed efficiently. In my earnest opinion, a remand will not substantively change the outcome or decision of the EPC. If the

625 EPC had truncated speaker time further and did not give the public advance notice of the  
626 change in rules, a remand perhaps would be necessary. But that was not the case here.  
627 Therefore, a remand is not recommended.

628         Next, Appellants claim that the EPC Chair refused “reasonable” cross-examination. I  
629 respectfully disagree. Cross-examination was allowed only by written questions submitted to  
630 the Chair. Under the circumstances, because there were 50 speakers total, and because the  
631 hearing was very long, the Chair exercised his authority over the hearing in a manner that did  
632 not substantially affect the due process rights of the public or the parties. As with speaking  
633 time, the Chair of the EPC has authority to establish an orderly manner of cross-examination  
634 that is efficient and reasonable. The record shows that the Chair gave advance notice to the  
635 public of how cross-examination would proceed [R. 333]. In fact, the Chair gave advanced  
636 notice of the written cross-examination process a second time just before the second break was  
637 taken [R. 381]. I find that those who engaged in cross-examination had adequate time to write  
638 questions and submit them to the Chair. Although the Chair “vetted” questions before reading  
639 the questions on the record, in comparing the questions to the transcript, it appears the vetting  
640 was primarily to weed out duplicate questions [R. 381-385 and Supp. R. 584-595].<sup>7</sup> I find that  
641 under the circumstances, reasonable cross-examination was allowed.

642

643

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645

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7. Notably, the Appeal record did not include the written cross-examination questions. The Appellants supplemented the record with the questions [Supp. R. 584-595].

646 **H. Alleged OMA Violations and Other Allegation Having to Do with City Staff**  
647 **Meetings and Use of Discretion.**

648  
649 *i. Decision-Making Authority of City Staff*

650 Appellants next allege that the EPC delegated “unbridled” discretion to the City  
651 Planning Staff to negotiate deviations and requirements under the IDO in violation of New  
652 Mexico law. They further claim that Staff made technical decisions regarding the IDO for the  
653 EPC and that the discretion that is wielded by Staff at the EPC hearing circumvented the EPC’s  
654 authority to be the final decision-maker. Appellants also generally assert that the EPC must  
655 not allow the City Staff to accept incomplete applications, make decisions regarding  
656 interpretation of the IDO, and negotiate deviations and waivers of requirements of the IDO.  
657 Appellants’ arguments assume too much under the law and under the facts in the record.

658 We must not lose sight that in an appeal, it is not the discretion of the City Staff that  
659 is appealable in this matter. The focus necessarily must remain on the final decision-maker  
660 [IDO, § 6-4(M)(4)(b)].<sup>8</sup> In this matter it was the EPC who was the final decision-maker prior  
661 to the appeals.

662 There are, however, other more substantive matters in which City Staff are expressly  
663 authorized to decide on, and which are appealable [See IDO, Part 14-16-6, Table 6-1-1].  
664 Notwithstanding, in this matter, there are no facts in the record that can support that City Staff  
665 exercised its substantive decision-making authority under the appealable matters described in  
666 Table 6-1-1 of the IDO. Thus, in these appeals, Appellants are challenging Planning Staff’s  
667 day-to-day type of decision-making responsibilities.

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8. In some appeals, City Staff decisions are appealable. [See IDO, § 6-4(U)(1)(a) and (b).] The record in these appeals does not support that there were City Staff appealable decisions.

Staffs' ministerial functions encompassing discretionary decision-making authority are not appealable under the IDO. These non-appealable decisions and functions concern the day-to-day administration of the Planning Department Staff under the IDO [§ 6-2(B)(1)]. The IDO does not establish a right to appeal decisions Staff make during their day-to-day performance of their responsibilities in the review of land use applications. Moreover, Appellants have not demonstrated such a right exists for these functions.

Regarding these functions, Appellants claim first that the EPC erred because the City Staff accepted an incomplete application from Consensus Planning in July 2018. Although the decision to accept a site plan is not appealable, the issue is moot for another reason: The EPC did not decide on the first site plan that was accepted by Planning Staff in July 2018. The evidence in the record shows that the application and site plan evolved over many months, and the EPC had in its record the various site plans, but it ultimately decided on the final site plan that was submitted in early March 2019.

Appellants' other claims regarding City Staff exercising power over waivers and deviations of the IDO requirements are unsupported with factual support from Appellants. There is no evidence that City Planning Staff waived IDO requirements. There is evidence that City Staff advised the EPC regarding IDO requirements and made recommendations regarding such requirements under the IDO. However, in doing so, the evidence shows that Staff also clearly advised the EPC that the ultimate decision regarding IDO requirements remained with the EPC [R. 303, 345, 385, 388, 389, 390]. Thus, I find that the evidence supports that at the EPC hearing, Planning Staff only made "recommendations" to the EPC regarding substantive IDO requirements. The fact that City Planning Staff obviously have



influence with the EPC and the EPC obviously relies on the professional training and guidance of City Planning Staff is not evidence of error or abuse of discretion.

*ii. Staff Meetings with Applicants Are Not OMA Meetings.*

Appellants also claim that City Staff violated the Open Meetings Act when they engaged in “closed meetings” regarding the Gamma Development, LLC application. The basis of their argument is that City Planning Staff act as a “policy making body” in these meeting and in the review processes, presumably before the application gets to the EPC. Although Appellants’ argument is very creative and nuanced, the facts, the OMA, and the IDO do not support Appellants’ underlying characterization of City Staff’s involvement.

In support of their argument, Appellants first cite to § 6-2(B)(1) and particularly § 6-2(B)(1)(b) and (1)(c) regarding the “overall responsibilities of the Planning Director and the ZEO respectively.”<sup>9</sup> Section § 6-2(B)(1)(1) b) states in full:

The Planning Director has overall responsibility for the decisions of City Planning Department staff and may delegate authority as necessary to any staff member.

And, the relevant section of 6-2(B)(1)(c) states:

1. The Zoning Enforcement Officer (ZEO) is a member of the City Planning Department staff and has authority to interpret this IDO pursuant to Subsection 14-16-6-4(A) (Interpretation).
2. The ZEO has responsibility for making formal determinations as to how this IDO applies to specific situations, proposed development projects, and parcels of land.

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9. Appellants also cite to the ZEO’s authority regarding issuing Declaratory Rulings, but this section is not applicable principally because it is undisputed that an application for an official declaratory ruling was not submitted to the City in this matter.

Appellants claim that these provisions in the IDO demonstrate that Planning Staff are making decisions as a policy-making body does under the OMA, subjecting them to the OMA. I fail to see how these provisions lend support to Appellants' contentions. As stated above, unless Appellants can show that Staff exercised their decision-making authority under one of the appealable functions shown in Table 6-1-1 of the IDO, the focus is on the EPC. And, unless Appellants can demonstrate that Staff, in fact, usurped the decision-making authority of the EPC, Staff's day-to-day decisions and meetings with the applicants' planners cannot be considered policy-making decisions that were/ are binding on the EPC.<sup>10</sup> And if such decisions are not binding on the EPC, Staff cannot qualify as a policy-making body under the OMA.

Again, there are circumstances in which Staff decisions can be considered policymaking, but under the circumstances and facts in these appeals, there is no evidence to support that Staff exercised authority to an extent that bound or usurped the EPC's authority. Although Appellants generally claim that City Planning Staff make "critical decisions" regarding the application, without any specificity as to what those decision were, I can find no facts or decisions made by City Staff that bound the EPC in any manner. And, Appellants have not put forth specific facts in the record to support their contentions.

There are facts in the record that demonstrates City Staff were fully engaged in the process as factfinders and as advisors to the EPC. As described in the history above, the Supplemental Record of email communications show that Planning Staff were in constant communication with the applicant regarding the application and deficiencies thereof, and

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10. I note for the City Council, that the Attorney General's Eighth Edition *Open Meetings Act Compliance Guide* includes three fact pattern examples to show how fact-finding, advisory functions of staff are distinguishable from functions that are subject to the OMA. See Examples 6, 7, and 11 therein.

736 regarding requirements of the IDO. And, again, the EPC's reliance on the expertise and  
737 recommendations of the City Planning Staff is not in of itself evidence of a usurpation of the  
738 EPC's authority.

739 In addition, I find nothing inappropriate with the meetings between the applicant and  
740 City Staff. By all appearances in the record, those meeting had everything to do with fact-  
741 finding. The meetings were not subject to the OMA because there is no evidence offered or in  
742 the record that such meetings bound the EPC's authority in any manner. How can Planning  
743 Staff administer their day-to-day responsibilities, review, and respond to inquiries from  
744 applicants and from the public without sometimes meeting with developers and or the public?  
745 Certainly, if a meeting occurred for some illicit purpose, then such a meeting can cross the  
746 boundary of lawfulness, but that is not alleged or supported by the facts. In general, meetings  
747 with developers and with the general public to discuss IDO requirements cannot be  
748 legitimately characterized as OMA violations.

749

#### 750 **IV. SUMMARY OF FINDINGS AND RECOMMENDATION**

751 In conclusion, except for block size, I find that the EPC did not error in its decisions  
752 regarding the site plan. Regarding block size, I recommend that the City Council modify the  
753 EPC's March 14, 2019 Official Notification of Decision, and add a new condition that requires  
754 the DRB, during its eventual review of the site plan, to also review and decide on the question  
755 whether the blocks satisfy the DPM.

756 Except for the modification of the EPC's decision stated in the preceding paragraph, I  
757 further recommend that Appellants' appeals should be denied. The record and decision of the

758 EPC is supported with substantial evidence. The EPC did not abuse its discretion, and it did not  
759 misapply or misinterpret the facts or the IDO requirements. The numerous conditions of  
760 approval, especially Condition Number 5, set by the EPC are essential to these findings.

761 The record shows that to appropriately satisfy the EPC conditions, the EPC and the  
762 applicant understood at the EPC hearing that a subsequent hearing before the EPC may be  
763 necessary if the site plan changes substantially. The IDO includes clear language that allows  
764 the Planning Director to determine what qualifies as a substantial (Major) change, necessitating  
765 another EPC hearing.

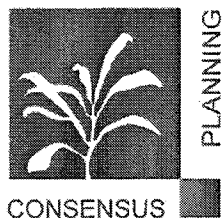


Steven M. Chavez, Esq.  
Land Use Hearing Officer

May 31, 2019

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February 10, 2020

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**Re: Project #2018-001402 Site Plan – EPC City Council Remand**

Dear Chairman Serrano:

The purpose of this letter is to itemize and express our concerns with the errors, incorrect IDO references, and mischaracterizations in the staff report for the above referenced case. This letter is provided as support for our request that the EPC proceed with the scheduled February hearing regarding this remand from City Council.

Overall, the applicants are concerned that staff has approached this as a de novo review, rather than an adherence to the City Council remand instructions. While the staff report attempts to organize this review according to the remand instructions, it extends well beyond the scope of the instructions and ignores item D. Other Matters in the City Council's remand instructions, which states:

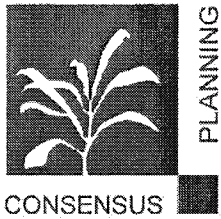
*"As to all other matters in this appeal that are not specifically remanded pursuant to the above, the recommendation and findings of the Land Use Hearing Officer (the "LUHO") are accepted and adopted. More specifically, to the extent not otherwise inconsistent with these findings for remand, the recommendation of the LUHO is accepted and adopted with the exception of the recommendations and findings contained in Page 11, Line 211 through Page 17, Line 359."*

The staff report should have included a summary of those matters addressed by the recommendation and findings of the LUHO that were accepted. The City Council, in their Finding D affirmed the LUHO's recommendations denying the appeal relative to sensitive lands, negative environmental impacts, street connectivity, block length, IDO Area of Consistency requirements, OMA and due process violations. In addition, the following concerns are hereby raised relative to the staff report:

#### **Remand Instruction 1 – Clusters and Setbacks Concentrated Buildings:**

This analysis contains several errors: First, it ignores the plain meaning of the word concentrated, which is defined by Merriam Webster as:

*"contained or existing or happening together in a small or narrow space or area: not spread out"*



Cluster A concentrates 33 lots on 6.59 acres of the 10.04 acres of land area. Clearly, this concentrates the buildings on a smaller space than if the lots were spread out over the entire property as would occur in a standard subdivision design. It is unclear what the basis is for the statement that the layout will be more compliant with the remand instructions if the “relatively small open space area is removed”. The small area of open space provides for several key requirements as outlined in the IDO, including use and enjoyment of the residents (this area includes a key trail connection providing connection for the lots to the west to the larger open space area) and provides visual access into the common open space from Tres Gracias Road. It also provides a view corridor that will work cooperatively with the applicant’s voluntary single story restriction on lots A-9 through 12 to mitigate impacts to views.

Cluster B concentrates 36 lots on 8.2 acres of the 12.71 acres of land area. The buildings (lots) are concentrated on the western portion of this area in order to maximize the protection of the sensitive land. The open space provided for this cluster is .61 acres above the requirement, which of course concentrates the buildings (lots) even more. Since a standard subdivision design wouldn’t provide any (or limited) open space, it is unclear what staff’s basis for their contention that Cluster B is a standard subdivision design. The stated reason is that the “linear form” creates this condition. It would probably be more accurate to say that the unique shape of the eastern end of the property, the need to avoid the sensitive land, and to provide for the maximum enjoyment of the created open space by the residents all dictate the way that the buildings (lots) are concentrated in Cluster B. As with Cluster A, the smaller open space area on the western portion of the cluster provides for key trail corridors that connect the property north to the City park and west to the larger open space created by Cluster A.

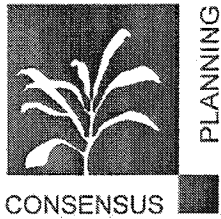
**Identifiable Clusters:**

It is unclear why staff states that this remand instruction is only met in part. Clearly the two cluster projects are identifiable and separated by a large common open space area created by Cluster A. This creates a significant separation between the buildings in Cluster A from those in Cluster B. If the City Council ultimately requires each of the clusters to be on their own site plan is irrelevant. It should also be clarified that the site plan shows potential building pads, not footprints.

**Setbacks:**

Scale – the City’s site plan checklist requires that the scale for site plans that include more than 20 acres is 1” = 100’. If staff had desired a different scale, a request should have been made back in November, when the new site plan was submitted and distributed for agency comments. If staff had requested a different scale, this could have been accommodated easily.

Setbacks and Structures – The reference to structures within the setback creates unnecessary confusion. Walls are not considered a structure and are separately regulated in the IDO as follows:



#### **5-7(C) WALL LOCATION**

*5-7(C)(1) Walls may be constructed anywhere on a parcel, including but not limited to any front, side, or rear setback area, unless otherwise prohibited by this IDO, by Articles 14-1 and 14-3 of ROA 1994 (Uniform Administrative Code and Uniform Housing Code), Article 14-2 of ROA 1994 (Fire Code), or by clear sight triangle requirements in the Development Process Manual (DPM).*

*5-7(C)(2) Walls may be constructed without any setback from a property line, unless otherwise prohibited by this IDO, by Articles 14-1 or 14-3 of ROA 1994 (Uniform Administrative Code and Uniform Housing Code), Article 14-2 of ROA 1994 (Fire Code), or by clear sight triangle requirements in the DPM. Walls may not encroach onto any public right-of-way without the prior written approval from the City Engineer and may not encroach onto any adjacent property without prior written approval of that property owner.*

It is simply incorrect, and counter to standard City practice to imply that walls are not permitted within the setbacks. The proposal is to maintain the existing wall constructed on the property line as noted on the Site Plan (Sheet 1). Comments made at the original facilitated neighborhood meeting indicated a desire to preserve the existing wall.

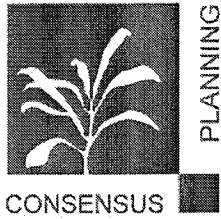
The applicant acknowledges that a note should be added to the Site Plan stating that the existing perimeter wall will be maintained and repaired as necessary along Namaste, Tres Gracias, and La Bienvenida.

Cluster Perimeter – The staff analysis ignores two key points. First, the property is not a single parcel, but has been subdivided into 6 existing parcels as shown on the zone atlas page/site vicinity map. The Site Plan includes an exhibit that clearly shows the two Cluster Projects, so it is unclear why there is any confusion regarding the boundary. The applicant is happy to add additional labelling to the site plan and has taken the liberty to identify a future property line and the cluster boundary on the revised site plan.

The cluster setback exhibit was prepared and provided to City staff back in December. The purpose of the exhibit is to clarify how the setbacks are being applied to the perimeter of the two clusters consistent with the EPC's previous Condition #5.

While staff correctly points out that there were several lots where the pad does not reflect the perimeter setback requirements, these have been corrected. Dimension labels have been added to show the typical setback requirements. The table in the staff report includes several inaccuracies. All the provided setbacks indicated to be 2 feet are 5 feet and Lots A-11, B-1, B-25, and B-26 have been corrected from 5 feet to 10 feet. Lots A-24-33 provide for the required 25 feet rear yard setback, not 20 feet. Lots B-19 to B-25 are along the side boundary between the two clusters, which requires a 10-foot setback and 15 feet is provided.

The analysis also notes that with approval of a site plan, a plat will be required to be reviewed and approved by the DRB. This plat will create the property boundary between



the two cluster projects, the individual home lots, and all common open space tracts. Once again, the existing wall is proposed to remain and be repaired as necessary, the site plan indicates where view fences are required.

The site plan clearly shows that the setbacks along the boundary between cluster A and cluster B do not overlap. The boundary of cluster A is entirely common open space, so no buildings are proposed within the required setback. The boundary along cluster B is considered the side setback and provides a minimum of 10 feet, with some lots providing a 15-foot setback. The setback exhibit illustrates these setbacks.

With the minor corrections noted above, we submit that the setbacks as required by the EPC's previous Condition #5 and the City Council's instruction are met.

#### **Remand Instruction 2 – Clusters and Open Space**

The staff report inaccurately states that the IDO open space requirements are not met. The following corrected analyses are presented to support the fact that the IDO requirements are met.

Contextual Standards – in the case of individual lots within the cluster areas these standards do not apply. The setbacks that are applied to this Site Plan are consistent with the EPC's previously adopted Condition #5, which as stated previously, is the most conservative interpretation of the setback requirements. The IDO states:

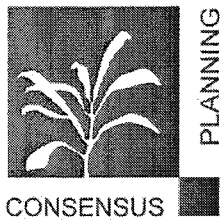
*5-1(C)(2) Contextual Residential Development in Areas of Consistency 5-1(C)(2)(a) Applicability 1. For the following residential development types, the contextual lot size standards in Subsection (b) below do not apply, and the contextual setback standards in Subsection (c) below apply to the entire project site, not to individual lots or primary buildings:*

- a. Manufactured home communities in the R-MC zone district.*
- b. Cluster development.*
- c. Cottage development.*

As clearly stated above, the lot size restrictions do not apply to individual lots within a cluster development and the setback standards apply to the property as a whole. The setback standards only apply to front yard setbacks when there are existing homes on the block face. Like the lot size contextual standards, the setback contextual standards do not apply to this project because it comprises an entire block.

Allowable Dwelling Units – The calculations for the open space have been provided on the Site Plan that compares the two techniques to determine the approach that results in the open space requirement for each of the clusters. For Cluster A, the lot reduction rule is the one that is used and for Cluster B, the 30 percent rule applies. The proposed lots in each cluster is well under the maximum density allowed. Each cluster project stands alone as separate uses shown on the Site Plan. If the City Council ultimately determines that only





one Cluster Project is allowed on a single site plan, then each cluster can be shown on its own Site Plan. This change is a procedural one that will not impact the layout.

Open Space relationship to each Cluster – The previous Site Plan that had been approved showing most of the open space at the eastern end of the property. This Site Plan was appealed and remanded with the instruction to more clearly separate and show each cluster as unique. The staff analysis mistakenly assumes that a future acceptance of the opposition's appeal of the Declaratory Ruling will result in a drastic reduction of the lots shown, when the result would be to separate the two clusters so that each one is on its own Site Plan. It is incorrect to assume that City Council's granting of the appeal, would result in one Cluster Project limited to 50 lots. A standard RA subdivision was reviewed with a sketch plat at the DRB showed 56 lots and no open space.

We have prepared and submitted a copy of an excel spreadsheet that shows the lot size reduction calculations. If staff had requested this information earlier, it could have been provided at that time.

#### **Remand Instruction 3 – Cluster Development**

With regards to whether you can have two clusters on a single site plan, which staff suggests is reason to defer this hearing, the EPC could address this with a Finding. The City Council, in their remand instructions has already addressed this with this instruction.

The finding should indicate that the current Site Plan shows two Cluster Development projects on a single site plan. The LUHO's analysis, Pages 11 to 16 contains ample reasoning to support multiple clusters on a single site plan. The opponents to the project have appealed a previously issued Declaratory Ruling that, in addressing a specific question concerning the interpretation regarding the application of setback standards as defined by the IDO, also indicates in dicta that you can have two Cluster Development projects on a single site plan.

#### **Remand Instruction 4 – Duly Noticed Hearing and Open Meetings Act**

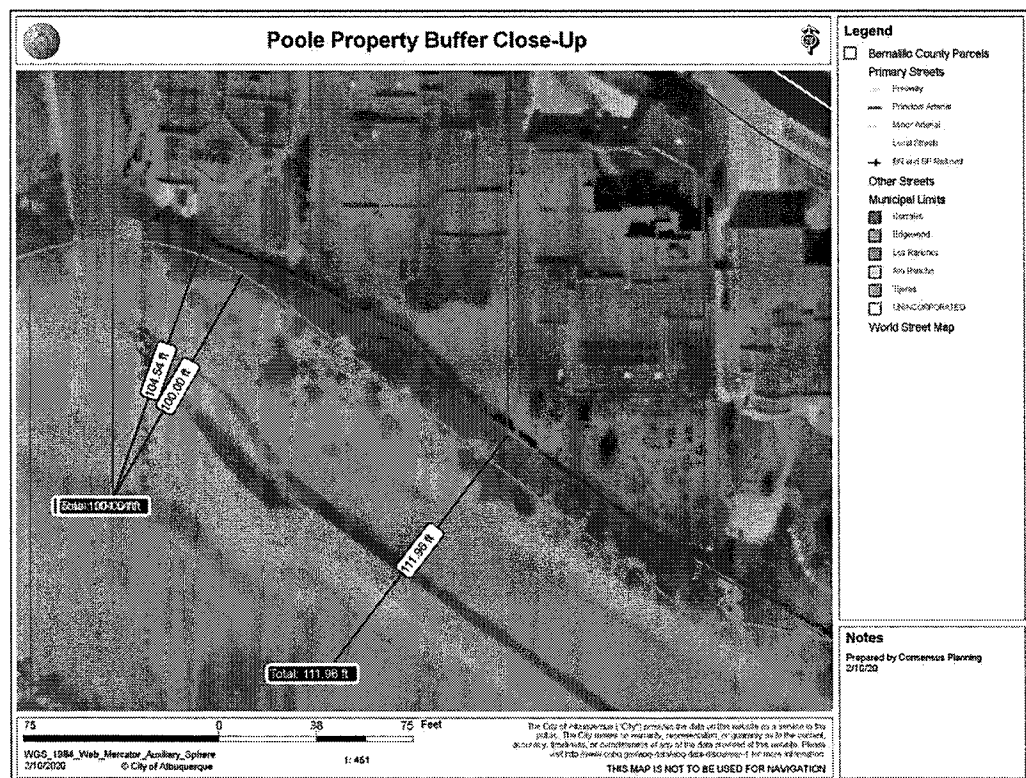
The applicant and City staff have worked to ensure that this instruction is being followed. As mentioned in the staff report, the legal ad and web posting were completed by the Planning Department, and the Applicant has provided mailed notification to the neighborhood associations and property owners, as well as posting signs on the property.

The Staff Report appears to question two aspects of the required notice related to both the neighborhood association and property owner notifications. However, as explained below, all notice was completed properly in accordance with the IDO requirements and remand instructions.

First, the staff report states that "...when several months have transpired and a case remains in the EPC process, applicants are often requested to provide an updated contact letter from the Office of Neighborhood Coordination (ONC)..." The report goes on to state that "To meet all notice requirements ("duly noticed"), the letter should have been updated."

Several months did not transpire between receipt of the neighborhood contacts and mailing of the notification letters, so updating the letter was not necessary. Based on City standard practice, the notification letters for the February 13, 2020 hearing were mailed within 30 days of receipt of the letter from ONC providing the neighborhood contacts (November 27, 2019). This timeframe, which was met, is not identified by Ordinance, but based on our understanding, is an administrative policy. In addition, if staff believes that an updated letter was necessary for proceeding with this application, such a request could have been made in a timely manner and accommodated, but no request was communicated to the Applicant except for the notation made in the staff report.

Second, the staff report contests the property owner notification by stating that four additional property owners should have been notified as they touch the 100-foot buffer. Of the four property owners identified, one of them was notified (Sanchez; see page 107 of the staff report packet for a copy of the stamped envelope). The other three properties are more than 100 feet from the subject property (not including right-of-way) and therefore do not require notice. As shown below, the three properties that were not sent notice are outside of the required notice buffer.



## Conclusion

While we appreciate the effort staff has provided regarding this remand application, we strongly disagree with much of the information presented, references to IDO requirements that do not apply, assumptions about the results of the opposition's appeal of the



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Declaratory Ruling, and the recommendation for an extensive 2 month deferral and respectfully request that the EPC hear this remand application.

Sincerely,

James K. Strozier, FAICP  
Principal

**City of Albuquerque Environmental Planning Commission**  
**Project # 2018-001402 Case # SI-2018-00171**  
**February 13, 2020**

***Applicant's Recommended Findings and Conditions for PR 2018-001402, Site Plan – EPC on Remand***

***Proposed Findings:***

1. This request for a Site Plan-EPC for Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lots 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T1 1N R2E, Lot 4, Block 1 West, located at 5001 Namaste Road NW, between La Bienvenida Place NW and the San Antonio Oxbow Major Public Open Space, containing approximately 23 acres (the "subject site").
2. The subject site is comprised of three legally platted County assessor parcels, subdivided into six City parcels, zoned R-A, and surrounded by exiting single-family development, a City park to the north, the Rio Grande Bosque to the east, and designated Major Public Open Space (MPOS) to the south.
3. The applicant proposes a subdivision of single-family homes (dwelling, cluster development), consisting of two cluster projects with a total of 69 lots and six open-space tracts. The proposed layout is divided into two areas, or clusters—A (33 lots) and B (36 lots).
4. The EPC is reviewing the request because the subject site is over 5 acres in size and is adjacent to MPOS [Ref: IDO 14-16-6-6(H)(1)(b)(3)]. While only the easternmost tract was required to be reviewed by the EPC, on September 17, 2018, David S. Campbell, Planning Director approved the applicant's request to have the EPC review the entire 23-acre property. He included three findings with this letter that included "3. EPC review of the entire 23-acre property will benefit the City and the Comprehensive Plan's vision for growth and development, especially adjacent to existing MPOS".
5. Single-family homes, cluster development, and cottage development are the three permitted uses in the R-A zone in the Household Living category. In addition to the requirements of the existing R-A Zone District, the Site Plan is subject to IDO site design regulations for Cluster Development in Section 14-16(B)(2).
6. The subject site is within the boundaries of CPO-2, Coors Boulevard [Ref: 14-16-3-4 (C)] and VPO-2, Coors Boulevard [Ref: 14-16-3-6 (E)]. The regulations contained therein apply to development on the subject site.
7. The Albuquerque/Bernalillo County Comprehensive Plan and the Integrated Development Ordinance (IDO) are incorporated herein by references and made part of the record for all purposes.

8. The subject site is within an Area of Consistency as designated by the Comprehensive Plan, which has policies to protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space. The City Council Remand Finding D affirms the LUHO's recommendations that the Site Plan- EPC is compliant with the Area of Consistency policies.
9. The revised site plan is consistent with the ABC Comp Plan, as amended. Applicable Policies Include:
  - The request is consistent with Goal 4.1, Policy 4.1.1 and Policy 4.1.2 The subject project's lot sizes range from 5,500 square feet to over 9,700 square feet, which is contextual with the lot sizes of adjacent R-1A, R-1B, R-1C, and R-1D subdivisions.
  - The request is consistent with Policy 4.1.5. The applicant has responded to the natural setting by preserving an area near the MPOS and the Bosque to retain some of the natural setting in the context of the site's R-A zoning district entitlements.
  - The request is consistent with Goal 5.3, Policy 5.3.1 and Policy 7.3.4 because the subject site is in an area with existing development, infrastructure, and public facilities thereby the project site is infill development, which is more efficient than development on the edge of the City.
  - The request is consistent with Policy 5.3.3 because the site plan shows two cluster development projects with private landscaped common open space and trails adjacent to the MPOS.
  - The request is consistent with Policy 5.3.4 because the cluster development design set aside private open space that preserves the natural landscape within and on the eastern portion of the property.
  - The request is consistent with Policy 5.6.3 because the cluster lot sizes are similar to the surrounding subdivisions, thereby protecting the character of the existing single-family neighborhoods. The adjacent MPOS is protected by the site plan's private open space buffer.
  - The request is consistent with Policy 7.3.1 because the natural features on the eastern portion of the site adjacent to MPOS are being preserved via the private open space buffer and sensitive land protection area on the site plan, which also helps preserve views into and from the MPOS.
  - The request is consistent with Policy 9.1.1 because the proposed site plan will provide additional housing options for a variety of income levels.
  - The request is consistent with Policy 9.2.3 because the proposed project is for cluster housing and provides private community open space.
  - The request is consistent with Policy 10.2.1 (c) because the developer is proposing private common open space for the future residents that includes an internal trail system that links the concentrated housing areas within each of the clusters to larger open space areas.
  - The request is consistent with Policy 11.3.3 (a) because grading is designed to direct stormwater away from the steep slopes at the southeast side of the project site, which will help preserve the adjacent MPOS for future generations.

- The request is consistent with Policy 11.3.3 (b) because the common open space (sensitive land protection area) to the east adjacent to the Bosque will be undisturbed or revegetated to a natural setting.
  - The request is consistent with Policy 11.3.3 (c) because the proposal is for an allowed cluster development on R-A zoned land adjacent to the Bosque and other MPOS, which will conserve approximately 30% of the land as private open space.
  - The request is consistent with Policy 11.3.3 (d) because the project has appropriate buffers and transitions from the MPOS that meet or exceed what is required.
10. The EPC approved a previous version of the proposed site plan for the subject site at its March 19, 2019 hearing. The decision was appealed (AC-19-6 and AC-19-7). The City Council heard the case on August 5, 2019 and remanded it to the EPC based on four findings and four remand instructions.
  11. In its August 27, 2019 decision, the City Council issued four findings. In brief, Finding A. Applicable IDO Requirements, refers to cluster development design and total number of dwelling units allowed within a cluster (see finding 12). In brief, Finding B. Site Plan and Deficiencies, refers to provision of open space, proposed subdivision layout, setbacks, and number of dwelling units. Finding C provided specific Remand Instructions (see finding 13). Finding D affirmed several items addressed by the LUHO (see finding 14).
  12. In response to City Council Finding B.3 and C.1, the site plan was amended to identify two identifiable clusters with less than 50 lots each and to clearly show that the setbacks, as articulated in the EPC's previous condition #5 (and the declaratory ruling) have been met and that the setbacks between the two cluster areas do not overlap. Minor corrections to the site plan have addressed the side setbacks for 3 lots (B-1, B-25 and B-26) and dimensions have been added to the site plan showing compliance with this requirement. An additional setback exhibit was also prepared to illustrate these setbacks.
  13. The City Council's remand instructions to the EPC (City Council Remand Finding C) are as follows:
    - A. Instruction #1: On remand, the EPC shall require the submission of a revised site plan for its consideration that clearly concentrates buildings in specific areas on the site, in identifiable clusters of no more than fifty lots each, and that otherwise satisfies the setback requirements of its condition number five. For purposes of setbacks between clusters, the relevant setback for each cluster shall not overlap. The minimum separation between clusters must include the combination of the relevant setback as applicable to each individual cluster.
    - B. Instruction #2: On remand, the EPC shall also evaluate and issue specific findings on the proposed cluster development's satisfaction of the IDO's applicable open space requirements for cluster developments, including but not limited to the ability to count drainage easements as part of its required open space designation and how the preserved common open space reasonably relates to each identifiable cluster.

- C. Instruction #3: On remand, the EPC shall also evaluate, explain and issue a specific finding as to whether the IDO allows more than one Cluster Development on a site plan.
  - D. Instruction #4: The EPC shall conduct the remand hearing within the scope of these remand instructions as a duly noticed quasi-judicial hearing in conformance with the Open Meetings Act and shall allow all interested persons and the public to submit comments by letter or electronic mail, testify, submit written evidence, present written or oral arguments, and/or cross-examine witnesses.
14. The City Council, in their Finding D affirmed the LUHO's recommendations denying the appeal relative to sensitive lands, negative environmental impacts, street connectivity, block length, IDO Area of Consistency requirements, OMA and due process violations. The affirmation of these items is considered in this Site Plan – EPC remand review. These issues were addressed in the prior approval.
  15. The applicant submitted a revised site plan, dated November 25, 2019, for consideration by the EPC (the "request"). The request was deferred at the January 9, 2020 EPC hearing for one month, to the February 13, 2020 hearing, to ensure that all requirements regarding proper notice are met (Instruction #4).
  16. The Zoning Enforcement Officer (ZEO) issued a Declaratory Ruling about cluster development on April 22, 2019. The declaratory ruling states that the regulations for cluster development apply to each project site, established setbacks consistent with the EPC's previous approval and Condition #5, and noted in dicta that the IDO does not prohibit more than one project site per site plan.
  17. On January 15, 2020, aggrieved parties appealed the Declaratory Ruling. There is no specific timeframe or deadline for appeals of declaratory rulings.
  18. In response to Remand Instruction C.1, The revised Site Plan – EPC shows two identifiable clusters, that concentrates buildings in specific areas of the site, with less than 50 lots in each cluster on a single site plan. The revised site plan also provides for the setbacks as referenced from the EPC condition number five and demonstrates that the required setbacks for the perimeter of each cluster do not overlap. Remand Instruction C.1 clearly anticipates more than one cluster project on a site plan since it addresses clusters in the plural form and requires that the "setbacks for each cluster shall not overlap".
  19. In response to Remand Instruction C.2, The proposed open space designation is consistent with other policies as articulated in the ABC Comp Plan (see finding 9) and CPO-2, IDO Section 14-16-3-4(C)(5)(a) Floodplain, which states: *"All development shall comply with all adopted drainage policies, including restrictions on development in the 100-year floodplain. Cluster development design on land above the flood level shall be used to the maximum extent practicable, and the floodplain shall be used as open space"*. Further, 4-3(B)(2)(d) provides that common open space be "set aside for agriculture, landscaping, on-site ponding, outdoor recreation, or any

combination thereof...” Common open space is distinct from usable open space and may include drainage easements.

20. In response to Remand Instruction C.3, the IDO does permit multiple cluster developments to be located on one site development plan so long as each cluster development meets all of the applicable IDO requirements because (i) the IDO does not expressly limit site plans to a single cluster development and it would be inappropriate to apply an implied prohibition to this one type of land use; (ii) the CPO-2 zone states that “Cluster development design on land above the flood level shall be used to the maximum extent practicable, and the floodplain shall be used as open space” (3-4(C)(5)(a)); and (iii) it would be nonsensical not to allow multiple clusters in a single site plan, where the applicant could fully comply with the IDO by instead submitting two separate site plans for approval, diminishing the city’s opportunity to consider the project as a whole.
21. On remand, four agencies submitted comments based on the November 25, 2019 proposed site plan: the Albuquerque/Bernalillo County Water Utility Authority (ABCWUA), the Department of Municipal Development (DMD), PNM, and the Open Space Division of the Parks and Recreation Department.
22. The Open Space Division (OSD) in their review of the revised site plan has major concerns regarding the proposed site layout. However, the OSD comments were not specific in their response to the Council Remand instructions, which dictated the re-arrangement of the proposed clusters and use of the common open space to create distinct and identifiable clusters rather than concentrating most of the open space at the eastern edge of the property. While OSD may prefer the previous site plan layout, the City Council remand instructions take precedence over those concerns. The applicant and the OSD may continue discussions related to the potential dedication of the Oxbow Wetland and steep sloped areas (sensitive land protection area as identified on the site plan) as MPOS. Nothing with the approval of this site plan will limit those negotiations.
23. The City Hydrology Division states “The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.” Subsequent to EPC review, the project should be reviewed for technical issues such as this by the Development Review Board (DRB).
24. The applicant notified the La Luz Landowner Association, the Taylor Ranch Neighborhood Association, and the Westside Coalition of Neighborhood Associations as well as property owners within 100 feet as required. Several meetings were conducted regarding the proposal, notably an initial facilitated neighborhood meeting, staff meetings with the neighbors, and several public meetings/presentations to the Open Space Advisory Board.
25. No request was received from any of the affected neighborhood associations or adjacent property owners for a facilitated meeting regarding this remand submittal.



26. Staff received multiple letters, comments, reviews, and reports in opposition to the proposed development. These are included in the case record. During the remand period, Staff received over 100 letters for concerned parties, some emails of opposition, and a hand-written letter. Staff did not receive any comments in support previously or during the remand period.

***Proposed Conditions of Approval:***

1. The applicant shall coordinate with the staff planner to ensure that all Conditions of Approval are met and then submit a vetted, final version to the staff planner for filing at the Planning Department.
2. Per IDO Section 14-16-5-2(C)(1)(i), the Pinon stand in the area shown as common open space shall be preserved. If the mature pinon pine trees cannot be retained, then they will be replaced in the same general area with new trees at a ratio of three new trees for every mature tree lost.
3. Even after adjustments to the lot sizes, the common open space must remain a minimum of 35 feet wide between the houses per IDO Section 14-16-4-3(B)(2)(d)2.
4. The Site Plan shall note any Variance – DRB that has been granted/approved for IDO Section 14-16-5-3(E)(2) on the Site Plan.
5. Setbacks at the perimeter of each cluster are required to be per the underlying R-A Zone District as follows:
  - a. Front, minimum 20 feet
  - b. Side, minimum 10 feet
  - c. Rear, minimum 25 feet – this affects all rear lot lines facing Namaste Road NW, Tres Gracias Road NW, and La Bienvenida Place NW.

For purposes of setbacks between clusters, the relevant setback for each cluster shall not overlap per City Council remand instruction C.1. The minimum separation between clusters must include the combination of the relevant setbacks as applicable to each individual cluster.

6. Note under Maintenance on page 2: 14-16-4-3(B)(2)(e) – The common open space for each cluster shall be on a separate subdivided lot or easement. 14-16-4-3(B)(2)(f) – Maintenance for common open space areas is the responsibility of the HOA for each cluster.
7. A note shall be added to the Site Plan that states all new Buildings and Landscape will comply with 14-16-3-6(D)(6) and 14-16-5-2(H).
8. This Site Plan shall be submitted to and approved by the DRB for the below technical issues/requirements:
  - a. Hydrology Section:
    - i. An approved Grading and Drainage Plan & Drainage Report is required prior to approval of Preliminary Plat or Site Plan. A separate submittal is required to Hydrology to include sufficient engineering analysis and calculations to determine the feasibility and adequacy of the proposed improvements.

- ii. All floodplains need to be shown on the plat and site plan.
- iii. LOMR will be required to remove the floodplain from the lots that have the floodplain.
- iv. AMAFCA approval will be required for connection to their Channel and grading adjacent to their right of way.
- v. USACE approval will be required for any fill proposed in Waters of the US.
- vi. An infrastructure list will be needed for Preliminary Plat.
- vii. A recorded IIA is required prior to Final Plat.
- viii. A prudent setback from the Rio Grande is recommended because the slope on City Open Space is not stable and subject to lateral migration of the river. The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.
- ix. Management onsite will be required for the SWQV unless a waiver is demonstrated on the G&D Plan and accepted by Hydrology.
- x. Note 4 on sheet 3 is incorrect and should be removed. Replace with a note that says "A prudent setback will be established to allow for the future construction of bank protection by the HOA on the HOA's property without any encroachment into the Open Space property or on any of the lots."

b. Transportation Development

- i. Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed development site plan, as required by the Development Review Board (DRB).
- ii. Infrastructure and/or ROW dedications may be required at DRB.
- iii. All work within the public ROW must be constructed under a COA Work Order.
- iv. Show the clear sight triangle and add the following note to the plan:  
"Landscaping and signage will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in the clear sight triangle."

c. ABC Water Utility Authority (ABCWUA)

- i. Availability 190105 was executed on 05/21/2019 and will remain in effect for a period of one year from that date. Should the information utilized for determination of that statement change or the statement expire then a new request shall be made at [http://www.abcwua.org/Availability\\_Statements.aspx](http://www.abcwua.org/Availability_Statements.aspx).
- ii. Request shall include a City Fire Marshal approved Fire 1 Plan, a zone map showing the site location, proposed utility plan, and a document encompassing any changes to the site.
- iii. It should be noted that there is an existing ten-inch collector line transecting the project that is not to be abandoned. If relocation of this line is required for the development to take place, the capacity shall be maintained or improved.

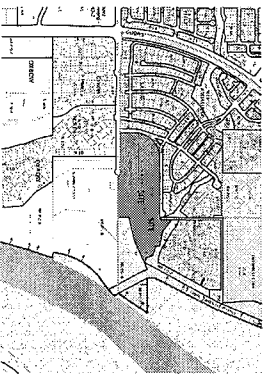
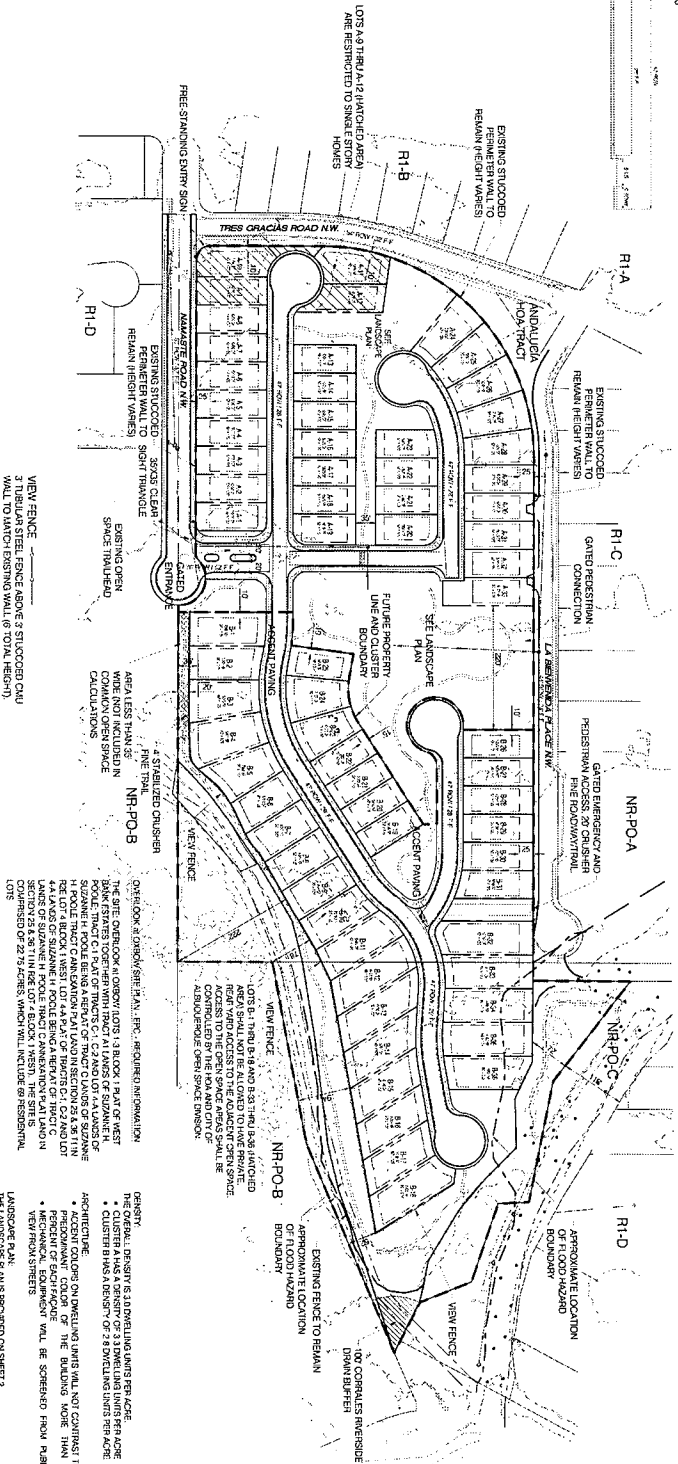
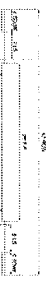
- d. Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA)
  - i. Identify the AMAFCA Easement, filed for public record in Bernalillo County, NM on October 17, 1996 as Document No. 96114620, on the Site Plan and Grading & Drainage Plan including the Storm Water Holding and Sediment Trapping Pond, Riprap bank stabilization, and grade control structure.
- e. Public Service Company of New Mexico (PNM)
  - i. An existing underground distribution line is located on the subject property to the existing structure which is to be removed. It is the applicant's obligation to abide by any conditions or terms of these easements. Vacation of the electric easement and location of new utility easements will need to be coordinated with PNM.
  - ii. As development moves forward, the applicant needs to contact the PNM New Service Delivery Department to coordinate electric service regarding this project. Please submit a service application at [www.pnm.com/erequest](http://www.pnm.com/erequest) for PNM to review.
  - iii. Ground-mounted equipment screening will be designed to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Refer to the PNM Electric Service Guide at [www.pnm.com](http://www.pnm.com) for specifications.

**Lot Reduction Calculations**

#	Lot Size	RA Lot Size	Difference
Cluster A			
1	7,246	10,890	3,644
2	6,250	10,890	4,640
3	6,250	10,890	4,640
4	6,250	10,890	4,640
5	6,250	10,890	4,640
6	6,250	10,890	4,640
7	6,250	10,890	4,640
8	6,250	10,890	4,640
9	6,268	10,890	4,622
10	7,706	10,890	3,184
11	7,705	10,890	3,185
12	6,226	10,890	4,664
13	5,500	10,890	5,390
14	5,500	10,890	5,390
15	5,500	10,890	5,390
16	5,500	10,890	5,390
17	5,500	10,890	5,390
18	5,500	10,890	5,390
19	5,916	10,890	4,974
20	5,864	10,890	5,026
21	5,450	10,890	5,440
22	5,450	10,890	5,440
23	5,340	10,890	5,550
24	7,304	10,890	3,586
25	7,250	10,890	3,640
26	7,248	10,890	3,642
27	7,244	10,890	3,646
28	7,034	10,890	3,856
29	6,250	10,890	4,640
30	6,250	10,890	4,640
31	6,250	10,890	4,640
32	6,250	10,890	4,640
33	8,171	10,890	2,719
			150,198
Required OS			3.45

#	Lot Size	RA Lot Size	Difference
Cluster B			
1	8,066	10,890	2,824
2	7,593	10,890	3,297
3	8,299	10,890	2,591
4	9,402	10,890	1,488
5	7,995	10,890	2,895
6	6,781	10,890	4,109

7	6,957	10,890	3,933
8	6,991	10,890	3,899
9	7,149	10,890	3,741
10	7,479	10,890	3,411
11	8,681	10,890	2,209
12	9,712	10,890	1,178
13	9,736	10,890	1,154
14	8,707	10,890	2,183
15	8,148	10,890	2,742
16	8,113	10,890	2,777
17	8,132	10,890	2,758
18	9,420	10,890	1,470
19	5,500	10,890	5,390
20	5,500	10,890	5,390
21	5,500	10,890	5,390
22	5,500	10,890	5,390
23	6,771	10,890	4,119
24	7,197	10,890	3,693
25	5,676	10,890	5,214
26	6,250	10,890	4,640
27	6,250	10,890	4,640
28	6,250	10,890	4,640
29	6,250	10,890	4,640
30	6,271	10,890	4,619
31	6,680	10,890	4,210
32	10,199	10,890	691
33	9,513	10,890	1,377
34	9,488	10,890	1,402
35	9,582	10,890	1,308
36	8,603	10,890	2,287
			117,699
Required OS			2.70



**APPLICANT NUMBER:** SI-2016-00171

**PROJECT LOCATION:** 10000 W. 10th Ave., Denver, CO 80202

This plan is consistent with the specific Site Development Plan required by the Environmental Planning Commission (EPC) dated \_\_\_\_\_, 2020 and the Findings and Conclusions in the Official Code of Ordinances are satisfied.

Is an installation last required? ☐ Yes ☒ No If yes, then a set of approved DDC plans with a work order is required for any construction within the Right-of-Way or for construction of public improvements.

**ON-SITE DEVELOPMENT PLAN APPROVAL:**

Traffic Engineering, Transportation Division	Date
ABQEMA	Date
Civil Engineer/Analyst	Date
Cost Engineering	Date
Solid Waste Management	Date
Parks and Recreation	Date
City Chairperson, Planning Department	Date

**GENERAL NOTES:**

1. THE OWNER WILL COORDINATE WITH CITY OPEN SPACE STAFF REGARDING TRAILHEAD PARKING AND ACCESS TO MARKET ROAD TO PROMOTE TRAIL USE.
2. A VARIANCE TO ACCESS AND CONNECTIVITY SECTION OF THE IDOT 11655 STANDARD WAS APPROVED BY THE IDOT ON DECEMBER 1, 2018.
3. DEVELOPER IS RESPONSIBLE FOR FURNISHING ALL IMPROVEMENTS TO THE TRANSPORTATION FACILITIES ADJACENT TO THE PROPOSED DEVELOPMENT SITE. IMPROVEMENTS AND NEW CONDUITS ARE REQUIRED BY THE CITY WITH CLEAR SIGN REQUIREMENTS. THEREFORE, SLOWS, WALLS, TREES AND SHRUBBERY BETWEEN 3' AND 5' FEET TALL ARE REQUIRED FROM THE OUTTER PAVEMENT TO THE CENTERLINE OF THE CLEARING. THEREFORE, PAVEMENT IMPROVEMENTS WILL BE REQUIRED TO BE 5' FROM THE CENTERLINE OF THE CLEARING TO THE OUTTER PAVEMENT.

# OVERLOOK at OXBOW

## SITE PLAN

Prepared For: **Gamma Development, LLC**

Prepared By: **Consensus Planning, Inc.**

 **PLANNING**

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