

48-HOUR MATERIALS (Updated 03/13/2019)

Public Comments

Explanatory statement for “TRNAEPCLetterMar112019”

The following letter was sent by the Taylor Ranch NA on Monday 11 March 2:15pm per the timestamp on a forward of the email from the NA. The addressees, Cheryl Somerfeldt, Dora Henry, Russell Brito, and Mikaela Renz-Whitmore, did not receive the email on Monday 11 March 2019.

Mikaela Renz-Whitmore’s inbox received the email Tuesday 12 March at 8:19am. Ms. Renz-Whitmore is not EPC staff and did not know that the other three addressees did not receive the correspondence.

After not seeing the TRNAEPCLetterMar112019 posted on the EPC webpage, Ms. Wolfley inquired with EPC staff about the status of the letter. EPC staff (Henry, Brito, and Somerfeldt) confirmed that this email was not received within the EPC’s 48-hour rule (EPC Rules of Conduct B.12) and in fact it has still not shown up in any of the EPC staff’s email inboxes.

But, because the applicant intended that it be included with the packet, and it appears to have been sent in a timely manner, and it eventually did reach a non-EPC staff person in the Planning Department within the 48-hour rule timeframe, this letter is being provided to the EPC for consideration.

Somerfeldt, Cheryl

From: Jolene Wolfley <sagehome@live.com>
Sent: Wednesday, March 13, 2019 9:31 AM
To: Brito, Russell D.; Henry, Dora L.; Somerfeldt, Cheryl
Cc: Hessel E. Yntema III
Subject: Email w/ letter received by one staff member/Overlook at Oxbow Case

Russell and Cheryl and Dora,

I remembered that I had copied Mikaela on the TRNA letter of 3/11/19. She confirms (below) that she did receive this email with the letter at 8:19 Tuesday morning 3/12/19 (within the 48-hour rule). I sent it Monday afternoon around 3:15 pm from my computer. (Does the City had a multi-hour delay in receiving emails?)

Would you please double-check your emails? I think you might have been confused because I sent two emails: one with the letter and the second with the checklist. I am sure you were very busy yesterday.

Would you please send my letter to the EPC as soon as possible and let me know when it is sent? Please note that the complete staff report was only available on Friday, 3/8/19. The TRNA letter responds to the staff report and was sent 3/11/19. A great amount of time was spent preparing this substantive response to the staff report. TRNA is not able to present all this information under the limits on oral testimony. Nor would the EPC be able to review it as they would if they had received it with the other 48-hour material.

Thanks,

Jolene Wolfley

From: Renz-Whitmore, Mikaela J. <mrenz-whitmore@cabq.gov>
Sent: Wednesday, March 13, 2019 7:26 AM
To: Jolene Wolfley
Subject: RE: Did you receive my email on Monday?

I got your email 8:19 am on Tuesday morning with the letter attached.



MIKAELA RENZ-WHITMORE
long range manager
urban design & development division
o 505.924.3932
m 505.924.3860

From: Jolene Wolfley <sagehome@live.com>
Sent: Wednesday, March 13, 2019 7:33 AM
To: Renz-Whitmore, Mikaela J. <mrenz-whitmore@cabq.gov>
Subject: Did you receive my email on Monday?

On Monday, I copied you on an email that had TRNA's letter response to the staff report on the Poole Property site plan.

Did you receive it? Was the letter attached?

Thanks.

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This message has been analyzed by Deep Discovery Email Inspector.

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This message has been analyzed by Deep Discovery Email Inspector.

Somerfeldt, Cheryl

From: Jolene Wolfley <sagehome@live.com>
Sent: Tuesday, March 12, 2019 3:58 PM
To: Henry, Dora L.; Somerfeldt, Cheryl; Brito, Russell D.
Cc: Hessel E. Yntema III
Subject: Fw: TRNA letter of 3/11/19 for EPC--was submitted yesterday at 2:15 pm
Attachments: TRNAEPCLetterMar112019.pdf

Dora, Cheryl and Russell,

I sent this letter in Monday at 2:15 pm.

Please check your records regarding receipt of it.

Please add it to the EPC materials for the hearing as I submitted it more than 48 hours prior to the hearing.

I send this letter first and then I sent a separate email with the checklist.

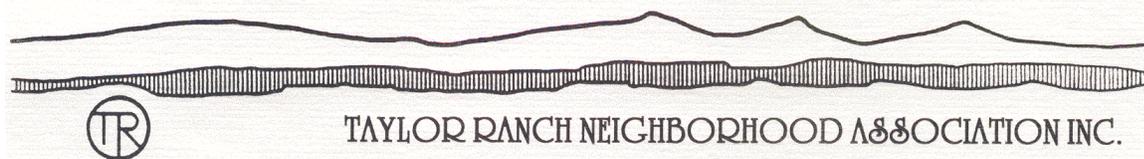
Thank you and please let me know what you are able to do.

Jolene Wolfley

From: Jolene Wolfley
Sent: Monday, March 11, 2019 2:15 PM
To: csomerfeldt@cabq.gov; Dora Henry; Brito, Russell D.; Renz-Whitmore, Mikaela J.
Cc: Hessel E. Yntema III
Subject: TRNA letter of 3/11/19 for EPC

Please provide this letter to the EPC on the Poole property/Overlook at Oxbow case to be heard by the EPC on 3/14/19.

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This message has been analyzed by Deep Discovery Email Inspector.



March 11, 2018

Dan Serrano, Chair
Environmental Planning Commission

RE: Comp Plan & IDO Call for Great Site Plans
Near Albuquerque's Great Spaces:
Call for a Better Site Plan and Process for the
Poole Property/Overlook at Oxbow

Dear Chair Serrano and Environmental Planning Commissioners,

Thank you Chairman Serrano Planning Commissioners for your time to serve the City and review site plan cases in an open public hearing. We recognize that this is a multi-faceted case and will be precedent setting for implementation of the IDO.

The Environmental Planning Commission reviewed many site plans in the past under the former SU-1 and SU-2 zoning. The IDO reduced the number of site plans the EPC will review. One of those EPC site plan requirements is for projects greater than 5 acres that are adjacent to Major Public Open Space.

In an EPC site plan review, the EPC uses its judgment to review the site plan for compliance based on the goals, policies, and regulations of the Comprehensive Plan and the IDO. The site plan review should still retain similarities to the former process of the SU-1 site plans: **creativity allowed, checks for achievement of comprehensive plan goals, striving for the highest levels of design, opportunities for existing neighborhood associations and existings landowners to weigh in on the adequacy of the design.**

The EPC as an appointed, non-employee body has a difficult assignment in considering this complex and controversial Overlook at Oxbow project. Your job is further complicated when there is so much advocacy in the staff's presentation and staff has made many interpretations and conclusions about how the new IDO should apply in this case. We recognize the hard work of the staff, yet we must ask the EPC to approach the recommendation from staff with some skepticism.

The IDO vests considerable decision-making authority in the Planning Department. The staff decides what is compliant with the IDO and also what can be properly considered by the EPC. These sorts of decisions constitute the making of public policy and should not be made behind closed doors. The latest staff report does not provide much of the underlying records from which their decisions were developed. All public record relating to the developer's

application should be included in the case record so the EPC can review the underlying communications, assumptions, and decisions which go into the influential and limiting staff recommendation.

We are particularly concerned about the numerous staff and the developer meetings done behind closed doors. The developer, in his March 5th letter (found at the end of the latest staff report), references more than **"25+ meetings" with various City personnel about various agreements, interpretations, and approvals. These meetings appear to have been closed, and therefore, in violation of the Open Meetings Act.** If staff is to make critical decisions about a contested development application, the decisions should be made in open meetings, not behind closed doors.

In contrast, the **public has provided its ideas and concerns in written letters that are transparent to all stakeholders.** There are numerous public letters regarding this case that have not been analyzed by staff in the staff report. Staff should not expect that volunteer members of the EPC should analyze all of this information without staff assistance. And there is an incredible volunteer effort from the public to inform the EPC and the city staff about wildlife habitat, environmental considerations, sewer and stormwater issues, etc. Furthermore, the public's specific requests for Zoning Determinations¹ have received no response, even when staff invited them to make these requests in writing. (See TRNA/Gulley requests for Zoning Determinations in the record.)

TRNA is concerned that staff has not rigorously analyzed this EPC level site plan to achieve Comprehensive Plan Policy 11.3.1 to **"minimize negative impacts and maximize enhancements and design that complement the natural environment...of the Rio Grande and Bosque..."** The proposed site plan will likely do irreparable harm to the ecologically important and fragile Oxbow wetlands portion of the Rio Grande/Bosque. And this analysis is made difficult for the EPC because the staff did not require the complete submittals required by the IDO (please reference earlier TRNA letters on IDO requiring that incomplete submittals be rejected.)

In clear violation of the IDO's allowance for the public to participate in an EPC site plan, the staff recommendation passes decision making as conditions to be handled at a later date by staff and outside the purview of the public. The EPC should decide on density, layout, needed buffers, grading, stormwater management, traffic patterns/entrances, landscaping, colors, walls, lighting adjacent to MPOS, construction mitigation and more. This work is the purview of the EPC, not the DRB.

Where has the developer and staff ambition gone to recommend to the EPC high quality design? Instead, **the Overlook at Oxbow site plan twists portions of the IDO beyond their intent to create the maximum number of lots.** The proposed 76 homes on their 5500 s.f. lots defy both the RA zoning and the sensitive lands provisions of the IDO.

¹ 6-2(B)(1)(c) Zoning Enforcement Officer 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.**

The IDO does not require that the EPC accept these twisted interpretations of the IDO and this overly dense design. In fact, **the Comprehensive Plan and the IDO provide significant authority to the EPC to require the highest standards of development to exist in this fragile ecosystem.** EPC site plans have a very different review process than administrative site plans. EPC has the authority to determine if the site plan has minimal impact to adjacent MPOS and onsite sensitive lands. That is the major difference from administrative site plans.

The staff report does not invite the EPC to ponder important questions about **how far development should be set back from the southeastern unstable bluff.** Both the City Hydrologist and Open Space Superintendent are warning in their comments that not enough is known about how far development must be set back to protect this bluff. The applicant has the responsibility to study and report on that, but staff has not required the applicant to complete the IDO requirements for Sensitive Lands submissions and proof of no negative impact on the MPOS.

We invite the EPC to use all of their authority. The IDO gives the EPC broad authority to protect the Major Public Open Space:

“Have an approved Site Plan – EPC that meets conditions deemed necessary by the EPC to further compliance with the above standards to minimize impact on the Major Public Open Space and maximize compatibility of the proposed development ...” (IDO 5-2(H)(2)(b)9

Site Plan

The IDO specifies that items like design guidelines, architectural style, and conceptual elevations should be part of site plans from the beginning phase, the neighborhood meeting. The agent never delivered these items at the neighborhood meeting. Furthermore, these complete items have not been submitted in the application and are not before the EPC. Why are we accepting such a low standard of submission from the applicant—all contrary to the IDO?

Part 14-16-6: Administration and Enforcement

6-4(D): Facilitated Meetings

6-4: General Procedures

consecutive days of the meeting request being accepted by the Neighborhood Association. If the Neighborhood Association declines the meeting, the applicant may proceed pursuant to Subsection 14-16-6-4(C)(7).

6-4(C)(5)

At the neighborhood meeting, the applicant shall provide information about the proposed project, including but not limited to the scope of uses, approximate square footages for different uses, general site layout, design guidelines, architectural style, conceptual elevations, and conceptual landscaping plans.

Definitions:

The IDO definitions talk about a detailed site development plan that specifies ‘elevations and dimensions.’”

The definition of the site plan being created is: “all informations required for that ...development.”

Site Development Plan

A term used prior to the effective date of the IDO for a scaled plan for development on one or more lots that specifies at minimum the site, proposed use(s), pedestrian and vehicular access, any internal circulation, maximum building height, building setbacks, maximum total dwelling units, and/or nonresidential floor area. A more detailed site development plan would also specify the exact locations of structures, their elevations and dimensions, the parking and loading areas, landscaping, and schedule of development. The equivalent approval in the IDO will be determined based on the level of detail provided in the prior approval.

Revised and Updated Through May 2018
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Integrated Development Ordinance
City of Albuquerque, New Mexico

Part 14-16-7: Definitions and Acronyms**S****7-1: Definitions**

Site Plan

An accurate plan that includes all information required for that type of application, structure, or development.

Site Plan-EPC

As the definition implies above, the Site Plan going before the EPC should include all the information required for that development. The EPC's ability to delegate any portions of the site plan to the DRB or staff is limited in the IDO to : "technical compliance with conditions of approval and DPM standards."

There are specific requirements of a site plan adjacent to MPOS and within 330 feet of MPOS. The EPC is the body to review these design details and make the discretionary decisions.

For the Poole Property these design details and discretion relate to:

1. Color
2. Lighting
3. Walls
4. Crime Prevention through Environmental Design
5. Grading and stormwater management minimizing impact to MPOS
6. Traffic management to mitigate impact on the MPOS
7. Construction mitigation
8. Finding of no major negative effect

A key criterion for the EPC review of a site plan is:

"The site plan mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable."

Part 14-16-6: Administration and Enforcement

6-6(H): Site Plan – EPC

6-6: Decisions Requiring a Public Meeting or Hearing

6-6(H)(3): Review and Decision Criteria

- 6-6(H)(2)(c) The EPC shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 14-16-6-4 (General Procedures).
- 6-6(H)(2)(d) The EPC may delegate authority to the DRB to determine technical review of compliance with conditions of approval and DPM standards.
- 6-6(H)(2)(e) A Site Plan – EPC may not be approved until after any necessary Conditional Use Approvals are obtained pursuant to Subsection 14-16-6-6(A).
- 6-6(H)(2)(f) The EPC may grant a Variance to IDO standards as part of this approval per Section 14-16-6-6(M) (Variance – EPC).
- 6-6(H)(2)(g) Site Plans shall be reviewed administratively for compliance with conditions of approval and zoning standards prior to the issuance of a building permit.

6-6(H)(3) Review and Decision Criteria

Any application for a Site Plan – EPC shall be approved if it meets all of the following criteria:

- 6-6(H)(3)(a) The Site Plan is consistent with the ABC Comp Plan, as amended.
- 6-6(H)(3)(b) The Site Plan is consistent with any applicable terms and conditions in any previously approved NR-SU or PD zoning covering the property and any related development agreements and/or regulations.
- 6-6(H)(3)(c) The Site Plan complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the property.
- 6-6(H)(3)(d) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.
- 6-6(H)(3)(e) The application mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.

TRNA has these specific objections to the analysis and findings in the Staff Report. We ask you to deny the site plan that has been presented to you.

TRNA comments are given first; followed by the language from the 3/14/19 staff report identified as SR and the page number.

1. **Construction mitigations is not specified for an extremely fragile area.** Fencing should be used to delineate a no disturbance zone during site construction. If site preparation is not closely monitored, irreparable damage could be done to the sandy bluff and oxbow. Revegetation is not an adequate construction mitigation.

SR, p. 7 The request is consistent with Policy 11.3.3 b) because the common open space to the east adjacent to the Bosque will be undisturbed or revegetated to a natural setting.

2. The final flood plain boundaries should be part of the EPC review. There should be no lots in the floodplain (violation of the IDO). **If the flood plain boundaries are not finalized, the site plan should not be finalized.** Staff should not suggest that lots in a floodplain should be relocated on the site plan after EPC review.

SR, p. 10 The applicant indicates a Flood Zone area on the Sensitive Areas exhibit and the Grading and Drainage Plan shows an "Approximate Location of Existing FEMA Flood Zone"; however, the applicant has indicated that the flood zone line should have been adjusted due to work on the adjacent detention pond to the north. The City Hydrologist states that a Letter of Map Revision (LOMR) will be required to remove the floodplain from the lots that have the floodplain, and this is Note 1 on the applicant's Conceptual Grading and Drainage Plan. Staff recommends this project proceed to DRB review and approval for technical issues such as this, and if Lots C-34-C-36 remain in the flood zone that they be relocated on the Site Plan.

3. **The EPC should find that the Sensitive Lands Analysis is inadequate.** A map is inadequate analysis. No descriptions or pictures of features with analysis of their vulnerabilities if development occurs. EPC unable to make a finding of no negative impact of development on MPOS without this analysis.

SR, p.14 Staff did not receive updated justifications to these criteria in the recent submittal. The current evidence that these criteria have been considered is the Sensitive Areas exhibit submitted in February and the original letter dated December 3, 2018, which is quoted in italics below. It is within the EPC purview to determine if the applicant has sufficiently met these criteria and/or if more information is needed.

4. The IDO requires compliance with the Sensitive Lands section when the features in the list are present on the site. **There is no language in the IDO that says a cluster does not have to comply with Sensitive Lands.** The Sensitive Lands provision is actually its own form of a cluster (move development away from sensitive lands; lot reductions allowed to a maximum reduction of 25%).

SR p. 17 This provision would apply if the project was to develop under the standard lot size for the R-A zone, 10,890 square feet. This provision does not supersede the right to develop the

property as a cluster development since more than one provision may apply to the same property as long as all regulations that apply to the provision are met per the IDO and as determined by the City's ZEO (Zoning Enforcement Officer). Since the applicant is proposing a cluster development and the sensitive lands are part of the designated common open space, applying this provision on top of the cluster development would not provide extra protection for sensitive lands.

- 5. The Zoning determination on what is contiguous is not supported by the IDO language.** ZEO is liberally making determinations outside the public purview to the benefit of the applicant. ZEO has ignored two written public requests for zoning determinations.

One of the reasons the open space should be contiguous is so that it remains part of the natural ecosystem of the open space. Interruptions of asphalt and cars destroy the smaller private open space linkage to the larger Bosque ecosystem. The result is usually the death of the natural plant palette of the smaller private open space and this land is no longer used by the wildlife.

SR, p. 18 All three of the County lots are adjacent to the City's MPOS and are therefore subject to this regulation. The ZEO determined that the common open space is contiguous if linked through a continuous trail system with minor crossings of the private internal roadway. The revised Site Plan is improved with regard to this provision.

- 6. The IDO requirement for CEPTED is not optional.** Natural surveillance, e.g. single loaded street adjacent to MPOS is a CEPTED technique. A gated community is not CEPTED.

SR, p. 19 5-2(H)(2)(a)6. Incorporate Crime Prevention through Environmental Design (CPTED) principles to deter crime and to facilitate security measures. Crime Prevention through Environmental Design principals. The City's police department did not comment on the development. Since the project is expected to be gated, property crime may be less of an issue than otherwise.

- 7. There is no IDO provision that states that Areas of Consistency policy does not apply to cluster development.**

SR, p.23 The subject site is within an Area of Consistency: The Site Plan is consistent with Area of Consistency Policies in the Comprehensive Plan as shown above in Section II. Contextual Standards in the IDO do not apply to the subject project because it is a cluster development that does not face the same street as any existing residential developments. Contextual regulations in Areas of Consistency do not apply to cluster developments per 5-1(C)(2)(a) and 51(C)(2)(c).

- 8. The Open Space Division has not stated no negative impact of the development on MPOS.** In fact, the opposite is true. The OSD Letter (see excerpts below) calls for a study prior to development. All should happen prior to EPC site plan approval. EPC should determine best buffer between the southeastern cliff and development.

SR, p. 20 The Open Space Division has not determined that material negative visual, recreational, or habitat values environmental impacts would be caused by the development.

9. **No evidence of finding for no negative impact on MPOS.** All Hydrology comments show grave concern for the stability of sandy bluff to the extent that the City Hydrologist does not want the City to own the bluff. It is highly likely that the problems will occur after the developer has finished the project and the residents of the community will not have the resources to deal with instability problems. They would turn to the City for remedy.

OSD calls for a study in their 3/1/19 letter because of their concern about how development could affect the southeastern portion of the bluff. The IDO has clearly been written to have the applicant submit in the beginning the sensitive land analysis and proof of no negative impact. This application has always been deficient in these areas. EPC should not be asked to make a site plan layout decision when all the crucial information about the prudent way to lay out the site under IDO provisions is complete. The question of how far development should be set back from this bluff remains a large question. The layout of the site cannot be deferred to the DRB.

SR p.35 Hydrology :

1. 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.
2. All floodplains need to be shown on the plat and site plan.
3. LOMR will be required to remove the floodplain from the lots that have the floodplain.
4. AMAFCA approval will be required for connection to their Channel and grading adjacent to their right of way.
5. USACE approval will be required for any fill proposed in Waters of the US.
6. An infrastructure list will be needed for Preliminary Plat.
7. A recorded IIA is required prior to Final Plat.
8. 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.
9. The land containing the AMAFCA facilities in the northeast corner of the site will have to be plated as separate tracts and conveyed to AMAFCA by deed.
10. Management onsite will be required for the SWQV unless a waiver is demonstrated on the G&D Plan and accepted by Hydrology

OSD comments 3/1/2019 Call for a study to determine no negative impact on the slope. This all is required prior to EPC adoption.

Another condition OSD would like the EPC to consider is that prior to any construction on the property, a study be done to ensure the bluff or Oxbow itself won't be negatively

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or adversely impacted by development of the proposed homes along the southern edge. In more specific terms, OSD would like to see a satisfactory erosion mitigation plan be developed and ensure that the City and OSD are not held responsible for mitigating any future erosion issues that may result from development near the bluff, and that any erosion mitigation or bank stabilization efforts on the private parcel not have an impact on the abutting MPOS.

The Open Space Division works to acquire and protect the natural character of land designated as MPOS in the 2017 ABC Comprehensive Plan. The San Antonio Oxbow is an important element of the MPOS system that requires careful and thoughtful treatment from adjacent development. The IDO's new requirements and standards for development near sensitive lands (14-16-5-2) provide some basic measures to implement, but special care shall be applied to development next to the Oxbow because it serves as prime riparian habitat for waterfowl, aquatic mammals, amphibians and fish species.

10. **We ask the EPC to confirm that all of TRNA letters on this case (including their attorney) is in the record before the EPC.** The Planning Department website does not provide a complete copy of the record in one place. Since only the Planning Department can compile the record, we are reliant on them to put all the public comment in one place for the EPC and the public to review. If the record is in multiple places on the website, it is very likely that public comments will be overlooked.

In conclusion, TRNA has grave concerns about the site plan and the process the staff used to come to their recommendations. We respectfully ask that the EPC deny this site plan or, at a minimum, defer action until all the required analysis is completed by the applicant.

Sincerely,
Jolene Wolfley, M.C.P.
Director of Government Affairs
Taylor Ranch N.A.