

# CITY OF ALBUQUERQUE

## *Planning Department*

*David Campbell, Director*

### *Development Review Division*

600 2<sup>nd</sup> Street NW – 3<sup>rd</sup> Floor

Albuquerque, NM 87102

## NOTICE OF APPEAL



May 17, 2019

### TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on May 16, 2019. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

***Please refer to the enclosed excerpt from the City Council Rules of Procedure for Land Use Hearing Officer Rules of Procedure and Qualifications for any questions you may have regarding the Land Use Hearing Officer rules of procedure.***

Any questions you might have regarding Land Use Hearing Officer policy or procedures that are not answered in the enclosed rules can be answered by Crystal Ortega, Clerk to the Council, (505) 768-3100.

**CITY COUNCIL APPEAL NUMBER: AC-19-9**

**PLANNING DEPARTMENT CASE FILE NUMBER: PR-2019-002184**

**VA-2019-00176**

**VA-2019-00086**

PO Box 1293

Albuquerque

NM 87103

**APPLICANT: Oso Grande Neighborhood Assoc.  
4921 Noreen Ct. NE  
Albuquerque NM 87111**

[www.cabq.gov](http://www.cabq.gov)

cc: Crystal Ortega, City Council, City county bldg. 9<sup>th</sup> floor  
Kevin Morrow/Legal Department, City Hall, 4<sup>th</sup> Floor-  
Zoning Enforcement  
ZHE File  
Paige Baird, 2900 Louisiana Blvd. NE, Ste 250, 87110  
Janie McGuigan, 4929 Purcell Dr. NE, 87111  
Kathy Alvarado, 4920 Serena Cir NE, 87111  
Phil Jester, 4225-C Paseo Del Oso NE, 87111  
Alicia Quinoes, Oso Grande NE, 87111  
Tom Knoll, 9412 Northridge Dr. NE, 87111  
Alan Markey, 10345 Camino Del Oso NE, 87111  
Andrew Leverett, 10416 Karen Ave NE, 87111  
Steve Armstrong, 9813 Mesa Arriba Ave NE, 87111  
Robert Fire, 10262 Gutierrez Road NE, 87111



Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.

<b>Administrative Decisions</b>	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)
<input type="checkbox"/> Archaeological Certificate (Form P3)	<input type="checkbox"/> Historic Design Standards and Guidelines (Form L)	<b>Policy Decisions</b>
<input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)	<input type="checkbox"/> Master Development Plan (Form P1)	<input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)
<input type="checkbox"/> Alternative Signage Plan (Form P3)	<input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)	<input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)
<input type="checkbox"/> WTF Approval (Form W1)	<input type="checkbox"/> Site Plan – DRB (Form P2)	<input type="checkbox"/> Amendment of IDO Text (Form Z)
<input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Subdivision of Land – Minor (Form S2)	<input type="checkbox"/> Annexation of Land (Form Z)
<b>Decisions Requiring a Public Meeting or Hearing</b>	<input type="checkbox"/> Subdivision of Land – Major (Form S1)	<input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)
<input type="checkbox"/> Conditional Use Approval (Form ZHE)	<input type="checkbox"/> Vacation of Easement or Right-of-way (Form V)	<input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
<input type="checkbox"/> Demolition Outside of HPO (Form L)	<input type="checkbox"/> Variance – DRB (Form V)	<b>Appeals</b>
<input type="checkbox"/> Expansion of Nonconforming Use or Structure (Form ZHE)	<input type="checkbox"/> Variance – ZHE (Form ZHE)	<input checked="" type="checkbox"/> Decision by EPC, LC, DRB, ZHE, or City Staff (Form A)

### APPLICATION INFORMATION

Applicant: <u>OSO GRANDE NEIGHBORHOOD ASSN.</u>		Phone: <u>296-3762</u>
Address: <u>PO BOX 4921 NOREDO CT NE</u>		Email: <u>guimenes@cybermax.com</u>
City: <u>ALBU</u>	State: <u>87111 NM</u>	Zip: <u>87111</u>
Professional/Agent (if any): <u>N/A</u>		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:		List all owners:

### BRIEF DESCRIPTION OF REQUEST

Appeal NOTICE OF DECISION - MAY 1, 2019; PROJECT #: 2019-002184

### SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)

Lot or Tract No.: <u>LOT 61; A</u>	Block: <u>—</u>	Unit:
Subdivision/Addition: <u>Academy Place</u>	MRGCD Map No.:	UPC Code: <u>1021064952534022</u>
Zone Atlas Page(s): <u>MX-L; F19124</u>	Existing Zoning: <u>MX-L</u>	Proposed Zoning:
# of Existing Lots: <u>2</u>	# of Proposed Lots: <u>N/A</u>	Total Area of Site (acres): <u>2.3</u>

### LOCATION OF PROPERTY BY STREETS

Site Address/Street: <u>4909 SWAN TABO</u>	Between: <u>SWAN TABO</u>	and: <u>OSUNA RD</u>
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### CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

1001993

Signature: <u>Oso Grande Neighborhood Assn.</u>	Date: <u>5-16-19</u>
Printed Name: <u>OSO GRANDE NEIGHBORHOOD ASSN</u>	<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent

### FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees
<u>VA-2019-00176</u>	<u>Appeal</u>	<u>\$130</u>
-		
-		
-		
Meeting/Hearing Date:		Fee Total: <u>\$130</u>
Staff Signature: <u>[Signature]</u>	Date: <u>5-16-19</u>	Project # <u>PR-2019-002184</u>

## FORM A: Appeals

**Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.**

☐ **APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)**

☐ **APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)**

☒ **APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)**

\_\_\_ Interpreter Needed for Hearing? \_\_\_ if yes, indicate language: N/A

✓ A Single PDF file of the complete application including all documents being submitted must be emailed to [PLNDRS@cabq.gov](mailto:PLNDRS@cabq.gov) prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD. PDF shall be organized with the Development Review Application and this Form A at the front followed by the remaining documents in the order provided on this form.

✓ Project number of the case being appealed, if applicable: 2019-002184

✓ Application number of the case being appealed, if applicable: VA-2019-00086

✓ Type of decision being appealed: THE NOTIFICATION OF DECISION


\_\_\_ Letter of authorization from the appellant if appeal is submitted by an agent NA

✓ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2) Applicant is NA located within 660 ft

✓ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4).

✓ Copy of the Official Notice of Decision regarding the matter being appealed

(1) SEE BASIS FOR OGNA APPEAL  
OF SPECIAL EXCEPTION  
No. VA-2019-00086  
PROJ # 2019-002184

<b>I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.</b>	
Signature:	Date:
Printed Name:	<input type="checkbox"/> Applicant or <input type="checkbox"/> Agent
<b>FOR OFFICIAL USE ONLY</b>	
Case Numbers:	Project Number:
<u>VA-2019-00176</u>	<u>PR-2019-002184</u>
Staff Signature: <u>[Signature]</u>	
Date: <u>5-16-19</u>	



**Oso Grande Neighborhood Association (OGNA)**

**Appeal of Special Exception no VA-2019-00086. Project no 2019-002184**

**Submitted May 16, 2019**



CITY OF ALBUQUERQUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
ZONING HEARING EXAMINER  
NOTIFICATION OF DECISION

SL Juan Tabo Land, LLC requests a conditional use to allow self-storage for Lot G1, Academy Place, located at 4909 Juan Tabo Blvd NE, zoned MX-L [Section 14-16-5-6]

Special Exception No:..... **VA-2019-00086**  
Project No: ..... **Project# 2019-002184**  
Hearing Date: ..... 04-16-19  
Closing of Public Record: ..... 04-16-19  
Date of Decision: ..... 05-01-19

On the 16th day of April, 2019, Jim Strozier, Consensus Planning, agent for property owner SL Juan Tabo Land, LLC ("Applicant") appeared before the Zoning Hearing Examiner ("ZHE") requesting a conditional use to allow self-storage ("Application") upon the real property located at 4909 Juan Tabo Blvd NE ("Subject Property"). Below are the ZHE's findings of fact and decision:

## FINDINGS

1. Applicant is requesting a conditional use to allow Self-Storage.
2. The City of Albuquerque Code of Ordinances Section 14-16-6(A)(3) (Review and Decision Criteria- Conditional Use) reads: *"An application for a Conditional Use Approval shall be approved if it meets all of the following criteria:*
  - (a) It is consistent with the ABC Comp. Plan, as amended;*
  - (b) It complies with all applicable provisions of the IDO, including, but not limited to any Use-specific Standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; and any conditions specifically applied to development of the property in any prior permit or approval affecting the property;*
  - (c) It will not create significant adverse impacts on adjacent properties, the surrounding neighborhood, or the larger community;*
  - (d) It will not create material adverse impacts on other land in the surrounding area, through increases in traffic congestion, parking congestion noise, or vibration without sufficient mitigation or civic or environmental benefits that outweigh the expected impacts;*
  - (e) It will not increase non-residential activity within 300 feet of a lot in any residential zone district between the hours of 8:00 pm and 6:00 am;*
  - (f) It will not negatively impact pedestrian or transit connectivity without appropriate mitigation.*
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-4-(F)(2).
4. Jim Strozier of Consensus Planning, agent for SL Juan Tabo Land LLC, owner appeared and gave evidence in support of the application.
5. The address of the subject property is 4909 Juan Tabo NE.
6. The subject property is currently zoned MX-L.
7. The MX-L zone allows indoor storage as a conditional use.

8. The requested use is regulated by Specific-use Standards Section 14-16-4-3(D)(28): Self-Storage.
9. All storage units for the proposed use will be located inside the structure, with access through interior corridors; with no outdoor storage of vehicles or goods on the subject property.
10. The subject property does not abut any residential zone or any lots containing residential use.
11. The application complies with applicable Use-specific standards of the IDO, the DPM; other City regulations.
12. There are no other conditions applied on the property by a prior permit or approval.
13. All property owners within 100 feet and affected neighborhood association were notified of the application.
14. Amberglen HOA, Inc., Oso Grande Neighborhood Association, and John B. Roberts Neighborhood Association are the affected NAs.
15. A site plan and photographs of the subject property and viewsapes from the subject property were submitted in support of the Application.
16. The property owner does business as Guardian Storage.
17. The subject property is 2.37 acres in area and is currently vacant, and is located on the southeast corner of the intersection of Juan Tabo and Osuna Blvd. NE.
18. The subject property is located within an Area of Consistency as designated by the ABC Comp. Plan.
19. The subject property is near Juan Tabo Blvd. NE., a Multi-modal Corridor designated by the ABC Comp. Plan.
20. Juan Tabo Blvd. NE is an Urban Principal Arterial as designated in the LRTS Guide.
21. Adjacent to the subject site to the south is an ABCWUA parcel and the CNM Montoya Campus.
22. The site has a 17 foot slope from Juan Tabo to the site floor.
23. There is a mix of moderate density residential in the R-T and MX-T zones to the north.
24. NR-PO-B to the east includes the John B. Robert Dam; Bear Canyon Open Space and Office.
25. NR-PO-A and R-1D zones properties to the west are the Oso Grande Park and Utilities.
26. The proposed project would be a newly constructed facility that would house a climate controlled multi-story self-storage unit on the property.
27. The proposed use will serve the surrounding neighborhood with a business which is low intensity, generates low traffic volume and congestion, commercial infill on currently vacant and underutilized and underdeveloped land.
28. This proposed use is consistent with ABC Comp. Plan Goal 5,3: Efficient Development Patterns; in promoting a development pattern that that will maximize the use of existing infrastructure and public facilities and the efficient use of land to support the public good.
29. The proposed building will be a 3 story, 120,000 square feet and 35 foot tall.
30. The proposed building will be constructed with an approximate 62 foot setback on the north; approximate 50 foot setback on the south; approximate 74 foot and 60 foot setbacks on the east; and a 75 foot setback to the west.
31. The building will have interior drive-in loading area with garage door ingress and egress to each unit.
32. Site access will be from an entrance to the north from Osuna Road.
33. The business will operate from 7:00 am through 5:30 pm, with gate access closed at 7:00 pm.
34. There will be no ingress or egress from Juan Tabo Blvd. NE.

35. The subject site is located adjacent to the Bear Canyon Arroyo Major Public Open Space, making it subject to the regulations of Section 14-16-5-2(C).
36. The Applicant shall conduct an analysis of the site constraints of the property as it relates to sensitive lands prior to the design process.
37. Agent for the Applicant participated in a site visit and a City of Albuquerque Land Use Facilitation meeting with representatives of the Oso Grande Neighborhood Association, Jon B. Robert Neighborhood Association and Amberglen Home Owners Association. held February 7, 2019 at the Holiday Park Community Center.
38. The Report from the facilitators was submitted with the Application.
39. The Report, Report Amendment, and Appendix summarizes potential adverse impacts to the adjacent area raised by opponents to the Application into three general areas of concern: Traffic impacts; Drainage; and Viewscape.
40. Opponents raised potential adverse traffic impacts relating to congestion and parking problems generated by the requested use.
41. Applicant pointed out that the requested conditional use generates far less traffic than many of the allowed uses on an MX-L zone district.
42. This use generates an average of 5 to 6 vehicles per hour, even during peak usage hours. With a daily average of approximately 50 per day.
43. The parking lot will be primarily used by employees of the proposed facility and potential new customers who want to rent a storage unit.
44. Existing customers will drive inside the building to drop off of pick up items.
45. Juan Tabo Blvd. currently generates 24,000 trips per average day.
46. Ingress and egress to the facility will only be from Osuna Blvd. There will be not access from Juan Tabo Blvd.
47. Osuna Blvd. does not continue to the west.
48. Access and circulation have been designed to ensure safe ingress and egress.
49. The City Fire Marshall's office has approved the Fire 1 Plan.
50. Opponents were concerned that storm runoff and drainage from the proposed use would potentially adversely impact nearby City Open Spaces and wildlife habitat areas.
51. Applicant has acknowledged the subject property is adjacent to the Bear Canyon Arroyo Overlay Zone/Corridor.
52. Although the site is not in a flood plain as designated by FEMA, Applicant agrees and stipulated ; since it is adjacent, the development will be assessed for compliance with a) drainage policies that prevent unnatural erosion and degradation of drainage ways, and b) approval by the City engineer.
53. Applicant will prepare and submit a Grading and Drainage Plan (site plan) to be approved by City Hydrology, with specific plans to stabilize the existing steep slope on the east edge of the property; b) provide on-site improvements to eliminate adverse impacts to the property to the west (including the pedestrian path) and c) improve storm water quality.
54. Applicant will maintain contact with AMAFCA, the agency that regulates the adjacent channel, and comply with any regulations by that agency.
55. Opponents raised concerns that the development will block the viewscape of the John B. Roberts Dam, a cultural landmark; that the development will destroy the feeling of openness.
56. Applicant has testified that the subject site is lower than the residential neighborhood to the north and the businesses to the southeast; that the property is privately owned and is not city "Open Space", and height is permissive in the MX-L zone.

57. Applicant has agreed to consider the viewscape from all directions with the intention and goal to design and site the building so that impacts are acceptable.
58. The proposed building is planned to be a three-story building with glass and a finished building materials that will blend in with other office, institutional, and commercial developments surrounding the subject property.
59. The Oso Grande Neighborhood Association submitted a Conditional Use-Impact Statement in opposition to the requested use.
60. Paige Baird, 2900 Louisiana Blvd. NE, appeared and gave testimony in support of the Application.
61. Janie McGuigan, 4929 Purcell Dr. NE, appeared and gave testimony in opposition of the Application.
62. Kathy Alvarado, 4920 Serena Cir NE, appeared and gave testimony in opposition of the Application.
63. Phil Jester, 4225-C Paseo Del Oso NE, appeared and gave testimony in opposition of the Application.
64. Alicia Quinoes, Oso Grande NE, appeared and gave testimony in opposition of the Application.
65. Tom Knoll, 9412 Northridge Dr. NE, appeared and gave testimony in opposition of the Application.
66. Alan Markey, 10345 Camino Del Oso NE, appeared and gave testimony in opposition of the Application.
67. Andrew Leverett, 10416 Karen Ave NE, appeared and gave testimony in opposition of the Application.
68. Steve Armstrong, 9813 Mesa Arriba NE, appeared and gave testimony in opposition of the Application.
69. Robert Fire, 10262 Gutierrez Road NE, appeared and gave testimony in opposition of the Application.
70. The proposed use is consistent with the ABC Comp. Plan, as amended, as required by Section 14-16-6-6(A)(3)(a).
71. The proposed use complies with all applicable provisions of the IDO, including, but not limited to any Use-specific standards applicable to the use in Section 14-16-4-3; the DPM; other adopted City regulations; any conditions specifically applied to the development of the property in a prior permit or approval affecting the property, as required by Section 14-16-6-6(A)(3)(b).
72. Although, the proposed use potentially might create adverse impacts on the adjacent properties; the surrounding neighborhood, or the larger community, the Applicant has proposed and stipulated mitigation that would outweigh the adverse impacts as required by Section 14—16-6-6(A)(3)(c).
73. The proposed use will not create material adverse impacts on other land in the surrounding area through increases in traffic congestion, parking congestion, noise, or vibration as requires by Section 14-16-6(A)(3)(d).
74. The proposed use will not increase non-residential activity within 300 feet of a lot in any Residential zone between the hours of 8:00 pm and 6:00 am as required by Section 14-16-6-6(A)(3)(e).
75. The proposed use will not negatively impact pedestrian or transit connectivity, as required by Section 14-16-6-6(A)(3)(f).



76. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
77. The Applicant has authority to pursue this Application.

DECISION:

APPROVAL of a conditional use to allow Self-Storage.

CONDITIONS:

Applicant shall comply with Specific-use Standards Section 14-16-4-3(D)(28): Self-Storage. Applicant shall comply with Section 14-16-5-2(C); specifically Applicant shall conduct an analysis of the site constraints of the property as it relates to sensitive lands prior to the design process.

APPEAL:

If you wish to appeal this decision, you must do so by May 16, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



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Stan Harada, Esq.  
Zoning Hearing Examiner

cc: Zoning Enforcement  
ZHE File  
Paige Baird, 2900 Louisiana Blvd. NE, Ste 250, 87110  
Janie McGuigan, 4929 Purcell Dr. NE, 87111  
Kathy Alvarado, 4920 Serena Cir NE, 87111  
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## **BASIS FOR OGNA APPEAL OF Special Exception No: VA-2019-00086; Project No. : 2019-002184**

The City of Albuquerque Zoning Ordinance provides that where there is a substantial reason to believe that all city plans, policies or ordinances were not properly followed by the Zoning Hearing Examiner in reaching his or her decision; the Board of Appeals on review must determine if:

1. There was an error in applying adopted city plans, policies, and ordinances in arriving at its decision;
2. There was an error in the ZHE decision including its stated facts; or
3. The ZHE acted arbitrarily and/or capriciously or the ZHE manifestly abused his discretion.

Oso Grande Neighborhood Association states that all three of the above criteria were disregarded, arbitrary, capricious, abusive of discretion, or erroneous in the ZHE Notification of Decision made on 5/1/19 by ZHE. OGNA requests the Land Use Hearing Officer, or City Council reexamine the decision, account for overwhelming evidence submitted in the Impact Statement, that subject proposal should be disallowed according to IDO. OGNA requests disallowance of the conditional use permit upon appeal. OGNA requests that its submitted Impact Statement be accounted for in the appeal as it was not accounted for in the original decision. OGNA requests that NA's be provided real and meaningful opportunity to engage in the Zoning, Planning, and Permitting Process rather than have their voices suppressed due to capriciousness and procedural non-compliance.

Following are specific items from the Notification of Decision, or from IDO and other relevant Ordinance, and from zoning process that does not comply with the above decision criteria for appeal.

- 1) **Criteria for a Variance Was Not Met:** OGNA rebuttal process was denied equal rights given to individual property owners when presented with a variance request. The application presented to OGNA was for a conditional use permit identified by Zoning as a special exception. Special exceptions are variances. Variances, through zoning procedure, require applicants to provide 20% approval from neighbors in the applicable NA. Applicant did not provide neighbor approvals at all. OGNA maintains that there should be equal criteria for all approvals of variances despite their names and despite neighbor type. OGNA did provide substantial and overwhelming evidence of neighbor disapproval of the proposed project. Those disapprovals were disregarded in the ZHE process.
- 2) **ZHE Notification of Decision Failed to Include Neighbor & Stakeholder Comments and Disapprovals:** ZHE process called for all commentary and rebuttal documents to be delivered to ZHE office no later than 5:00pm, on April 10.

Approximately 30 rebuttal documents were submitted, via email, by this deadline. ZHE staff, in some cases, returned a note that the commentary would be added to the record. Notification of Decision did not record these documents and commentary. Presumably, they were also not read. This commentary was important supplementation from stakeholder groups whom will be negatively impacted by the ZHE decision. Their submissions were not accounted for; their important perspective and information about regulatory and environmental aspects of the proposal were ignored. Specifically in the group of ignored submittals were documents from District 8 Coalition, and from InterCoalition Panel of NA's and from Oso Grande Pollinator Habitat Board. Disregarding properly submitted documents is contrary to Zoning Process. Neighborhood opposition to proposed development was subverted and disregarded.

- 3) **Zoning Process Allowed Applicant to Change their Application after the Submission Deadline:** An incomplete and improper document, applicant letter assigning agency, was received by Zoning Staff and accepted as a change after the submission deadline. This is improper procedure, unfair, and against Zoning procedure. Application should be disallowed on this basis alone.
- 4) **OGNA's Impact Statement, submitted properly by deadline did not appear to have been read by ZHE Nor Was it Considered in NOD.** It clearly showed material negative impact to neighbors on a post-mitigation basis, out-of-character criteria was clearly and overwhelmingly demonstrated, and CABQ Ordinance was competently shown to disallow such permitting. The Adverse Impact Statement stands on its own as evidence OGNA fully and competently met the burden of demonstrating adverse impact. There was little evidence in the Zoning decision document that OGNA's submittal was even read by Zoning. During the Appeal process OGNA requests that every item in the Impact Statement be read, compared to the IDO and associated Policies and Plans, such as the Bear Canyon Arroyo Plan, and be individually justified as to why IDO, and Policy was ignored in the decision process. Material Impacts on a post-mitigation basis were clearly elucidated. And out-of-character criteria were amply demonstrated in the document. Findings of NOD, Item #2 parts a-f were all demonstrated to be NOT MET by the applicant in the Impact Statement.
- 5) **Applicant Submitted Evidence Clearly Disallowing Storage as a Permitted Use On MX-L Zoned land.** Applicant submitted documentation, IDO Zoning Usage Table, 14-16-4; wholesaling and storage, as evidence of permissive use. The submitted table, highlighting the Rows shown as wholesaling and storage, clearly indicate that storage is Not Allowed for MX-L. Applicant appears to be unclear about whether they intend wholesale storage (Not Allowed) or they intend self-storage. If applicant is unclear as to intended use by submitting documentation that is contrary to their position, then, such lack of clarity should not be supported. Yet, ZHE did allow contrary evidence and

changed its name to self-storage rather than the submitted and disallowed wholesaling and storage tables. Finding #8 in NOD superseded the applicants own evidence of disallowance. Further, applicant went on to provide evidence that the disallowed warehousing storage would indeed be an important function of their proposed business. Example: The rough design layout of the facility shows a first floor that dedicates large quantities of space to vehicle/truck traffic and logistics. ...in fact an inordinate amount. This inordinately large dedication to interior traffic and logistics only makes sense if warehousing, activity were planned. If self-storage were competently being planned, the first floor would provide ample, but not excessive, space to vehicles for self-storage customers, providing more rentable space. Otherwise, it's a waste of space. OGNA Impact Statement pointed out this incongruity but that document was not accounted for in decision-making. Applicant lack of clarity, and submission of contrary evidence, of what they intend should not be supported in such an important decision. Appeal should deny CUPermit to Applicant on this basis alone.

- 6) **Finding #36 Improperly Designates Sensitive Lands Use.** Zoning Notification of Decision document, Finding #36 and Conditions section calls for sensitive lands site constraints analysis. 1) sensitive lands is not capitalized in the Findings document. This opens up the statement for loose interpretation. Because the non-capitalization and non-designation of sensitive land, the Applicant is at liberty to determine for themselves what that statement means. Yet, IDO is very specific about Sensitive Lands and its requirements. 2) OGNA Impact Statement was very clear about Applicants' disavowal that the Site is centered in crucial water, erosion, and flood management infrastructure regulated by City, State, and Federal agencies. 3) Finding #39 reduces flood management to a mere drainage problem to be rectified by Applicant. It is not a mere drainage issue. Flood management, pointed out in the Impact Statement is real, a threat, and constitutes material adverse financial impacts to abutting and adjacent property owners. The NOD trivialized the realities of locating a business in the heart of flood and arroyo management lands in an intensive regulatory environment. 4) Finding #52 about Site being located in a floodplain is erroneous. Site is in a floodplain, one which is managed by several agencies charged with managing Arroyo and flood risks. The disavowal of the Impact Statement, which pointed out the realities of floodplain management and the associated hardships the Proposal would induce upon nearby property owners is another example of trivializing the cruciality of floodplain management and its associated decision-making. 5) Finding #27 refers to Site as being underutilized and underdeveloped. The Site is currently fully utilized and developed as a) working floodplain b) flood diversion c) flood absorption capacity d) subsurface structural support and dam safety feature for toe-hold area of dam e) wildlife habitat e) open space for recreational users on nearby Major Open Space Trail. OGNA requests that CABQ Appeals process elevates these issues beyond a Zoning concern into CABQ levels of management whereby interdependent risks, affected stakeholders, and regulatory compliance with multiple agencies are not trivialized and are amply treated with due diligence. Sensitive Lands should be capitalized !

- 7) **Bear Canyon Arroyo Overlay Zone/Corridor Plan and Policies Are Being Disregarded With Proposal.** Finding # 51 is a simple statement that Applicant acknowledges being adjacent to Bear Canyon Arroyo. This Plan is a working policy document for CABQ which designates usage which has been ignored. The Site is located in the Corridor, in the Arroyo, in the floodplain, in the Oso Grande Park/Habitat/ABCWUA/ OpenSpace complex. It's not adjacent. Proposal does not fit with the policies designated by the Bear Canyon Plan. Impact Statement raised this issue but was ignored. Finding #51 does not go far enough in assuring that the Arroyo Plan is accounted for in decision-making. The Arroyo Plan disallows development such as that identified in the Proposal. OGNA requests that all items in the Impact Statement be taken into account prior to issuing a decision.
- 8) **OGNA Was Consistently Excluded from Zoning's Process to Use Neighborhood Association Input for New Zoning Designations.** Zoning's 2015-2017 process to rezone CABQ systematically disregarded OGNA's multiple comments about the subject Site. Because Zoning can show no evidence that initial zoning processes implemented by CABQ were followed, then subsequent zoning approvals are invalid. This lack of due diligence led to improper zoning that risks neighbors' private property and denies their rights.
- 9) **Finding #73 Regarding Noise and Traffic Are Insufficiently Stated.** NOD does not designate compliance measures required for noise or traffic. CABQ Noise Ordinance has specific requirements regarding noise that cannot be superseded by Zoning decision. NOD appears to provide a variance for noise and traffic. There have been no noise or traffic studies conducted; hence ZHE is not at liberty to grant an exception for special use. New traffic regulation appears to prohibit the type of entrance proposed. OGNA requests a greater level of specificity from NOD, and requests due diligence burden be placed on Applicant to follow all ordinance and regulation and that regulation cannot be suspended through a variance.
- 10) **Finding #28 Is Contrary to ABC Comp. Plan 5,3; Efficient Development Patterns.** Proposal calls for abusive use of existing infrastructure, and is an inefficient use of land to support public good. As discussed previously, and as discussed in the OGNA Impact Statement, and as discussed in presentation materials at the Hearing, existing public infrastructure is high-value water and flood management infrastructure, high value recreational and wildlife management property. It is intensive from a regulatory perspective. Higher-level risk management review, approval, and decision-making has not been conducted regarding the risks, impacts, vulnerabilities, and costs to the public by allowing inefficient land usage. OGNA requests that CABQ Risk Management be apprised of the decision and weigh-in, with discussion and recommendations that includes all affected stakeholders and that Risk Management conduct risk and mitigation studies

that properly identify all costs of allowing public infrastructure to be squandered. It is not enough that a blanket statement, unsubstantiated in Finding #28, be allowed to threaten high-value environmental, flood, and water management infrastructure.

- 11) **Finding #72 Disregards and Trivializes Adverse Impacts on Neighbors and on the Public.** NOD takes well documented and impactful risks identified in the Impact Statement as “might create adverse impacts”. Acceptance of proposed, non-workable mitigation is unacceptable decision-making. Risk is Impact! Neighbors will be forced to deal with financial fallout of risk shifted from the Applicant onto Oso Grande. Applicant disregarded all identified risks that could not be mitigated, and ZHE approved it anyhow. OGNA requests that Impact Statement be read and analyzed, and be accepted as legitimate, well founded, critical input into Zoning Process.

- 12) **OGNA Does Not Consent to Suspension or Variance from Any City, Federal, State Laws or Ordinances.** NOD appears to give mere guidelines and suggestions for complying with Ordinance, Regulation, and Law. OGNA requests that Appeal efforts specify that Applicant bear the burden of proper due diligence on all matters identified in the Impact Statement. All necessary studies should be specified and conducted at the expense of the Applicant. Designated agencies, not the applicant, should provide oversight, monitoring, regulatory review, approvals, and risk management decision-making. The NOD appears to be placing the fox in charge of the chicken coop. OGNA insists that greater attention be paid to the serious ramifications pointed out in the Impact Statement.