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Notice of Decision
City Council
City of Albuquerque
April 23, 2025

AC-25-01 - Five appellants-the Santa Fe Village Neighborhood Association (SFVNA); West Side Coalition of Neighborhood Associations (WSCONA); the Native American Voters Alliance (NAEVA), a non-profit organization; and individuals Jane Baechle and Michael T. Voorhees-appeal the Environmental Planning Commission (EPC) decision to approve a Site Plan for the Mesa Film Studio proposed for Double Eagle II (DEII) Airport Lease Area 2 (an approximately 60-acre portion of the Double Eagle II Airport property, consisting of Tract A-1 Plat of Tract A-1 & Tract L-1 Parcels 1-5 Double Eagle II Airport, Tracts C, E, F, K Bulk Land Plat of Double Eagle II Airport and Adjacent Lands, Tract D-1-A-2 and Tract S-1-A Parts of Tracts D-1-A-1, D-1-A-2 & S-1-A of amended Bulk Land Plat for Aerospace Technology Park, Tract N-1 Bulk Lands Part of Tracts N-1, O-1 & N-2 Parcels 1, 2, 3 & 4 Double Eagle II Airport and Adjacent Lands, Tract S-2 Bulk Land Plat for Aerospace Technology Park Tracts D & S of Double Eagle II Airport and Adjacent Lands), located at 7401 Paseo del Volcan NW, Atrisco Vista Blvd. NW and Shooting Range Access Rd. intersection, approximately 4,100 acres (C-4, C-5, C-6, D-4, D-5, D-6, E-4, E-5, E-6, F-4, F-5, F-6, G-4, G-6)

Decision

On April 7, 2025, by a vote of 9 FOR and 0 AGAINST, the City Council voted to deny the appeal, uphold the EPC's decision to approve a Site Plan for the Mesa Film Studio proposed for Double Eagle II (DEII) Airport Lease Area 2, and adopt the EPC's findings in its December 19, 2024 Official Notice of Decision, subject to the following additional findings adopted by a vote of 9 FOR and 0 AGAINST at the April 21, 2025 City Council meeting:

A. The Council finds that the Appellants do not have standing to appeal the December 19, 2024 decision of the EPC. The Appellants cannot establish proximity standing to appeal the EPC Decision. [IDO Section 6-4(U)(2)(a)5]. No neighborhood association has a boundary within 660 feet of the subject site and the individual appellants do not reside within 330 feet of the subject site. The Appellants have failed to demonstrate that their property rights or legal rights have been specially and adversely affected by the EPC Decision. [IDO Section 6-4(U)(2)(a)4]. The Appellants' claims, including that the EPC's Decision could potentially reduce enjoyment of the MPOS and the anticipated "loss of views" as a result of the presence of buildings at a distance, do

not constitute an interference with a property right or legal right, therefore the Appellants do not have standing in this matter.

B. Notwithstanding the Appellants' lack of standing, the Council further finds on the merits of the appeal that the Appellants failed to satisfy their burden of proof that the EPC erred in approving the Site Plan. The Appellants did not demonstrate that the EPC's Decision was erroneous under any of the criteria of IDO Section 6-4(V)(4). There is substantial evidence in the record that application satisfies all applicable criteria for approval. The facts in the record support the EPC's approval of the Site Plan.

C. The Council finds that the IDO's requirements that are applicable to the NR-SU zone district are intended to maintain a practice of negotiable standards by allowing the decision-making body to approve use standards that it finds are appropriate and necessary to accommodate the highly specialized use in each NR-SU zone district and to disregard generalized requirements that the decision-making body finds are not appropriate. The EPC exercised appropriate discretion in deciding the use standards that are appropriate and necessary to regulate the airport use and the compatible or complementary accessory uses requested on the premises.

D. The Council finds that the uses of light manufacturing, office, and other non-residential uses (i.e., warehousing, restaurant, mobile food truck, and mobile food truck court) related to a film study facility are accessory to the primary airport use of the Double Eagle II Airport property and are compatible with and complementary to the primary use.

E. The Council finds that the uses of light manufacturing, office, and other non-residential uses (i.e., warehousing, restaurant, mobile food truck, and mobile food truck court) related to a film studio facility are subordinate in use and purpose to the primary airport use and purpose of the Double Eagle II Airport property, and the accessory use is subordinate in area to the area of the Double Eagle II property on which the primary airport use occurs.

F. The Council finds that when the Subject Property is subdivided from the balance of the Double Eagle II Airport property, the accessory uses approved by the EPC will occur on the same premises as the adjacent lot where the primary airport use of the Double Eagle II Airport occurs.

G. The Council adopts the EPC's findings in its December 19, 2024 Official Notice of Decision, with the following amendments to Findings 7 and 9:

7. The subject site is zoned Non-residential Sensitive Use (NR-SU) for airport as the primary sensitive use.

[The purpose of NR-SU zone district [IDO §14-16-2-5(E)(1)] is to "accommodate highly specialized public, civic, institutional, or natural resource-related uses that require additional review of location, site design, and impact mitigation to protect the safety and

character of surrounding properties. Uses that require NR-SU zoning are not allowed in zone districts and are shown in Table 4-2-1."]

In the NR-SU zone district, allowable land uses and development standards are [negotiated and] established on a case-by-case basis and specified on a Site Plan approved by the EPC. The Site Plan shall be consistent with the Master Plan, but allowable uses and development standards can vary from requirements in the Integrated Development Ordinance (IDO) [IDO Table 2-5-9]. Where the Site Plan is silent, IDO regulations and other City regulations apply. A Site Plan – EPC is required prior to any development or subdivision, both because the subject site is zoned NR-SU and because the subject site is more than 5 acres adjacent to Major Public Open Space [IDO §14-16-6-6(I)(1)(a)].

9. The Site Plan proposes a development consisting of [uses listed in Table 4-2-1: Allowable Uses and defined in IDO §14-16-7-1 as] light manufacturing, office, and other non-residential uses (i.e., Warehousing, Restaurant, Mobile Food Truck, and Mobile Food Truck Court) related to a film studio [establishment][~~, which is not a defined use in the IDO~~].

[The NR-SU zone district is required for the airport as a Sensitive Use [IDO §14-16-2-5(E)(2)(a)] and allows other uses in Table 4-2-1: Allowable Uses as permissive accessory uses if found to be complementary and compatible [IDO §14-16-4-1(A)] to be added via a Site Plan – EPC that establishes development standards to mitigate expected negative impacts. The Rank 3 Double Eagle II Master Plan lists appropriate uses in Table 3.19, including Commercial, Light Industrial, and Film Studio; therefore, the proposed accessory uses are complementary and compatible to the airport.]

[The IDO defines accessory use as a "land use that is subordinate in use, area, or purpose to a primary land use on the same lot or, in any Mixed-use or Non-residential zone district, the same premises…" [IDO §14-16-7-1]. The proposed accessory uses are subordinate in area because they are proposed in a lease area (60 acres) that is much smaller than the area used for the airport use (approximately 1,117 acres).]

[Accessory uses approved in an NR-SU zone district are subject to relevant Use-specific Standards [IDO 14-16-4-1(A)(4)(b)3]. While the Use-specific Standard for Light Manufacturing [IDO §14-16-4-3(E)(4)(f)] requires a Conditional Use Approval within 330 feet of Major Public Open Space, this standard is not applicable to the NR-SU zone district, since the EPC is the decision-making body for establishing the uses that are complementary and compatible [IDO §14-16-4-1(A)] and the development standards that sufficiently mitigate expected negative impacts in a Site Plan [IDO §14-16-2-5(E)(3)(a)], both of which satisfy the purpose of a Conditional Use Approval. The proposed development standards, subject to Conditions of Approval, sufficiently mitigate expected negative impacts.]

The proposed film studio campus includes approximately 291,500 square feet (SF) (6.7 acres) of building area in 7 buildings, including 1 office building (office use) and 6 buildings associated with light manufacturing on the eastern approximate 30 acres (2

Flex, 1 Mill, 3 Stage buildings). A flex building is a space that can be used for a variety of purposes related to film production. A mill building is a large structure where film elements can be constructed and fabricated. An outdoor green screen and stage (25,835 sf/ 0.59 acres) is proposed in the western approximately 28-acre portion of the film studio lease area.

For: Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, Sanchez

IT IS THEREFORE ORDERED THAT THIS APPEAL IS DENIED AND THE EPC'S DECISION TO APPROVE THE SITE PLAN IS UPHELD.

Attachments

1. Land Use Hearing Officer's Findings and Recommendation
2. Action Summary from the April 7, 2025 City Council Meeting
3. Action Summary from the April 21, 2025 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.

Date: 4/23/2025

Brook Bassan, President
City Council

Received by: Ashlee Cordova Date: 04/23/2025

City Clerk's Office

CITY OF ALBUQUERQUE
LAND USE APPEAL UNDER THE IDO
BEFORE AN INDEPENDENT
LAND USE HEARING OFFICER

APPEAL NO. AC-25-01
PR-2018-001577, SI-2024-01470 (Site Plan),
VA-2025-0006 (Appeal)

Santa Fe Village Neighborhood Association,
Westside Coalition of Neighborhood Associations,
Jane Baechle, and Michael T. Voorhees,

Appellants,

And

Scott Resnick, Mesa Film Studio LLC,

Appellees/ Applicants.

PROPOSED DISPOSITION

I. INTRODUCTION

This is an appeal of a December 19, 2024, decision from the Environmental Planning Commission (EPC) who approved a site plan application for a film studio use in a Non-Residential-Sensitive Use (NR-SU) zone district. The proposed uses for the 60-acre site plan are encompassed within a larger, approximately 4,000-acre parcel that is the Double Eagle II

Airport Master Planned property. Most of the land within Double Eagle II Airport Master Planned property (DEII) is owned by the City of Albuquerque **[R. 290]**. The DEII parcel currently contains an airport use and accessory aviation (aeronautical) operations including utility infrastructure, commercial uses for the airport; otherwise, it is vacant land **[R. 290]**.

In this appeal, the issue of standing has been challenged by the Appellee. And, as discussed in detail below, New Mexico law supports an expansive interpretation of standing for appeals having to do with challenges to government administrative action. This matter clearly involves administrative government action. As a consequence, I respectfully find that the Appellants have standing to appeal the EPC's decision under the IDO and under New Mexico law. Next, in their appeal, Appellants allege 23 separate substantive claims of error; however, as explained below, all but one should be denied by the City Council.

The record of this appeal is well over 4,000 pages long. I carefully reviewed the entire record, the Integrated Development Ordinance (IDO), as well as an abundance of New Mexico case law. I respectfully find that the record demonstrates the EPC misapplied the IDO in its review and approval of the application. In doing so, it exceeded its authority in a manner that cannot be cured with a remand.

Briefly, under the IDO the light manufacturing, film studio land uses approved by the EPC in the site plan are not allowed in an NR-SU zone district as primary uses or as accessory uses to the existing primary existing land use at the site—an airport. However, rather than denying the application, the EPC through Planning Staff constructed a creative but antithetical rationale under the IDO. As shown in detail below, this justification is contrary to the IDO and violates New Mexico Law.

II. BACKGROUND

In a planning needs assessment of aeronautics in the city, the DEII airport was first conceived by City leaders in 1969 **[R. 1744]**. Three years later, a targeted study of locations for a "reliever airport" for the Albuquerque International Airport led to what is now the DEII Airport **[R. 1966]**. After an annexation, and land exchanges with the State, and a private owner, the DEII grounds currently encompasses approximately 4,100 acres of land **[R.86]**. Because the DEII is an airport, the city is required under the Federal Aviation Administration (FAA) rules to develop and a Master Plan for the site. **[R. 98]**.

The first DEII Master Plan was approved by the city in 2002 and has been amended three times, including in 2018, 2023, and again in 2024 **[R. 99-100]**. In the first (original) DEII Master Plan, only aeronautical land uses were allowed on the property. Relevant to the site plan application in this appeal, in August 2024 the City Council contemplated and enacted a Resolution allowing non-aeronautical land uses on the DEII airport property, specifically including "film studio" land uses **[R-24-71, Enactment No. R-2024-059]**.[1]

Meanwhile, to discuss the application requirements under the IDO, on August 27, 2024, the agents for Scott Resnick and Mesa Film Studio LLC met with city Planning Department Staff in a mandatory pre-application review meeting (PRT) **[R. 282-285]**. The PRT notes specifically indicate that the request is for "approval for a Film Studio containing 6 Stage buildings, 2 flex buildings, production office, and Mill Building" **[R. 282]**. Between September

1. Notably, although the DEII Master Plan now allows a film studio on the property, the authorizing mechanism was legislative in nature (a resolution). Among the propositions that the New Mexico Supreme Court case of **Albuquerque Commons Partnership v. City Council**, 2008-NMSC-025 stands for is that "piecemeal zoning" actions (targeted for a single property) requires action through the quasi-judicial process.

and October 3, 2024, the applicants through their agents participated in four facilitated meetings with neighborhood association representatives **[R. 427-446]**. The application was then submitted for Planning Staff's (Staff) review on October 10, 2024 **[R. 277]**.

The record next shows that after an initial review by Staff, the applicants were advised in a memorandum on October 27, 2024, to amend the application regarding some minor discrepancies in the application. They were also advised that the "subject site is within 330' of MPOS and Edges" **[R. 334]**. On November 6, 2024, in a second memorandum, Planning Staff again notified the applicants that more information was necessary to justify the request **[R. 347-360]**.

Apparently, on November 21, 2024, the EPC held a public, quasi-judicial hearing on the application **[R. 04]**. The record minutes of that hearing are not in this record; however, it appears that after some discussion, the EPC voted to defer the hearing until December 19, 2024 **[R. 2091]**.[2] Next, the record shows that within a few days after the EPC's deferral, the applicants were sent a third memorandum from Staff requesting that the applicants further revise their "justification letter" and site plan to address the varies regulations in the IDO **[R. 355-360]**. Then, on December 3, 2024, the applicant's agent resubmitted their site plan with the requested changes **[R. 361-368]**.

In the days before the EPC's December 19, 2024, hearing on the matter, the EPC was sent multiple letters regarding the application. Many of the letters were expressions of support

2. Although the record of the EPC's November 21, 2024, hearing is not in the record, the record does show that the neighborhood association appellants, through counsel, requested that the EPC defer it hearing **[R. 685]**.

for the film studio and others requested that the EPC deny the application **[R. 579-1727]**.

It is not known when Planning Staff submitted its Staff Report to the EPC, but in doing so Staff outlined, among other things, the IDO criteria that Staff believed apply to the EPC's site plan review **[R. 86–185]**. With the Report, Staff also submitted to the EPC the bulk of historical zoning and planning decisions related to the DEII site, as well as documents relevant to the application (Exhibits A-K) **[R. 186-578]**.[3]

The EPC held its full hearing regarding the application on December 19, 2024 **[R. 1957-2088]**. On January 3, 2025, the Appellants filed a timely appeal under IDO, § 6-4(U)(3)(a)1. A public, quasi-judicial, appeal hearing, at which all parties were allowed to present argument, testimony, and cross-examine witnesses was held on February 20, 2025. The Appellants and the Appellees are represented by counsel, and they each supplemented the record with written arguments.[4]

III. STANDING TO APPEAL

The first question presented is whether any of the Appellants have alleged facts that entitle them to obtain administrative appellate review of their appeal. As indicated above, there is no dispute that the appeal was filed timely. However, whether a party has a sufficient

3. The Bates stamped record fluctuates in the numbering making it a bit difficult to follow. The last exhibit submitted to the EPC by Planning Staff is, Exhibit Item K, the DEII Master Plan at **R. 578**. However, in the record Exhibit K begins at **R. 1728**.

4. The Appellants also sought to supplement the record with an ordinance that the City Council recently enacted, (Enactment No. 2025-004). The Appellants argued that the ordinance demonstrates bias against neighborhood associations. The Appellees objected to its inclusion in the record. After finding that the ordinance does not include provisions expressly making it retroactively applicable to the date this appeal was filed, it has no relevancy to this appeal, and the objection was sustained.

stake in an otherwise justiciable controversy to obtain review of that controversy is what is referred to as a question of standing to appeal. In the IDO, § 6-4(U)(2)(a), an appellant must have standing to appeal any final decision made under the IDO. There are several manners in which an appellant can show standing under § 6-4(U)(2)(a). Standing is automatic for a listed owner in an application appealed, a city agency, and for a quasi-government entity whose services "may be affected by the application. See IDO, § 6-4(U)(2)(a)1-2. It is undisputed that none of the neighborhood association or individual appellants in this matter are government or quasi-government agencies. In addition, property owners and neighborhood associations whose dwellings and association boundaries are within 330-feet and 660-feet respectively have standing to appeal a decision of the EPC. See IDO, § 6-4(U)(2)(a)5 and the associated Table 6-4-2. Because it is also undisputed that the proposed film studio campus is well over a mile from the closest residential neighborhood, the appellants in this matter do not have standing under the proximity criteria of Table 6-4-2. Surrounding the DEII property is vacant land and directly east of the proposed 60-acre film studio campus, and within 330-ft of the campus is city owned major public open space (MPOS) **[R. 86]**. Within .3 miles of the campus is the Petroglyph National Monument **[R. 86]**.

In the IDO, there is another, less clear basis for standing in which an appellant may attempt to show standing. Under IDO, § 6-4(U)(2)(a)4, standing can be conferred when:

> Any other person or organization that can demonstrate that his/her/its *property rights* or other *legal rights* have been *specially* and *adversely affected* by the decision. (Emphasis added).

The Appellants through counsel contend that they all have standing because the Westside Coalition of Neighborhood Associations (WCNA) and the Santa Fe Village Neighborhood Association (SFVNA) have *"legal rights" under the IDO regarding "land use decisions such*

as building heights, views, protection of West Side MPOS and quality of life issues and also concerning land use decision processes issues" **[R. 019]**. These association appellants further claim that the *"EPC decision specially and adversely affects them… by reducing their enjoyment of the MPOS and by the anticipated loss of use and views in the neighborhood and near the Petroglyph National Monument, and the other factors set out in IDO Section 5-2(A)"* **[R. 019]**.

As for the individual appellants, their claim of standing is similar in nature to the claims of the association appellants. Appellants Baechle and Voorhees both reside in the closest neighborhoods to the film studio campus and on the cusp of the Petroglyph National Monument and MPOS lands **[R. 18-19]**. Appellant Baechle alleges that she has been *"a Petroglyph National Monument VIP (Volunteers in Parks) for over five years, serving both Visitor Services and Trail Watch, educating visitors from all over the world about the geologic and cultural significance of the Petroglyph National Monument and the surrounding area and has an interest in the protection of the entire Monument and all of its resources"* **[R. 19]**. Appellant Baechle further alleges that she *"frequently hikes the Petroglyph National Monument including from designated crossings to the mesa top with both views and trail access to the volcanoes."* **[R. 18-19]**. Appellant Voorhees also alleges frequent use of the MPOS that abuts the proposed film studio campus **[R. 19]**. None of these facts were disputed by the Appellees; thus, these allegations must be taken as true.

However, the Appellees through counsel argue that under these facts the Appellants cannot have standing as they have not shown that their property or legal rights are in fact *specially* or *adversely affected* by the EPC's decision. The Appellees further argue that IDO, § 6-4(U)(2)(a)4 "*does not define the terms "property rights" and "legal rights,"* and that *"we*

must derive the meaning of these terms from other sources" **[Appellee Response, pg. 4, 2-17-25]**. In essence, the Appellees are suggesting that § 6-4(U)(2)(a)4 is vague and or ambiguous. In referencing considerable New Mexico law defining the terms "property rights" and "legal rights," the Appellees contend that under the New Mexico, these terms are well defined and limited in scope **[Appellee Response, pg. 4, 2-17-25].** However, in the analysis, the Appellees failed to cite to any law that relates these general terms to the issue of standing.

I agree with Appellees that there is no guidance in the IDO for interpreting the terms "property rights" and legal rights" as these terms relate to standing. I find that the § 6-4(U)(2)(a)4 is both vague and ambiguous as it pertains to standing. Because it is vague, IDO, § 6-4(U)(2)(a)4, therefore, must be interpreted within the confines of the case law on the issue.

Under NMSA, 1978, § 3-17-1, an ordinance cannot be inconsistent with New Mexico law. Moreover, as "aggrieved parties," the appellants would have standing to appeal this matter to the district court under NMSA 1978, § 3-21-9. There is a large body of New Mexico case law concerning how standing should be evaluated specifically in administrative appeals concerning *alleged* wrongful government action that Appellees failed to examine. Thus, Appellee's well-written analysis regarding the terms in § 6-4(U)(2)(a)4 is inapplicable to the precise matter of standing.

The controlling New Mexico law on standing to challenge government administrative action was expressed in the New Mexico Supreme Court case of **De Vargas Savings & Loan Ass'n v. Campbell**, 1975-NMSC-026. In **De Vargas,** four separate savings and loan associations sought judicial review of a decision by the savings and loan supervisor of the New Mexico Department of Banking to grant the Los Alamos Building and Loan Association authority to operate a branch office in the city of Santa Fe. In overruling the strict test requiring

a legal or property interest, the Court expressed a much more expansive approach to standing, holding that:

> "to attain standing in a suit arguing the unlawfulness of governmental action, the complainant must allege that he is injured in fact or is imminently threatened with injury, economically or otherwise."

De Vargas, ¶ 15. In setting this broad approach to standing, the Court expressly held that tests related to legal interests for standing are no longer applicable.[5] **De Vargas**, ¶¶ 3-15. Since **De Vargas**, in zoning administrative appeals and in other appeals in which government action was challenged, New Mexico Courts have relied on the **De Vargas** decision to evaluate standing questions. For example, in the New Mexico Court of Appeals case of **Ramirez v. City of Santa Fe**, 1993-NMCA-049, the Court cited favorably to the standing analysis from **De Vargas**, and acknowledged New Mexico's approach to standing was now more consistent with the principles enunciated in the United States Supreme Court case of **Sierra Club v. Morton**, 405 U.S. 727 and in **United States v. SCRAP**, 412 U.S. 669. The **Ramirez** Court, quoting from the **De Vargas** case, described how the Court in **Sierra Club** decided the issue, writing:

> **Sierra Club** expansively delineated the type of harm which confers standing in federal court. **Sierra Club**, 405 U.S. at 733-41, 92 S. Ct. at 1365-69. In that case, the Court stated that if the Sierra Club had shown that its members used the subject property at Mineral King and Sequoia National Park, the United States Supreme Court would have conferred standing based on an *alleged injury to the environment* from the contested land development plan. As the Court in **De Vargas** cited with approval, Sierra Club does not limit standing to economic harm but also recognizes that *"'aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the*

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5. The legal interests test that was overruled in **De Vargas**, included evaluating standing based on legal rights and property rights. See **Ruidoso State Bank v. Brumlow,** 1970-NMSC-042**;** See also **Ramirez v. City of Santa Fe**, 1993-NMCA-049, ¶ 8.

many rather than the few does not make them less deserving of legal protection through the judicial process.'"

Ramirez, ¶ 8.[6] (Emphasis added).

In the **Ramirez v. City of Santa Fe** case, the New Mexico Court of appeals further embraced the expansive standing test adopted in **De Vargas Savings & Loan Ass'n v. Campbell**, 1975-NMSC-026, The **Ramirez** Court made it clear that once an appellant alleges an injury "*the extent of injury required under **SCRAP** is slight: an identifiable trifle is the basis for standing and the principle supplies the motivation."*[7]

Moreover, in the New Mexico Court of Appeals case of **Town of Mesilla v. City of Las Cruces**, 1995-NMCA-058, which involved a land use decision that was appealed, the Court affirmed that an aesthetic injury under NMSA 1978, § 3-21-9 is sufficient to demonstrate standing. **Town of Mesilla,** ¶ 14.[8]

These cases demonstrate that the law on standing to challenge government administrative decisions is broad in scope and coverage; further, the law on standing embodies more than property rights or legal interests being impacted. In **City of Sunland Park v. Santa Teresa Services Co.**, 2003-NMCA-106, a utility company, who was not the target of the eminent domain action taken by a municipality sought to challenge the action. In ruling that the utility did not have standing to appeal, the Court distinguished the eminent domain case from the **Town of Mesilla** case. The Court wrote:

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6. Quoting from **De Vargas**, 87 N.M. at 472, 535 P.2d at 1323 (quoting **Sierra Club**, 405 U.S. at 734, 92 S. Ct. at 1366).

7. The Court was quoting from **United States v. SCRAP,** 412 U.S. 669.

8. NMSA 1978, § 3-21-9 is the statute that confers standing to appeal zoning municipal decisions to the District Court.

> reliance on **Town of Mesilla v. City of Las Cruces**, 120 N.M. 69, 898 P.2d 121, a zoning case, is unavailing. Zoning provisions have an entirely different zone of interest they seek to protect.

City of Sunland Park, ¶ 61. The Court went on to describe what the "zone of interests" are that distinguish zoning appeals from eminent domain cases. Adopting the language from the New York Court of Appeals case of **E. Thirteenth St. Cmty. Ass'n v. New York State Urban Dev. Corp**., 641 N.E.2d 1368 (1994), the Court said:

> There are notable differences between zoning statutes and eminent domain proceedings, which make clear that petitioners are not within the zone of interest contemplated by the EDPL. *Standing in zoning cases is a broader concept because zoning statutes seek to protect "the welfare of the entire community,"* by making a balanced and effective use of the available land and providing for the public need for varying types of uses and structures. In contrast, eminent domain statutes seek primarily to protect the interests of property owners and to ensure that their property is taken only in accord with proper procedure and for just compensation.

City of Sunland Park, ¶ 61. (Emphasis added).

The **De Vargas** case and its progeny compel the conclusion that when, as in this matter, the governing standing ordinance language is vague regarding who may bring an appeal to require a public agency to comply with applicable law, one who is "injured" by the allegedly unlawful conduct ordinarily may appeal even if they allege aesthetic or environmental injuries. However, the determination of who is an "injured" party may be difficult in some circumstances. But the answer for our present purposes is provided by **De Vargas**. The opinion in that case specifically approved **United States v. SCRAP**, 412 U.S. 669 (1973). **De Vargas**, ¶ 12.

The allegations of injury by the Appellants in this case appear to be indistinguishable from those made by the organization whose standing was affirmed in **SCRAP**, 412 U.S. at 685-87. The neighborhood association appellants in this case alleged that it had members who

use, enjoy, derive benefit from, and have a substantial interest in protecting and preserving the character and integrity of the MPOS and the Petroglyph National Monument, which they allege is threatened by the decision of the EPC's approval of the site plan. The individual appellant, Beachle made even more compelling allegations. Baechle alleges that she "frequently hikes the Petroglyph National Monument including from designated crossings to the mesa top with both views and trail access to the volcanoes." She further contends that the height of the buildings proposed in the site plan will erode the visual landscape **[R. Supp. Ltr., Baechle, Feb. 12, 2025]**. As indicated above, none of the factual allegations to support standing were disputed. The Appellants therefore have alleged the requisite injury to demonstrate they have standing to pursue this appeal to the City Council.

IV. ISSUES PRESENTED

Collectively, the Appellants raise 23 separate issues of error. Each claim is listed below as they were presented. Appellants claim that:

> 1. Commissioner MacEachen should be recused for bias expressed at the November 21, 2024, EPC hearing. At that hearing, it appeared that Commissioner MacEachen expressed irritation with Commissioner Carver for questioning whether the required notices for the hearing had been properly given, apparently stating that if Commissioner Carver had concerns about moving ahead with the MFS application, Commissioner Carver should have expressed those concerns privately with Commissioner MacEachen, and that Commissioner Carver was not a "team player."
>
> 2. The EPC has not complied with the submission and notice requirements of the EPC's Rules of Practice and Procedure, effective date April 15, 2021 ("EPC Rules") (from the City's website), particularly Article III, Section 2.E, concerning the record and timing of submissions. It appears that the EPC and the Planning Department are not following the EPC Rules. Appellants object to this rushed, irregular proceeding for the MFS application. Appellants object to consideration of any analysis or advocacy submissions by the Planning Department for which the public has not had at least 15 days prior notice. The MFS application presents

complicated issues of fact, policy, and law which deserve through consideration.

3. The Planning Department should have placed in the record and the EPC should have considered the entire record of the AC-24-26 proceeding. Some unanswered questions from the EPC hearings involve why the Aviation Department withdrew its application for the proposed "as-built" Site Plan for the Double Eagle II Master Plan area.

4. The EPC effectively prejudged its approval of the MFS application by the EPC's decision in AC-24-26, in which the EPC approved the "Design Standards" of the "as-built" Site Plan specifically with the MFS project in mind.

5. The entire City government quasi-judicial decision apparatus as currently constituted under the IDO including the EPC should not be involved as a "quasi-judicial" decision-maker for the land use approvals necessary for the MFS project, because the City Council already committed to the MFS project in the Lease for the property, and the Planning Department and Aviation Departments essentially are applicants for the MFS project. The quasi-judicial decision-makers for the MFS application should not be partial to the MFS project.

6. The MFS project is "Film Production" under the IDO and is not allowed in a NR-SU zone. Film production is not "light manufacturing" (even if NR-SU allowed light manufacturing). Approval of the MFS project would require amendment of the IDO to allow long-term "film production", amendment of or change from the NR-SU zoning category, and amendment of the DEII Master Plan to establish design standards for the DEII Master Plan area. Film Production is not an accessory to an airport. The City in its rush to approve the MFS project is overriding important guardrails for quasi-judicial decisions and its own controlling planning and zoning documents.

7. It appears that Chair Hollinger "closed" the EPC meeting in violation of the New Mexico Open Meetings Act, and that the EPC Commissioners then continued to discuss and make decisions about the matter outside the open portion of the hearing.

8. It appears that the EPC or someone with delegated authority of the EPC destroyed or tampered with the EPC public records to delete the "break" EPC discussions on November 19, 2024 (which discussions apparently included Planning Department staff as well as EPC members).

9. The City should update the DEII Master Plan before approving ad hoc piecemeal site plans like the MFS proposal.

10. The MFS application is not consistent with the DEII Master Plan.

11. The DEII Master Plan and the IDO do not provide adequate standards for the EPC to decide the MFS application.

12. The DEII Master Plan does not contemplate or authorize ad hoc piecemeal site plans such as the proposed MFS Site Plan. The DEII Master Plan does not change the area's NR-SU zoning.

13. The application appears to involve a zone map amendment. A zone map amendment is not justified under the IDO or state law.

14. The MFS project approval and EPC Findings 19 through 28 are in error because the proposed Site Plan is not consistent with the Comprehensive Plan, particularly for failure to protect the Petroglyph National Monument.

15. The MFS Site Plan is effectively an amendment to the DEII Master Plan and should be processed as such.

16. The EPC lacks authority under the IDO to approve a Master Plan amendment or a site plan within a Master Plan.

17. The pre-application meetings for the MFS application were inadequate because they assumed the enactment of the 4,200 "as built" Site Plan with Design Standards before consideration of any MFS application.

18. City Staff have made numerous repeated promises to Appellants and others that the City intends to proceed with an update to the DEII Master Plan with community input. The City should be estopped from proceeding with or supporting ad hoc piecemeal development proposals so close to the Petroglyph National Monument.

19. The IDO decision criteria for Site Plan- EPC approval is not satisfied.

20. The procedures including decision criteria for the MFS project were not established in open meetings.

21. The ZEO has not issued a written determination under IDO Section 4-1(B) for the unlisted use of long-term Film Production.

22. The Site Plan does not mitigate significant adverse impacts to the surrounding area particularly the Petroglyph National Monument.

23. Based on the whole record, the EPC and the Planning Department denied Appellants due process.

[R. 22-25].

V. STANDARD OF REVIEW

The IDO addresses how appeals under the IDO are to be evaluated. Review of an appeal under the IDO is a whole record review to determine whether a decision appealed is fraudulent, arbitrary, or capricious; or whether the decision is not supported by substantial evidence; or if the requirements of the IDO, a policy, or a regulation were misapplied or overlooked. See IDO, § 6-4(U)(4). The Land Use Hearing Officer (LUHO) has been delegated the authority evaluate appeals, to make findings, and to propose a disposition of an appeal, including whether the

decision should be affirmed, reversed, or otherwise modified to bring the decision into compliance with the standards and criteria of the IDO.

In addition, of particular significance for the issues presented in this appeal, in an administrative, quasi-judicial appeal, the standard for judging how the EPC interpreted any particular provision, rule, standard, or policy is a question of whether the interpretation is reasonable and rational under the evidence in the record. **Huning Castle Neighborhood Ass'n v. City of Albuquerque**, 1998-NMCA-123, ¶ 15. If the EPC's findings and its decision are rational such that "a reasonable mind can accept them as adequate" considering the regulations that apply, that decision will be accorded deference. **Regents of the Univ. of N.M. v. N.M. Fed'n of Teachers**, 1998-NMSC-456 020, ¶ 17. With these significant appellate review principals and considerations in mind, the substantive merits of the appeal are discussed next.

VI. DISCUSSION

As indicated above, the Mesa Studios LLC application (Mesa) is for a Site Plan – EPC for the development of what is essentially a film studio on approximately 60 acres of land. The land is owned by the city and Mesa entered into an agreement to lease the property to Mesa Film Studios, LLC [**R. 718-731]**.[9] The 60-acre tract is not currently subdivided but is part of the larger approximately 4,100-acre Double Eagle II (DEII) Airport property that is located at 7401 Paseo Del Volcan NW, which sits to the northwest of the intersection of Atrisco Vista Blvd. NW and Shooting Range Access Rd. **[R. 027]**. Except for a small strip in the very

9. Notably, the lease itself wrongly states that a film studio is an allowable use in the NR-SU zone district **[R. 726]**. As shown below, it is clearly not an allowable use in the NR-SU-zone district under the IDO.

NW corner, which is zoned Non-Residential-Park and Open Space Zone District (NR-PO-B), the entire DEII property is zoned NR-SU [**R. 027]**. The site is bounded by Major Public Open Space (MPOS), the City of Rio Rancho, and unincorporated Bernalillo County. The subject site lies less than 0.25 miles west of the Petroglyph National Monument and about 8.5 miles northwest of Downtown Albuquerque **[R. 095]**. Notably, Planning Staff reported in their Staff Report to the EPC that "[t]he subject site is *within 330 feet of Major Public Open Space* and within 0.3 miles of the Petroglyph National Monument" (emphasis added) **[R. 86]**.

What follows next is the substantive analyses of the issues presented in Appellants' appeal. Because the zoning issue is dispositive, it is given considerable time in the discussion below.

A. The EPC's implicit decision that the film studio uses are similar to light manufacturing is not irrational under the circumstances.

The Appellants contend that the EPC erred because it determined that the film studio uses in the site plan are essentially light manufacturing land uses and approved them as such. The Appellees and Planning Staff argue that film production is similar in nature with light manufacturing. They also contend that this determination is consistent with other similar applications to site film studios in the city.

In their revised application, Mesa presented a table generally describing the proposed buildings and outdoor stages that are included in their site plan **[R. 293]**. In the Staff Report, Planning Staff (Staff) described the film studio as light manufacturing, reporting that:

> The request proposes a development consisting of light manufacturing, office, and other non-residential uses (i.e., Warehousing, Restaurant, Mobile Food Truck, and Mobile Food Truck Court) related to a film studio. This proposed film and television production campus will include 7 buildings totaling 291,428 square feet (SF) (6.7 acres) of building area, and associated parking. An outdoor green screen and stage (25,835 SF/

> 0.59 acres) is also proposed. The campus will be secured by a perimeter wall, and access will be restricted to a single-entry gate monitored by a security guard.

[R. 95]. In the IDO, "film production" is only a defined "temporary" land use.[10] The land use of film production:

> For the purposes of this IDO, [is] a temporary use that involves filming a movie, television show, commercial, or other type of televised media as the primary use of the property. Film production includes temporary structures, such as sets, lighting rigs, sound stages, and the parking of large vehicles.

IDO, § 7-1, Definitions.

It is undisputed that what is proposed and envisioned in the site plan's film studio campus are permanent film production structures, buildings, and stages. Conversely, there is no dispute that the film production land uses proposed are not temporary in nature.

In the IDO, Table 4-2-1 "specifies allowable land uses in individual zone districts." IDO, § 4-1(A). There is a total of 163 listed land uses in the IDO's Table 4-2-1. Excluding the 13 temporary land uses listed in Table 4-2-1, of the 150 primary and accessory land uses that are listed, "film production" (as a permanent use) is not a listed use. This is apparently the rationale behind characterizing the film production uses described in the site plan as "light manufacturing and warehousing uses," which are clearly listed in Table 4-2-1. The IDO's definition of light manufacturing is:

> The assembly, fabrication, or *processing of goods and materials*, including machine shop and growing food or plants in fully enclosed portions of a building, using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes

10. Under the IDO, film production as a temporary use must be terminated after five years. IDO, § 4-3(G)(5)(a).

> place, where such processes are housed primarily within the fully enclosed portions of a building. Loading and unloading from rail spurs and wholesaling of products manufactured at the facility are incidental to this use. This use does not include any use that meets the definition of Heavy Manufacturing or Special Manufacturing. See also Clean Room and Cannabis Definitions for Cannabis-derived Products Manufacturing and Cannabis Cultivation.

IDO, § 7-1, Definitions.

Appellants, however, contend that film production is not light manufacturing and because a non-temporary film production land use is not listed in Table 4-2-1, film production is a technically an "unlisted use." Under IDO, § 4-1(B), unlisted uses requires that the Zoning Enforcement Officer (ZEO):

> determine whether or not it is included in the definition of a listed use or is so consistent with the size, scale, operating characteristics, and external impacts of a listed use that it should be treated as the same use. In making this determination, the ZEO shall consider the scale, character, traffic impacts, storm drainage impacts, utility demands, and potential impacts of the proposed use on surrounding properties. The ZEO's interpretation shall be made available to the public on the City Planning Department website and shall be binding on future decisions of the City until the ZEO makes a different interpretation or this IDO is amended to treat the use differently.

See, § 4-1(B).

In the EPC's public hearing on the site plan, the ZEO testified that he made the determination that what occurs with film production is consistent with what occurs in the light manufacturing processes **[R. 2036]**. ZEO Vos further testified that a written determination was unnecessary because there was already precedent on similar determinations in the city regarding at least one other film studio. ZEO Vos testified further that:

> You know the Netflix; you know it exists. And it went through our approval process as light manufacturing and office uses, and there was no argument about that at that time, so I don't know that these interpretations have been debated before today **[R. 2037]**.

The New Mexico doctrine of administrative gloss is a rule of statutory construction that fundamentally allows the ZEO to interpret the IDO in a consistent manner with its own previous interpretations. The public policy rationale for this method of carrying on previous consistent interpretations is that the long-standing consistent practice becomes the *de facto* legislative intent. The ZEO's testimony arguably lends support to administrative gloss allowing for the continuation of that interpretation if it is rational. **High Ridge Hinkle Joint Venture v. City of Albuquerque**, 1998-NMSC-050, ¶ 9.[11] The Appellants did not present evidence disputing ZEO Vos's analysis or conclusion. I find that the ZEO's interpretation deserves some deference because it is rational. Accordingly, I find that there is sufficient evidence in the record showing that film production is minimally consistent with the processes in light manufacturing.

B. The film studio uses as light manufacturing, warehousing uses, or otherwise, are not permissive as primary uses in a NR-SU zone; and these uses cannot be allowed as "accessory uses" to the primary airport use--thus, the EPC erred.

The Appellants contend that the EPC abused its discretion, and it violated the IDO when it allowed the Mesa film uses in the NR-SU zone as accessory uses to the airport use which is the only primary use there. I have to agree; it is unmistakable and a poorly-constructed fiction that a film studio, even as an alleged light manufacturing use, is an accessory to the DEII airport. Moreover, it is clear that the IDO does not allow these land uses in a NR-SU zone. Allowing them as accessory uses was an arbitrary and capricious decision. Under New Mexico

11. To trigger the doctrine of administrative gloss, the Court requires that the ordinance provisions being interpreted be ambiguous. There is just enough ambiguity in the definition of "light manufacturing" to allow for administrative gloss. See **High Ridge Hinkle Joint Venture,** ¶ 9.

law, arbitrary and/or capricious conduct is action taken that "is unreasonable or without a rational basis, when viewed in light of the whole record." **Rio Grande Chapter of the Sierra Club v. New Mexico Mining Commission**, 2003-NMSC-005, ¶ 17. Moreover, it is action taken "without proper consideration in disregard of the facts and circumstances." **Perkins v. Department of Human Services**, 1987-NMCA-148, ¶ 20. As shown below, the record lacks a rational basis supporting the conclusion that a film studio as light manufacturing is an accessory to the airport use on the site. The EPC clearly erred.

Planning Staff have presented two creative, but unfounded justifications of the EPC's decision. The first involves Table 2-5-9 in the IDO. Staff argue that under Table 2-5-9, the EPC is allowed to exercise discretion to approve any land uses in an NR-SU zone district. As discussed in detail below, without reading language into Table 2-5-9 which is clearly not there, the plain language of Table 2-5-9 does not endow the EPC with the unfettered discretion Staff claims the EPC possesses. Staff's theory necessitates a generous interpretation of Table 2-5-9 which is not supported by its language.

In construing ordinances, under New Mexico law, the same basic rules of construction are applied as the Courts' use when they are construing statutes. **Burroughs v. Board. of County Comm'rs**, 1975-NMSC-051, ¶ 13. Moreover, "zoning regulations should not be extended by construction beyond the fair import of their language, and they cannot be construed to include by implication that which is not clearly within their express terms." **High Ridge Hinkle Joint Venture v. City of Albuquerque**, 1998-NMSC-050, ¶ 6. Further, in construing Table 2-5-9, because other provisions of the IDO are involved, "they must be read together so that all parts are given effect." **High Ridge Hinkle Joint Venture**, ¶ 5.

The two Tables that are implicated in any analysis of allowable land uses in the NR-SU zone district are both Table 4-2-1 and Table 2-5-9 of the IDO. IDO, Table 4-2-1, is the vehicle through which all decisions are made regarding whether a land use is allowed or not allowed in any of the 18 base zone districts of the IDO. Table 4-2-1 is the bedrock of the IDO because it establishes whether a particular land use is a permissive use, a conditional use, a temporary use, or any combination of primary or conditional use. It also establishes what uses are accessory uses. See IDO, Table 4-2-1: Allowable Uses. In addition, every description of every zone district (including the NR-SU zone district) in the IDO includes a reference to Table 4-2-1.

As for Table 2-5-9, it is a unique table because it includes special language not found elsewhere in the IDO, and it applies only to the NR-SU zone district. For purposes of siting land uses in an NR-SU zone it states in full:

Table 2-5-9: Other Applicable IDO Sections[1]

Overlay Zones	Part 14-16-3
Allowable Uses	**As negotiated from among those listed in Section 14-16-4-2**
Use-specific Standards	Section 14-16-4-3 unless varied in the NR-SU approval process
Dimensional Standards Tables and Exceptions	As applicable to the most similar use or district as shown in Section 14-16-5-1, unless different standards are approved in the NR-SU approval process
Site Design and Sensitive Lands	Section 14-16-5-2 unless varied in the NR-SU approval process
Access and Connectivity	Section 14-16-5-3 unless varied in the NR-SU approval process
Subdivision of Land	Section 14-16-5-4 unless varied in the NR-SU approval process
Parking and Loading	Section 14-16-5-5 unless varied in the NR-SU approval process
Landscaping, Buffering, and Screening	Section 14-16-5-6 unless varied in the NR-SU approval process
Walls and Fences	Section 14-16-5-7 unless varied in the NR-SU approval process
Outdoor and Site Lighting	Section 14-16-5-8 unless varied in the NR-SU approval process
Neighborhood Edges	Section 14-16-5-9 unless varied in the NR-SU approval process
Solar Access	Section 14-16-5-10 unless varied in the NR-SU approval process
Building Design	Section 14-16-5-11 unless varied in the NR-SU approval process
Signs	Section 14-16-5-12 unless varied in the NR-SU approval process
Operation and Maintenance	Section 14-16-5-13 unless varied in the NR-SU approval process

[1] Some of the general controls in these sections may not apply to specific types of NR-SU zone districts or specific types of

IDO, Table 2-5-9, (Emphasis added).

Staff specifically contend that the bold highlighted language in Table 2-5-9 implies that the EPC can exercise discretion through "*negotiation*" in ultimately deciding which land uses can be sited in the NR-SU zone district. Notably, in Table 2-5-9, allowable uses are to be negotiated from those listed in Table 4-2-1, but Specific-Use Standards and other regulatory provisions that may apply to land uses in an NR-SU zone can be "varied." That is, there is a remarkable distinction in the language of Table 2-5-9 pertaining to allowable uses and how a use is regulated once allowed. This distinction is important. In allowing a use, Table 2-5-9 states that the use is *"negotiated from among those listed in Section 14-16-4-2."* Yet, certain regulatory provisions listed under Table 2-5-9 can be *"varied."*

To the extent that Table 2-5-9 allows the EPC a certain amount of discretionary authority with allowing land uses in an NR-SU zone, I agree. However, without express language, Table 2-5-9 is a limited grant of discretionary authority that allows the EPC to "negotiate" with the applicant among the listed land uses in table 4-2-1. That is, it cannot be implied that the term "negotiation" means that the EPC may disregard what is allowable in the NR-SU zone district as clearly established in Table 4-2-1. Put another way, one cannot simply presume that "as negotiated from among this [uses] listed in Table 4-2-1" is authority to violate Table 4-2-1. It is unmistakable that under Table 4-2-1 does not allow light manufacturing or warehousing, (as primary or as accessory use) in a NR-SU zone.

There is no express grant of authority in Table 2-5-9 that endows the type of unrestrained discretion that Staff contends exists. To read more into Table 2-5-9, including the implicit discretion to ignore the prohibitions in Table 4-2-1 is contrary to **High Ridge Hinkle**

Joint Venture v. City of Albuquerque, 1998-NMSC-050 and the propositions stood for in that case.[12]

Under Staff's theory, Table 2-5-9 allows the EPC to not only disregard Table 4-2-1, but it also allows the EPC to treat the NR-SU zone as a dumping ground for essentially any land use that the EPC desires to allow in it. Staff's theory that the EPC has this unrestrained discretion is contrary to the stated purpose of a NR-SU zone in § 2-5(E). Notably, each of the 18 base zone districts in the IDO have clear legislatively-stated purposes. The NR-SU zone district is no different, and it establishes coherent limits on what types of land uses it is reserved for. The express purpose of the NR-SU zone district is described in IDO, § 2-5(E) which states in full:

> The purpose of the NR-SU zone district is to accommodate highly specialized *public, civic, institutional, or natural resource-related use*s that require additional review of location, site design, and impact mitigation to protect the safety and character of surrounding properties. Uses that require NR-SU zoning are not allowed in zone districts and are shown in Table 4-2-1.

If anything, the stated purpose of the NR-SU zone is to "*require additional review…impact mitigation*" to "*protect the character of surrounding properties.*" That why only certain uses are reserved for it. See also Table 4-2-1 which is remarkably consistent with this purpose.

Staff's expansive theory turns this purpose on its head. It cannot be disputed that although the film studio is a "highly specialized" use, it is not a public, civic, institutional, or

12. Notably, as discussed more in the next section regarding Specific-Use Standard regulations that were exempted by the EPC, Staff's theory creates conflicts in how the IDO is applied. See IDO, 1-8(A)-(D) on how conflicts are resolved.

natural resource related use; it is clearly a private commercial use **[R. 718]**. Moreover, under the rubric of the term "as negotiated" in Table 2-5-9, not only does Staff theory disregard the clear purpose of the NR-SU zone district, but it disregards that the uses in the site plan are expressly not allowed in a NR-SU zone district under Table 4-2-1.

It is an undisputed fact that the only primary land use on the site is the DEII airport and its accessory aeronautical uses. The land use inventory in the DEII Master Plan confirms this fact **[R. 1729-1846]**. Table 4-2-1 expressly does not allow light manufacturing or warehousing land uses in an NR-SU zone district. Because the cell's boxes in Table 4-2-1 for these uses under the NR-SU zone column are blank for both uses, it is incontrovertible that these uses are not allowed as primary uses and as accessory uses in the NR-SU zone district. See also IDO, § 4-1(A)(2) which states that "*a blank cell in Table 4-2-1 specifies that the use is not allowed in that zone district*." Under Table 4-2-1, the temporary use of "film production is also not allowed in the NR-SU zone district.[13] It must be emphasized that neither light manufacturing nor warehousing, either as permissive, conditional, or as accessory land uses are allowed in an NR-SU zone under Table 4-2-1.

Staff's second argument is just as unsupported by the IDO as their theory regarding Table 2-5-9. Planning Staff and Appellees believe that the clear prohibitions in Table 4-2-1 are inapplicable because the NR-SU zone district is treated differently under IDO § 2-5(E)(3)(b)2 and under § 4-1(A)(4)(b)(2). Under these provisions of the IDO, Staff contends that if a land use is "found to be compatible with or complementary to the proposed primary

13. This begs a basic question of logic: If film production as a temporary use is not allowed in the NR-SU zone district, how can this same use, but characterized as a permanent, light manufacturing use be allowed?

uses," it can be approved in a NR-SU zone district by the EPC as an *accessory use* **[R. 112]**.

Staff also espoused this theory at the EPC hearing **[R. 1967]**.

To better understand this theory, the IDO sections that Staff rely on are restated below.

They state:

> 2-5(E)(3)(b) Allowable Uses
> 1. Uses that require a Zoning Map Amendment for NR-SU are not allowed in other zone districts. Allowable uses in the NR-SU zone district, including *accessory uses*, are listed in Table 4-2-1.
>
> 2. Additional uses may be approved as *accessory uses* if they are found to be compatible with the proposed primary sensitive use, pursuant to Subsection 14-16-4-1(A)(4)(b)**.**
>
> …
>
> 4-1(A)(4)(b)
> The NR-SU zone district allows primary uses not allowed in any other zone district as specified in Subsection 14-16-2-5(E)(2) (Use and Development Standards).
>
> 1. *Accessory uses* listed as allowable in the NR-SU zone district in Table 4-2-1 may be approved in conjunction with a primary NR-SU use *if they are found to be compatible with or complementary to the proposed primary use.*
>
> 2. Additional uses not listed as allowable in the NR-SU zone district in Table 4-2-1 *may be approved as accessory to the proposed primary use if they are found to be compatible with or complementary to the proposed primary uses*.
>
> 3. *Accessory uses* approved in an NR-SU zone district shall be subject to the relevant Use-specific Standards or any other standards deemed appropriate and necessary by the relevant decision-making body.
>
> 4. Uses approved for each property and any related standards are documented in the approved Site Plan for that property on file with the City Planning Department.

(Emphasis added).

To the extent that staff contend that these apply only to land uses in the NR-SU zone, they are correct. Like Table 2-5-9, these are special provisions that only apply to the NR-SU zone district. However, what Staff gets wrong is that these are very narrow exceptions to Table 4-2-1; they are not nearly as expansive as Staff suggests. They are very narrow because they only contemplate allowing lawful "accessory uses" that are compatible and complementary to the primary use(s) on the lot in the NR-SU zone. Even if a primary use is not allowed in NR-SU zone under Table 4-2-1, under the above exceptions such uses could be allowed as accessory uses to the DEII airport use. However, the uses allowed must be legitimate accessory uses to the primary use on the lot. In presenting the application to the EPC and in describing the EPC's authority under these narrow provisions, Staff testified simply that:

> Other uses can be allowed if EPC finds them to be compatible with or complementary, to airport use **[R. 1967]**.

It wasn't until later in the hearing, during cross examination that Zoning Enforcement Officer Michael Vos dispensed more clarity to the EPC on the subject of § 2-5(E)(3)(b)2 and § 4-1(A)(4)(b)(2), advising them that it applied to accessory uses **[R. 2035].** However, in doing so, he failed to explain how a film studio as a light manufacturing use is in fact accessory to an airport.[14] There is a lack of analysis, rationale, or logic in the record demonstrating that the film studio is in fact accessory to the airport at the site. However, there is substantial evidence in the record that demonstrates that the film studio, light manufacturing, and warehouse uses are in no way accessory uses for the airport.

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14. The question of how film studio uses can be accessory uses for an airport uses was raised at the EPC hearing by Appellants' counsel but was inexplicitly glossed over without any explanation from Staff or from the Appellees' agents **[R. 2036-2038]**. To make matters worse, the EPC asked no questions about whether the uses are accessory to the primary airport use and made no findings in its decision regarding this basic question.

First, under the IDO, an accessory use is:

> A land use that is ***subordinate in use***, area, or purpose *to a primary land use* ***on the same lot*** or, in any Mixed-use or Non-residential zone district, the same premises. An accessory use may or may not be located in an accessory structure. For the purposes of this IDO, accessory uses are listed in Table 4-2-1, may have separate Use-specific Standards, or may be defined as incidental to another primary use. See also Use Definitions for Primary Use.

(Emphasis added). IDO, § 7-1, Definitions.

This definition is consistent with New Mexico zoning law. In the Mexico Court of Appeals case of **City of Las Cruces v. Huerta**, 1984-NMCA-120, ¶ 10, the Court held that an "*accessory, incidental or auxiliary use is one which is dependent on or pertains to the principal or main use, and which may be considered an integral part of the primary use*." See also **Randall v. Pittman**, Opinion No. 31,492 (unpublished decision) where the Court again held that an accessory use must be incidental and subordinate to the primary use on a lot.[15]

There are no facts in the record that lend support to the notion that the film studio, its uses, as light manufacturing or otherwise, are subordinate to, or incidental to and are "an integral part of the primary use," an airport. Conversely, there are no facts showing that the airport is dependent on the film studio in the manners required for it to be a legitimate primary use to the film studio.[16]

It is clear from the record that the film studio uses, whether light manufacturing or not,

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15 . Under Rule 12-405, NMRA, the fact that the decision is unpublished does not necessarily affect the precedential value of the decision. There is no indication that **Randall v. Pittman** is not precedential.

16. An argument was made in the appeal hearing that the airport will partially rely on the economic funding from the film studio. As shown below, if this were a legitimate basis for linking accessory uses to primary uses under the IDO, there would be no limits to what could be accessory, making the distinction superfluous.

are entirely unattached to the operation of the airport uses. Claiming that a film studio use is an accessory use to the airport is merely a pretext to satisfy § 2-5(E)(3)(b)2 and § 4-1(A)(4)(b)(2).

As indicated above, the City Council amended the DEII Master Plan to specifically allow "non-aeronautical uses," including film studio uses within the Master Planned lands of the DEII airport. **[See Resolution, R-2024-059, R. 5]**.[17] It is self-evident that a film studio as a non-aeronautical use is a use that is not incidental to the airport use, otherwise the Resolution would have been unnecessary. In addition, the fact that a film studio is laid out in R-2024-059 as a non-aeronautical land use confirms what common sense tells us—i.e., that a film studio is not intended to be incidental or associated with the aeronautical uses of the airport use.

The Appellees contend that the film studio is associated economically with the DEII airport in that it will provide the airport with funding **[R. App. Hrg., Tr. 107: 3-9]**. That may be true; however, if economic connection alone between two uses is a legitimate basis for concluding that a use is accessory to a primary use, any use could be found to be accessory to any other use. The Appellees suggest that this economic connection theory for accessory uses is different in a NR-SU zone because it is a "special" zone that allows only sensitive uses **[R. App. Hrg., Tr. 80: 7-17]**. Not only is there no support in the IDO for this theory, but there is no support in the IDO that somehow differentiates or limits how accessory uses are evaluated

17. City Council Resolution R-2024-059 is referenced in the record with a link to it.

in an NR-SU zone.[18]

For purposes of the IDO and zoning law in general, an accessory use must be incidental or subordinate to the operation of a primary use in a way that shows that the former is rationally related to the latter in some functional manner. **City of Las Cruces v. Huerta,** ¶ 10. As a simple example, the IDO allows a dwelling and a separate stand-alone garage structure on a single lot because the garage is incidental and subordinate (in its functionality) to the dwelling. Thus, a garage is undeniably an accessory use for that dwelling.[19] As in **City of Las Cruces v. Huerta**, because it is understood that religious schools are normally operated by a church use, a religious school is deemed to be incidental to and rationally related to a primary church use.

The **City of Las Cruces v. Huerta** case is consistent with the plain meaning of the term "subordinate" in the definition of accessory use in the IDO. The dictionary definition of the term "subordinate" is "yielding to or controlled by authority."[20] In addition, this is also congruent with the **Randall v. Pittman** case, in which the Court of appeals held that an accessory use must be incidental and secondary to the primary use. **Randall**, ¶ 13. Thus, the connection between an alleged accessory use and a primary use requires more than an

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18. Because of the sensitive nature of the land uses that are expressly allowed in the NR-SU zone district under the IDO, there is however, considerable support for the opposite result: a limiting of what land uses are considered sensitive under the IDO for being allowed in the NR-SU zone. Again, see § 2-5(E)(1) and Table 4-2-1. Under the Appellees' argument, the EPC can essentially classify any uses as sensitive and allow any land use in the NR-SU zone as an accessory land use.

19. In Table 4-2-1, what is and is not an accessory use is included within the table. As shown above, film studio, light manufacturing, and warehousing uses are not allowed in a NR-SU zone district as primary, conditional, or as accessory uses.

20. "Subordinate." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/subordinate.

economic connection; it requires that the accessory use be incidental (in a functional way) to the primary use.

In this appeal, other than the alleged economic connection argued by Staff in the appeal hearing, there are no facts offered by the Appellees, Planning Staff, or by the EPC in the record that shows how the film studio uses are incidental to or subordinate to the airport uses in the manners required as an accessory use. If anything, the facts clearly show that the film studio uses are specifically intended to stand alone and be separate from the airport. The EPC's decision essentially allows two unrelated primary land uses on the same lot, which is contrary to the IDO under these facts and applicable IDO provisions.

The record shows that Mesa Film Studios intends to separate or partition the 60-acre campus from the 4,000-plus acre DEII master planned area through the subdivision process of the IDO **[R. 125]**.[21] Notably, once the subdivision occurs, the pretext that the film studio is accessory to the airport entirely evaporates because the 60-acre lot will be a separate, fully partitioned lot from the airport Master Planned area. Going back to the IDO's definition of an accessory use, an accessory use must be accessory to the primary use on the "*same lot*." See the IDO's definition of accessory use above. After the subdivision occurs, the film studio will no longer be on the same lot as the airport use.

Without the unsupported pretense that the film studio uses are accessory to the airport use, there is no manner under the IDO, without a zone-change, in which the film studio uses,

21. Although not required, it is customary and routine for a subdivision to occur before site plan approval. However, it is apparent that to create the pretext to support the irrational theory that the film studio is accessory to the airport use, it is obvious, that this process was delayed until a later date after the site plan was approved.

with or without characterizing them as light manufacturing and warehouse uses, can be approved in a NR-SU zone district. These land uses are undeniably not allowable uses in an NR-SU zone. The fact that the film studio uses were approved through a site plan is irrelevant—it is not allowed in the NR-SU zone under the IDO.[22]

Accordingly, the EPC's errors approving the uses in the NR-SU zone (regardless that it was done through a site plan) are not harmless errors. The errors of allowing these uses in the NR-SU zone are insurmountable and I must respectfully recommend that the EPC's decision be reversed on theses issues alone.

C. To the extent that other claims presented in this appeal are not included in the discussion of errors above, those claims should be denied for lack of evidence supporting them.

Appellants claims that the EPC violated its own Rules of Practice and Procedure (Rules) in hearing the application. This allegation is not supported with evidence in the record. In addition, the allegation that the EPC violated the New Mexico Open Meetings Act is unsupported with evidence. There is no supporting evidence to substantiate that a closed meeting of the EPC took place regarding the application. Similarly, there is no evidence referenced by the Appellants that the August 27, 2024, pre-application meeting was "inadequate," as Appellants contend. The adequacy of a pre-application meeting is a purely subjective judgment that is not a basis for an appeal under the IDO.

The Appellants next suggest that undisclosed illicit "promises" were made by city Staff with Mesa Studios, but Appellants failed to support the allegation with any evidence. Equally

22. Planning Staff vaguely suggest that the approval was lawful because it was done through a site plan. Yet, nothing in the IDO supports this theory, and except for the statement, nothing no evidence was presented to support it.

insufficient is the unsupported allegation that the record of the appeal has been tampered with or spoliated.

Appellants' contentions that the EPC violated their due process rights is nothing more than an unsupported allegation based on the alleged procedural irregularities in the hearing. There are insufficient facts to support the allegations that Appellants' due process rights were violated at the EPC's December 19, 2024, hearing.

As for the claims of bias by EPC Commissioners, I find that the allegations are not supported by the evidence. I agree with the Appellee's counsel that bias claims must be supported with more than the inuendo and vague inferences claimed by Appellants in this matter. Without making broad assumptions as to prejudgment from individual EPC commissioners' words, the record—specifically, the minute transcript of the EPC's hearing—does not support Appellants' broad claims of bias under New Mexico law. See generally, **Reid v. New Mexico Bd. of Exam'rs**, 1979-NMSC-005.

As for the contentions of bias regarding the property lease agreement between the City and the applicants, Appellants have not supported its claims with evidence. Appellants subjectively speculate that the lease was a motivating factor for the EPC's lack of review. I find that there is nothing nefarious about the fact that the lease predates the EPC's December 19, 2025, hearing. Without evidence, it is nothing more than subjective inferences to support the claim of bias.

VII. PROPOSED FINDINGS

In conclusion, after hearing the appeal, pouring over the record, the written arguments of the parties, the IDO, as well as applicable New Mexico case law, the EPC's decision

regarding the land uses allowed in the NR-SU zone district violate the IDO in a way that a remand would not cure. As primary or conditional land uses, the IDO does not allow the film studio land uses in an NR-SU zone. Furthermore, regardless of how the film studio land uses are characterized (as light manufacturing or otherwise), the facts clearly support that they are not accessory to the airport use which is the only primary use on the site. Characterizing the film studio land uses as accessory to the airport is nothing more than a pretense. The facts support that the film studio uses (and light manufacturing and warehouse uses) are not incidental or otherwise subordinate as accessory uses to the airport use.

Accordingly, I recommend that the EPC's decision be reversed, and that the application be denied under the IDO. I also respectfully recommend that the City Council adopt the below findings. Each individual proposed finding is supported by substantial evidence in the record, the IDO, the law of New Mexico, and were discussed above.

1. The Appellants filed a timely appeal under the IDO.

2. The Appellants have standing to appeal the December 19, 2024, decision of the EPC.

3. A three and one-half hour quasi-judicial appeal hearing at which the Appellants and the Appellees were given an opportunity to argue and present their appeal, bring witnesses to testify, and cross examine witnesses, was held on February 20, 2025.

4. The Appellants did not satisfy their burden of proof on the issue presented regarding the EPC Rules of Practice.

5. Appellants have not met their burden of proof regarding procedural due process violations under the IDO or in the EPC hearing.

6. Appellants have not met their burden of proof in their claims of EPC bias.

7. The Appellants have not carried their burden of proof of spoliation of evidence.

8. Although the proposed Site Plan is arguably consistent with the DEII Airport Master Plan and its amendments (Resolution 2024-059), the land uses in the site plan cannot be located in an NR-SU zone district, and doing so violates the IDO.

9. The EPC erred when it approved the land uses in the site plan in a NR-SU zone.

10. There is sufficient evidence in the record showing that film studio land uses are minimally consistent with the processes in light manufacturing and or warehousing.

11. Light manufacturing as a permissive, conditional, or as an accessory use is not an allowed in a NR-SU zone under IDO, Table 4-2-1.

12. There is substantial evidence in the record showing that the EPC's decision allowing the Mesa Film Studios' light manufacturing and warehousing uses in the NR-SU zone district as accessory uses to the DEII airport violates IDO.

a. The DEII airport is the only primary land use in the NR-SU zone district.

b. The DEII airport is an aeronautical land use.

c. The land uses in the site plan are non-aeronautical uses.

d. The land uses in the site plan are not incidental or subordinate to the DEII airport use.

e. The evidence shows that applicant owner of Mesa Film Studios intends to replat the 60-acre site plan encompassing the film studio uses as a separate lot through the subdivision process in the IDO.

f. The impending subdivision-replat will result in the film studio no longer encompassing the same lot as the DEII airport.

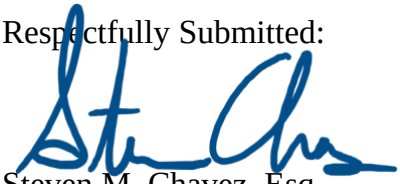
13. The EPC has authority under IDO, Table 4-2-1 to "negotiate" with an applicant regarding allowable land uses listed in Table 4-2-1, but it does not have authority under the IDO to modify or otherwise disregard Table 4-2-1 to allow a land use that is contrary to Table 4-2-1.

14. The EPC's decision allowing land uses in the NR-SU zone district that are not allowed under Table 4-2-1 was a clear oversight of discretion.

15. The EPC's decision allowing land uses in the NR-SU zone district that are not allowed under Table 4-2-1 was arbitrary and capricious.

16. The EPC decision should be reversed and the appeal sustained in a manner not inconsistent with this recommendation.

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
March 2, 2025

Copies to:
City Council
Appellants. Through Counsel
Appellees through Counsel
EPC
Planning Staff

Notice Regarding City Council Rules Under IDO, § 6-4(U)(3)(e)

When the Council receives the Hearing Officer's proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council "accept or reject" hearing. Parties submitting comments in this manner must include a signed, written attestation that the comments being submitted were delivered to all parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was

made. Comments received by the Clerk of the Council that are not in conformance with the requirements of this Section will not be distributed to Councilors.

City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Brook Bassan, District 4
Council Vice-President, Klarissa J. Peña, District 3

Louie Sanchez, District 1; Joaquín Baca, District 2;
Dan Lewis, District 5; Nichole Rogers, District 6;
Tammy Fiebelkorn, District 7;
Dan Champine, District 8; Renée Grout, District 9

Monday, April 7, 2025 **5:00 PM** **Vincent E. Griego Chambers**
One Civic Plaza NW
City of Albuquerque Government Center

TWENTY-SIXTH COUNCIL - TWENTY-NINTH MEETING

1. ROLL CALL

Present 9 - Joaquín Baca, Brook Bassan, Dan Champine, Tammy Fiebelkorn, Renée Grout, Dan Lewis, Klarissa Peña, Nichole Rogers, and Louie Sanchez

2. MOMENT OF SILENCE

President Bassan led the Pledge of Allegiance in English.
Councilor Sanchez led the Pledge of Allegiance in Spanish.

3. PROCLAMATIONS & PRESENTATIONS

4. ADMINISTRATION QUESTION & ANSWER PERIOD

5. APPROVAL OF JOURNAL

March 17, 2025

6. COMMUNICATIONS AND INTRODUCTIONS

7. REPORTS OF COMMITTEES

8. CONSENT AGENDA: {Items may be removed at the request of any Councilor}

a. EC-25-312 Declaring Not Essential for Municipal purposes property located at 2245 Louisiana Blvd NE and approving the Exchange Agreement for property located at San Mateo and Cutler formerly known as Kimo Park

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

b. EC-25-313 Mayor's Recommendation of Award for WE CARE Training

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

c. EC-25-315 Mayor's Recommendation of Award for Workers' Compensation Cost Containment Services - Medical Bill Review

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

d. EC-25-316 Land Lease and Agreement between the City of Albuquerque and Honeywell Federal Manufacturing & Technologies

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

e. EC-25-339 Mayor's appointment of Mrs. Valarie L. Thietten to the Biological Park Board

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

f. EC-25-341 Age-Friendly Quarterly Update for Q2 FY 2025

A motion was made by President Bassan that this matter be Receipt Be Noted. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

g. EC-25-344 FasTrax Permitting Reporting

A motion was made by President Bassan that this matter be Receipt Be Noted. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

h. EC-25-345 Approval of the Risk First Supplemental Agreement to add funds for Outside Counsel Legal Services Between German * Burnette & Associates, LLC and the City of Albuquerque

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

i. EC-25-346 Mayor's appointment of Mr. Jacob Thomas to the Youth Advisory Council

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

j. EC-25-347 Mayor's appointment of Ms. Nicole S. Finch to the Library Advisory Board

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

k. EC-25-348 Mayor's appointment of Ms. Leila Sonora Murrieta to the Greater Albuquerque Active Transportation Committee

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

l. EC-25-349 Mayor's appointment of Ms. Elaine M. Hebard to the Indicators Progress Commission

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

m. EC-25-350 Mayor's appointment of Mr. Sebastian Ab Bentley to the Greater Albuquerque Active Transportation Committee

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

n. EC-25-351 Mayor's appointment of Mr. Dennis Gromelski to the Arts Board

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

***o.** EC-25-352 Mayor's appointment of Mr. Mark S. Reynolds to the Senior Affairs Advisory Council

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

p. O-25-74 Creating A New Article 19 In Chapter 2 To Approve A Community Energy Efficiency Development (CEED) Block Grant From The New Mexico State Energy, Minerals And Natural Resources Department, Energy Conservation And Management Division Pursuant To The CEED Block Grant Act To Support The Execution Of A CEED Program Project And Accepting The Terms And Conditions Of The Grant Agreement (Fiebelkorn, by request)

A motion was made by President Bassan that this matter be Passed. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

9. ANNOUNCEMENTS

10. FINANCIAL INSTRUMENTS

a. O-25-79 F/S Authorizing The Issuance And Sale Of The City Of Albuquerque, New Mexico Taxable Industrial Revenue Bond (Geltmore Karsten Project), Series 2025 In The Maximum Principal Amount Of $5,600,000 To Provide Funds To Acquire, Renovate, Improve And Equip A 56,000 Square Foot Building To Be Leased For Various

Manufacturing Purposes; Authorizing The Execution And Delivery Of An Indenture, Lease Agreement, Bond Purchase Agreement, Bond, And Other Documents In Connection With The Issuance Of The Bond And The Project; Making Certain Determinations And Findings Relating To The Bond And The Project; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance (Baca, by request)

A motion was made by Councilor Baca that this matter be Substituted. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Baca that this matter be Passed as Substituted. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

11. APPEALS

a. AC-24-28

The Westside Coalition Of Neighborhood Associations Appeal The Development Hearing Officer Decision To Approve A Preliminary Plat, For All Or A Portion Of Lot 1-A, Block 2, Volcano Cliffs Unit 26 Zoned MX-M Located On Paseo Del Norte NW And Kimmick Dr NW Containing Approximately 8.2578 Acre(s) (C-11)

A motion was made by Councilor Lewis to Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Rogers, and Sanchez

Against: 1 - Peña

b. AC-25-01

Five appellants-the Santa Fe Village Neighborhood Association (SFVNA); West Side Coalition of Neighborhood Associations (WSCONA); the Native American Voters Alliance (NAEVA), a non-profit organization; and individuals Jane Baechle and Michael T. Voorhees-appeal the Environmental Planning Commission (EPC) decision to approve a Site Plan for the Mesa Film Studio proposed for Double Eagle II (DEII) Airport Lease Area 2 (an approximately 60-acre portion of the Double Eagle II Airport property, consisting of Tract A-1 Plat of Tract A-1 & Tract L-1 Parcels 1-5 Double Eagle II Airport, Tracts C, E, F, K Bulk Land Plat of Double Eagle II Airport and Adjacent Lands, Tract D-1-A-2 and Tract S-1-A Parts of Tracts D-1-A-1, D-1-A-2 & S-1-A of amended Bulk Land Plat for Aerospace Technology Park, Tract N-1 Bulk Lands Part of Tracts N-1, O-1 & N-2 Parcels 1, 2, 3 & 4 Double Eagle II Airport and Adjacent Lands, Tract S-2 Bulk Land Plat for Aerospace Technology Park Tracts D & S of Double Eagle II Airport and Adjacent Lands), located at 7401 Paseo del Volcan NW, Atrisco Vista Blvd. NW and Shooting Range Access

Rd. intersection, approximately 4,100 acres (C-4, C-5, C-6, D-4, D-5, D-6, E-4, E-5, E-6, F-4, F-5, F-6, G-4, G-6)

A motion was made by Councilor Lewis to deny the appeal and uphold the EPC's decision to approve the site plan with new findings to be adopted at a later date. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by President Bassan that this matter be Postponed for the adoption of findings to April 21, 2025. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

12. GENERAL PUBLIC COMMENTS

13. APPROVALS: {Contracts, Agreements, and Appointments}

a. EC-25-319 Proposal for Funding and Implementation of a Pilot Program to Provide Comprehensive Employment and Support Program for Individuals Experiencing Homelessness

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

Against: 1 - Champine

14. FINAL ACTIONS

a. R-25-117 F/S Approving The Programming Of Funds And Projects For The 2025-2034 Decade Plan For Capital Improvements Including The 2025 Two-Year Capital Budget (Grout)

A motion was made by President Bassan that the rules be suspended for the purpose of allowing a Floor Substitute to be considered by the full Council. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Grout that this matter be Substituted. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Lewis that this matter be Amended. Councilor Lewis moved Amendment No. 1. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Rogers that this matter be Amended. Councilor Rogers moved Amendment No. 2. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by President Bassan that this matter be Amended. President Bassan moved Amendment No. 3. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Grout that this matter be Passed as Substituted, as Amended. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

b. R-25-123 Approving The Expansion Of The Downtown 2025 Metropolitan Redevelopment Area Boundary To Include The McClellan Park And Railroad Metropolitan Redevelopment Areas And Property At Broadway And Lomas, And Repealing The McClellan Park And Railroad Metropolitan Redevelopment Area Boundaries And Plans (Baca, by request)

A motion was made by Councilor Baca that this matter be Amended. Councilor Baca moved Amendment No. 1. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Baca that this matter be Amended. Councilor Baca moved Amendment No. 2. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Baca that this matter be Passed as Amended. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

c. R-25-128 Approving And Adopting The Local Government Coordinating Commission Joint Opioid Settlement Implementation Plan; And Appropriating Opioid Settlement Funds (Fiebelkorn, Grout, Rogers and Champine)

A motion was made by President Bassan that the rules be suspended for the purpose of extending the meeting to 10:45 p.m. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Champine that the rules be suspended for the purpose of extending the meeting to 11:15 p.m. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Vice-President Peña that this matter be Postponed to April 21, 2025. The motion failed by the following vote:

For: 2 - Bassan, and Peña

Against: 7 - Baca, Champine, Fiebelkorn, Grout, Lewis, Rogers, and Sanchez

A motion was made by Councilor Rogers that this matter be Amended. Councilor Rogers moved Amendment No. 1. The motion carried by the following vote:

For: 5 - Baca, Bassan, Lewis, Peña, and Rogers

Against: 4 - Champine, Fiebelkorn, Grout, and Sanchez

A motion was made by Councilor Fiebelkorn that this matter be Amended. Councilor Fiebelkorn moved Amendment No. 2. The motion failed by the following vote:

For: 2 - Fiebelkorn, and Rogers

Against: 7 - Baca, Bassan, Champine, Grout, Lewis, Peña, and Sanchez

A motion was made by Councilor Baca that the rules be suspended for the purpose of extending the meeting to 11:25 p.m. The motion carried by the following vote:

For: 7 - Baca, Champine, Fiebelkorn, Grout, Lewis, Peña, and Sanchez

Against: 2 - Bassan, and Rogers

A motion was made by Councilor Fiebelkorn that this matter be Passed as Amended. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Rogers, and Sanchez

Against: 1 - Peña

15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

a. Corrective statement to address OMA violations at City Council Meeting on 10/21/24.

President Bassan announced The New Mexico Department of Justice has requested City Council issue a corrective statement in response to an Open Meetings Act complaint regarding an executive session held at the October 21, 2024 City Council meeting.

The DOJ found two technical violations.

The agenda should reflect that the Council went into executive session to discuss pending litigation regarding Bernalillo County and the Air Quality Control Board.

The Council should have more clearly moved to go into executive session and the motion should have been made pursuant to NMSA 10-15-1(H)(8) to discuss pending litigation.

There being no further business, this City Council meeting adjourned at 11:21 p.m.

City of Albuquerque

City of Albuquerque
Government Center
One Civic Plaza
Albuquerque, NM 87102

Action Summary

City Council

Council President, Brook Bassan, District 4
Council Vice-President, Klarissa J. Peña, District 3

Louie Sanchez, District 1; Joaquín Baca, District 2;
Dan Lewis, District 5; Nichole Rogers, District 6;
Tammy Fiebelkorn, District 7;
Dan Champine, District 8; Renée Grout, District 9

Monday, April 21, 2025 **5:00 PM** **Vincent E. Griego Chambers**
One Civic Plaza NW
City of Albuquerque Government Center

TWENTY-SIXTH COUNCIL - THIRTIETH MEETING

1. ROLL CALL

Present 9 - Joaquín Baca, Brook Bassan, Dan Champine, Tammy Fiebelkorn, Renée Grout, Dan Lewis, Klarissa Peña, Nichole Rogers, and Louie Sanchez

2. MOMENT OF SILENCE

President Bassan led the Pledge of Allegiance in English.
Councilor Sanchez led the Pledge of Allegiance in Spanish.

15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

a. Executive Session pursuant to 10-15-1(H)(7) - Discussion subject to attorney-client privilege pertaining to OC-25-35 and relating litigation in Mayor Tim Keller v. Albuquerque City Council.

A motion was made by President Bassan that they move into Executive Session. The motion carried by the following vote:

For: 8 - Baca, Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 1 - Lewis

President Bassan affirmed that the matters discussed in executive session were limited to those specified in the motion for closure.

3. PROCLAMATIONS & PRESENTATIONS

5. APPROVAL OF JOURNAL

April 7, 2025

6. COMMUNICATIONS AND INTRODUCTIONS

7. REPORTS OF COMMITTEES

Finance & Government Operations Committee - April 14, 2025

Land Use Planning & Zoning Committee - April 16, 2025

8. CONSENT AGENDA: {Items may be removed at the request of any Councilor}

a. EC-25-354 Metropolitan Redevelopment's State of New Mexico Trails+ grant request for Central Crossing

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

c. EC-25-357 Mayor's re-appointment of Mr. David A. Mueller to the Albuquerque Energy Council

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

d. EC-25-358 Mayor's appointment of Mr. Roman Varela, to the Greater Albuquerque Recreational Trails Committee

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

e. EC-25-359 Mayor's appointment of Mr. Konrad A. Jeungling to the Library Advisory Board

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

f. EC-25-362 Mayor's re-appointment of Ms. Tara M. Trafton to the Albuquerque Energy Council

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

g. EC-25-363 Mayor's appointment of Mrs. Mariah Tallent, to the Greater Albuquerque Recreational Trails Committee

A motion was made by President Bassan that this matter be Confirmed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

h. R-25-123 Approving The Expansion Of The Downtown 2025 Metropolitan Redevelopment Area Boundary To Include The McClellan Park And Railroad Metropolitan Redevelopment Areas And Property At Broadway And Lomas, And Repealing The McClellan Park And Railroad Metropolitan Redevelopment Area Boundaries And Plans (Baca, by request)

A motion was made by President Bassan that this matter be Passed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

13. APPROVALS: {Contracts, Agreements, and Appointments}

b. EC-25-355 Housing Forward Fund FY25 Report

A motion was made by Councilor Grout that this matter be Receipt Be Noted. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

i. R-25-136 Adjusting Fiscal Year 2025 Operating Appropriations (Champine)

A motion was made by Councilor Champine that this matter be Postponed to May 5, 2025. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

9. ANNOUNCEMENTS

10. FINANCIAL INSTRUMENTS

***a.** O-25-82 Approving A Project Involving Vitality Works, Inc. Pursuant To The Local Economic Development Act And City Ordinance F/S O-04-10, The City's Implementing Legislation For That Act, To Support The Expansion And

Modernization Of Vitality Works Production And Manufacturing Of Botanical, Vitamin And Nutraceutical Supplements, Essential Oils And Homeopathic Products At Vitality Works Facilities Located In The City; Authorizing The Execution Of A Project Participation Agreement And Other Documents In Connection With The Project; Making Certain Determinations And Findings Relating To The Project Including The Appropriation Of Funds; Ratifying Certain Actions Taken Previously; And Repealing All Actions Inconsistent With This Ordinance (Sanchez, by request)

A motion was made by Councilor Sanchez that this matter be Passed. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

11. APPEALS

a. AC-25-01

Five appellants-the Santa Fe Village Neighborhood Association (SFVNA); West Side Coalition of Neighborhood Associations (WSCONA); the Native American Voters Alliance (NAEVA), a non-profit organization; and individuals Jane Baechle and Michael T. Voorhees-appeal the Environmental Planning Commission (EPC) decision to approve a Site Plan for the Mesa Film Studio proposed for Double Eagle II (DEII) Airport Lease Area 2 (an approximately 60-acre portion of the Double Eagle II Airport property, consisting of Tract A-1 Plat of Tract A-1 & Tract L-1 Parcels 1-5 Double Eagle II Airport, Tracts C, E, F, K Bulk Land Plat of Double Eagle II Airport and Adjacent Lands, Tract D-1-A-2 and Tract S-1-A Parts of Tracts D-1-A-1, D-1-A-2 & S-1-A of amended Bulk Land Plat for Aerospace Technology Park, Tract N-1 Bulk Lands Part of Tracts N-1, O-1 & N-2 Parcels 1, 2, 3 & 4 Double Eagle II Airport and Adjacent Lands, Tract S-2 Bulk Land Plat for Aerospace Technology Park Tracts D & S of Double Eagle II Airport and Adjacent Lands), located at 7401 Paseo del Volcan NW, Atrisco Vista Blvd. NW and Shooting Range Access Rd. intersection, approximately 4,100 acres (C-4, C-5, C-6, D-4, D-5, D-6, E-4, E-5, E-6, F-4, F-5, F-6, G-4, G-6)

A motion was made by Councilor Lewis for Adoption of Findings. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

12. GENERAL PUBLIC COMMENTS

Please refer to the instructions at the beginning of this Council Agenda.

13. APPROVALS: {Contracts, Agreements, and Appointments}

a. EC-25-360 Approval of the Second Supplemental Agreement to the Farolito Senior Community Development Agreement with Sol Housing to Utilize ARPA Funds Towards the New Construction of a Senior Rental Housing Project

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 6 - Bassan, Champine, Fiebelkorn, Grout, Peña, and Sanchez

Excused: 3 - Baca, Lewis, and Rogers

b. EC-25-361 Approval of the Agreement to the Somos Apartments Development Agreement with Sol Housing to Utilize HUD HOME & ARPA Treasury Funds Towards the New Construction of a Senior Rental Housing Project

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

***c.** EC-25-368 Mayor's Recommendation of Award for Human Resources Flexible Spending Accounts Administration

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

***d.** EC-25-369 Mayor's Recommendation of Award for Human Resources Basic Life/Supplemental Life, Long/Short-Term Disability Insurance

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 8 - Baca, Bassan, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

Against: 1 - Champine

***e.** EC-25-374 Request authorization to establish a Professional Service Agreement with Youth Development Incorporated (YDI) to provide Gateway Family Housing Navigation

A motion was made by President Bassan that this matter be Approved. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

f. EC-25-375 Request authorization to establish a Professional Service Agreement with Chicanos Por La Causa to provide Gateway Women's Housing

Navigation

A motion was made by Councilor Grout that this matter be Postponed to May 5, 2025. The motion carried by the following vote:

For: 5 - Baca, Champine, Grout, Rogers, and Sanchez

Against: 4 - Bassan, Fiebelkorn, Lewis, and Peña

14. FINAL ACTIONS

a. R-25-131 City Of Albuquerque Project Recommendations To Mid-Region Council Of Governments For Inclusion In The 2045 Metropolitan Plan For Consideration Of Future Federal Funding For The Albuquerque Metropolitan Planning Area (Baca, by request)

A motion was made by Councilor Baca that this matter be Amended. Councilor Baca moved Amendment No. 1. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

A motion was made by Councilor Baca that this matter be Passed as Amended. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

b. OC-25-35 Response to Mayor's Statement of Issues sent to the Intragovernmental Conference Committee

A motion was made by Councilor Champine that this matter be Approved. The motion carried by the following vote:

For: 9 - Baca, Bassan, Champine, Fiebelkorn, Grout, Lewis, Peña, Rogers, and Sanchez

4. ADMINISTRATION QUESTION & ANSWER PERIOD

14. FINAL ACTIONS

a. R-25-131 City Of Albuquerque Project Recommendations To Mid-Region Council Of Governments For Inclusion In The 2045 Metropolitan Plan For Consideration Of Future Federal Funding For The Albuquerque Metropolitan Planning Area (Baca, by request)

A motion was made by Councilor Bassan for Reconsideration of R-25-131. The motion carried by the following vote:

For: 7 - Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 2 - Baca, and Lewis

A motion was made by President Bassan that this matter be Amended. President Bassan moved Amendment No. 2. The motion carried by the following vote:

For: 7 - Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 2 - Baca, and Lewis

A motion was made by President Bassan that this matter be Passed as Amended. The motion carried by the following vote:

For: 7 - Bassan, Champine, Fiebelkorn, Grout, Peña, Rogers, and Sanchez

Excused: 2 - Baca, and Lewis

There being no further business, this City Council meeting adjourned at 10:04 p.m.