



# CITY OF ALBUQUERQUE

*Albuquerque, New Mexico*


**Planning Department**

Mayor Timothy M. Keller

## INTER-OFFICE MEMORANDUM

December 13, 2024

**TO:** Dan Lewis, President, City Council

**FROM:** Alan Varela, Planning Director   
Alan Varela (Dec 13, 2024 12:28 MST)

**SUBJECT:** AC-24-28, (VA-2024-00296) PR-2022-007712 AKA PR-2019-002663,  
SD-2024-00097

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)

### REQUEST

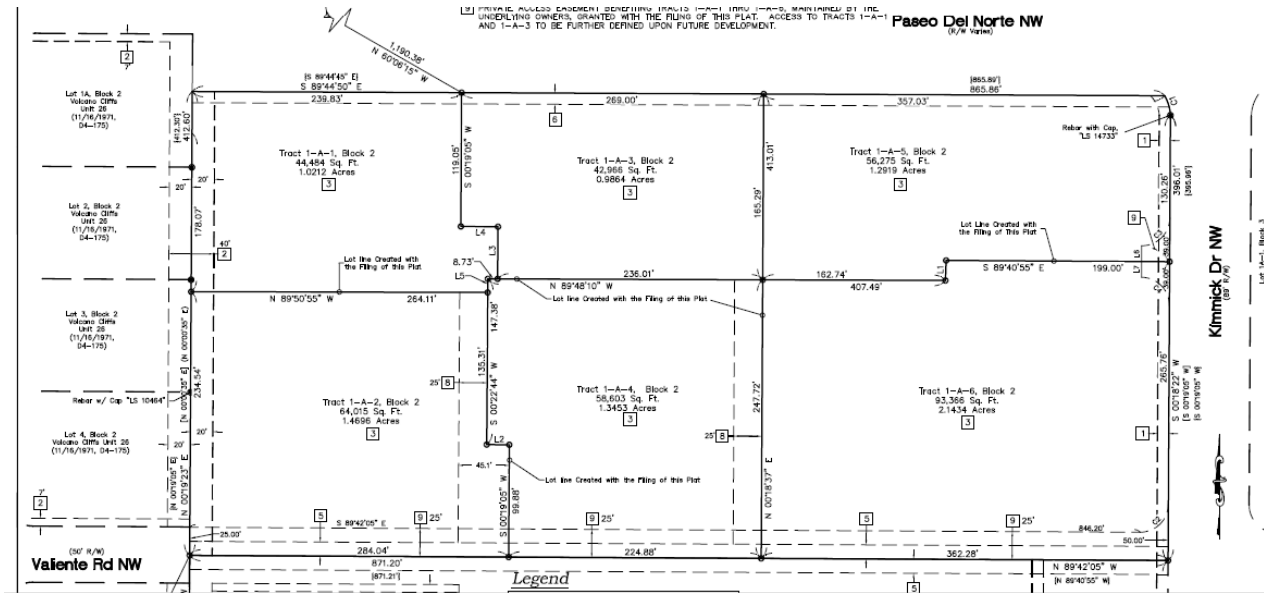
This is an appeal of the Development Hearing Officer (DHO) decision to approve a Preliminary Plat for 8.2578 acres on June 12<sup>th</sup>, 2024. The subject parcels are bounded by Paseo del Norte to the north, and Kimmick Drive NW to the east.

The Preliminary Plat would divide the subject property (Tract 1-A, Block 2, Volcano Cliffs Subdivision) into 6 parcels; Tract 1-A-1 consisting of 1.0212 acres; Tract 1-A-2 consisting of 1.4696 acres; Tract 1-A-3 consisting of 0.9864 acres; Tract 1-A-4 consisting of 1.3453 acres; Tract 1-A-5 consisting of 1.2919 acres; and Tract 1-A-6 consisting of 2.1434 acres. The application was deemed complete and subject to review under the IDO Effective Date of July 2023.

On July 1<sup>st</sup>, 2024, an initial appeal was submitted by the appellant which referenced PR-2022-007712, SD-2024-00019, an earlier Final Plat approved by the DHO on February 7<sup>th</sup>, 2024 that included the subject property for the Preliminary Plat for PR-2022-007712 AKA PR-2019-002663, SD-2024-00097. That appeal was determined by Planning staff to not be a timely appeal as it was referencing an earlier Final Plat approval whose opportunity to appeal had passed, and was not accepted and processed.

On October 22<sup>nd</sup>, 2024, the Second District Court approved a Stipulated Order of Remand, as agreed upon by the parties of the case, where the Order was to accept an ‘amended’ appeal. The case is remanded per D-202-CV-2024-06591. The appellant submitted their amended appeal on November 1<sup>st</sup>, 2024, which was deemed timely per the remand order as well as per the IDO, and was accepted and processed. The appellant claims to have standing as they appeared before the DHO and they claim to be specially and adversely affected by the decision.

Figure 1. Preliminary Plat for PR-2022-007712 AKA PR-2019-002663, SD-2024-00097



## BACKGROUND

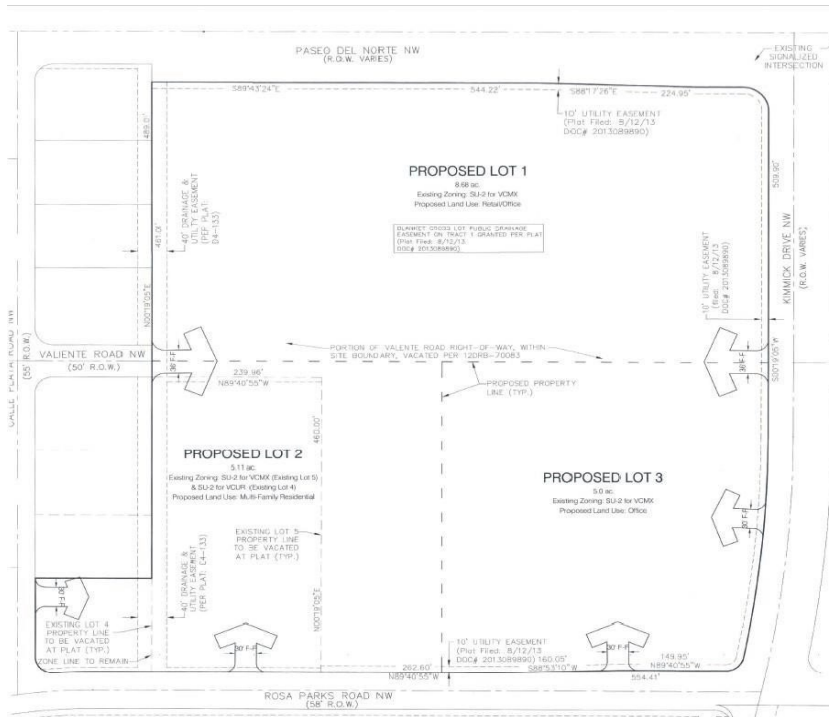
### A. Prior Approvals (before November 14<sup>th</sup>, 2023)

Site Plan for Subdivision 2017. In September 2017, the Development Review Board (DRB) approved a site plan for subdivision for 18.79 acres plus an additional Lot 4 (less than 1 acre at the southwest corner of the subject parcel).

The Site Plan for Subdivision was approved by the DRB in September 2017 per 1009082 / 17DRB-70109 and was reviewed according to the Volcano Heights Sector Development Plan because the site plan application was made prior to enactment of the IDO.

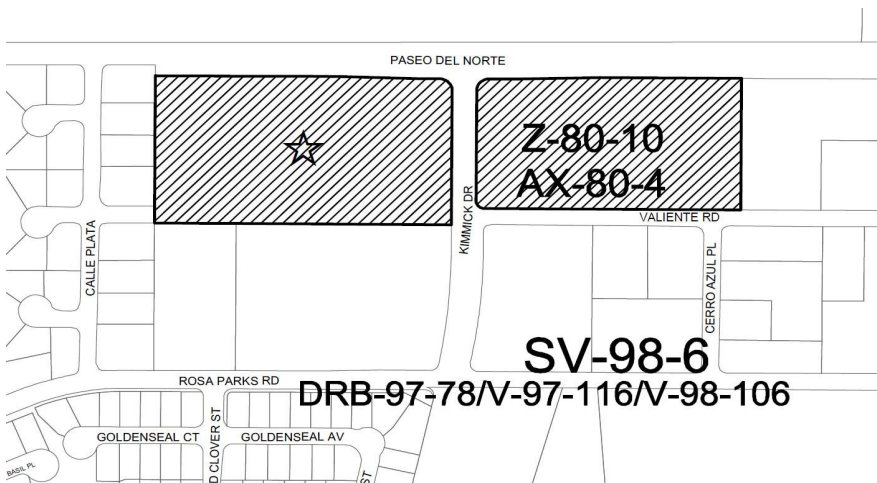
The DRB approved a Major Site Plan Amendment – DRB (PR-2022-007712, SI-2022-01875) on November 9<sup>th</sup>, 2022, eliminating/removing the Site Plan for Subdivision as the original approving body for the Site Plan for Subdivision per 6-4(Y)(3) of the July, 2022 IDO.

Figure 2. 2017 Area involved in Site Plan for Subdivision



Rezoning of 2019 (PR 2019-002263). The Environmental Planning Commission (EPC) approved a rezoning that included the subject property on October 10, 2019. The rezoning request included 16 acres directly south of Paseo del Norte. The two parcels were east and west of Kimmick. See the figure below identifying the land that was rezoned by the striping pattern. The parcel west of Kimmick of 8.7 acres is the only parcel from that rezoning that is included in this appeal (noted with a 'star' in the figure below).

Figure 3. 2019 Rezoning Exhibit PR-2019-02263



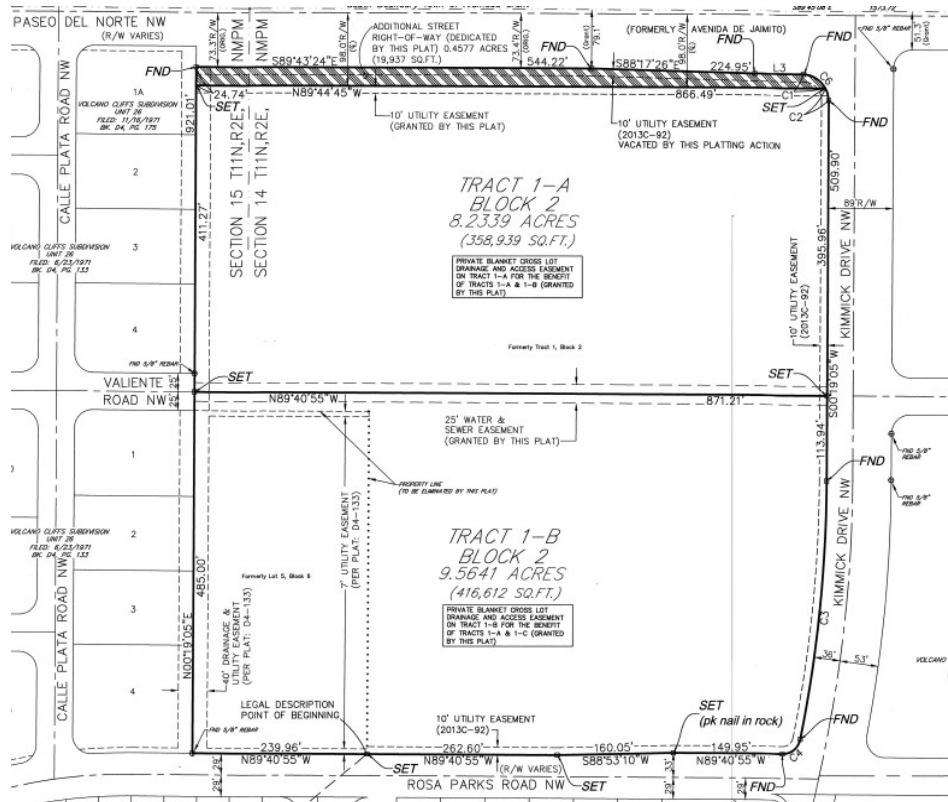
The EPC established the following condition of approval for the rezoning:

Condition 1. ‘The zone map amendment shall not become effective until Lot 1, Block 2 is replated and a lot line is created that corresponds to the proposed zone boundary, located at 436.01 feet south of the Paseo del Norte Blvd. NW right-of-way, and the plat is recorded.’ (EPC NOD Oct. 10, 2019)

The Preliminary Plat application of November 9, 2022. The DRB approved a Preliminary Plat (PR-2022-007712, SD-2022-00143) for 18.23 acres on November 9<sup>th</sup>, 2022 which included the subject property for the current Preliminary Plat subject to this appeal (PR-2022-007712 AKA PR-2019-002663, SD-2024-00097). The Preliminary Plat was reviewed and approved because it met the requirements of the IDO and DPM.

The figure below identifies the two tracts that were the subject of the Preliminary Plat.

Figure 4. Preliminary Plat for PR-2022-007712, SD-2022-00143



Vacations of Public Easements. The DRB approved three applications for vacations of private easements as part of the Preliminary Plat application for PR-2022-007712, SD-2022-00143 on November 9<sup>th</sup>, 2022. These vacation approvals were not appealed.

The Preliminary Plat for PR-2022-007712, SD-2022-00143 was the first step for the applicant to fulfill the EPC condition from the rezoning case. A Final Plat would be the second step needed to fulfill this EPC condition for the rezoning.

The Final Plat application of July 12, 2023. The DHO approved an application for a Final Plat at its hearing of July 12, 2023 per PR-2022-007712, SD-2023-00127. The application for a Final Plat was the completion step (per the November 9<sup>th</sup>, 2022 DRB-approved Preliminary Plat for PR-2022-007712, SD-2022-00143) to reconfigure two existing tracts into two different tracts what would create a north and south tract (the north tract being subject to the current appeal). The boundary of the tracts was according to the EPC conditionally approved rezoning: MX-M zone district for the northern parcel, Tract 1-A, Block 2 (8.23 acres) and the MX-L zone district for the southern parcel, Tract 1-B, Block 2 (9.56 acres).

### **B. Appeals on the Prior Approvals (through November 14<sup>th</sup>, 2023)**

AC-23-1 Appeal. The appellant of the current appeal (AC-24-28) was an appellant on an earlier appeal (AC-23-1) on the subject property of the current appeal which included the November 9<sup>th</sup>, 2022 DRB-approved Preliminary Plat for PR-2022-007712, SD-2022-00143, and that was timely submitted. On February 17<sup>th</sup>, 2023, the Land Use Hearing Officer (LUHO) recommended the City Council deny Appellants' appeal in its entirety, and on March 7<sup>th</sup>, 2023, the City Council denied the appeal for AC-23-1. The appeal for AC-23-1 was then appealed to the Second Judicial District Court (see Second Judicial District Court Ruling and Order below).

AC-23-14 Appeal. The appellant of the current appeal was also an appellant on an earlier appeal (AC-23-14) on the subject property of the current appeal, which was an appeal of the Final Plat for PR-2022-007712, SD-2023-00127, and that was timely submitted. On October 18<sup>th</sup>, 2023, the LUHO recommended that the DHO approval of the Final Plat for PR-2022-007712, SD-2023-00127 be reversed and the Preliminary Plat for PR-2022-007712, SD-2022-00143 be revoked. This appeal was scheduled on the November 8<sup>th</sup>, 2023 City Council agenda, but on October 27<sup>th</sup>, 2023 (before the scheduled City Council meeting), the applicant for the Final Plat for PR-2022-007712, SD-2023-00127 withdrew their application. On November 8<sup>th</sup>, 2023, the City Council voted to accept the withdrawal of the Final Plat application.

Second Judicial District Court Ruling and Order. On November 14<sup>th</sup>, 2023, the 2<sup>nd</sup> Judicial District Court affirmed the City Council's March 7<sup>th</sup>, 2023 denial of the appeal for AC-23-1 which included the November 9<sup>th</sup>, 2022 DRB-approved Preliminary Plat for PR-2022-007712, SD-2022-00143.

### **C. Prior Approvals (after November 14<sup>th</sup>, 2023)**

The Preliminary Plat/Vacation Extension applications of December 6, 2023. On November 29<sup>th</sup>, 2023, Planning staff deemed complete, accepted and processed applications for the extension of the Preliminary Plat and Easement Vacations approved by the DRB on November 9<sup>th</sup>, 2022 per PR-2022-007712, SD-2023-00218, SD-2023-00216. The DHO approved the noted extension applications at its hearing of December 6, 2023.

The Final Plat application of February 7, 2024. On January 29<sup>th</sup>, 2024, Planning staff deemed complete, accepted and processed the Final Plat application for PR-2022-007712, SD-2024-00019. The DHO approved an application for a Final Plat at its hearing of February 7, 2024.

This Final Plat was identical to the Final Plat that was approved by the DHO on July 12, 2023 per PR-2022-007712, SD-2023-00127 and later withdrawn by the applicant, and was the completion step for the November 9<sup>th</sup>, 2022 DRB-approved Preliminary Plat for PR-2022-007712, SD-2022-00143. The applicant then addressed the conditions of approval of the Final Plat; Development Facilitation Team (DFT) staff and the City Engineer then signed the Plat once the conditions of approval of the Final Plat were addressed; and on March 4<sup>th</sup>, 2024, the Plat was recorded and filed with Bernalillo County.

## D. DHO Approval Under Appeal

On May 20<sup>th</sup>, 2024, Planning staff deemed complete, accepted and processed the Preliminary Plat application for PR-2022-007712 AKA PR-2019-002663, SD-2024-00097. The DHO approved an application for a Preliminary Plat at its hearing of June 12<sup>th</sup>, 2024. The Preliminary Plat divides the subject property (Tract 1-A, Block 2, Volcano Cliffs Subdivision) into 6 parcels; Tract 1-A-1 consisting of 1.0212 acres; Tract 1-A-2 consisting of 1.4696 acres; Tract 1-A-3 consisting of 0.9864 acres; Tract 1-A-4 consisting of 1.3453 acres; Tract 1-A-5 consisting of 1.2919 acres; and Tract 1-A-6 consisting of 2.1434 acres.

The subject property of the Preliminary Plat consists of the northern tract (Tract 1-A, Block 2, Volcano Cliffs Subdivision) that was created per the November 9<sup>th</sup>, 2022 DRB-approved Preliminary Plat for PR-2022-007712, SD-2022-00143 and the February 7<sup>th</sup>, 2024 DHO-approved Final Plat for PR-2022-007712, SD-2024-00019.

## REASONS FOR THE APPEAL

1. **Appellant:** Notice of the Preliminary Plat was not sent to the Appellant. Appellant was advised verbally of the Preliminary Plat proceedings and appeared on short notice at the DHO hearing on June 12, 2024 to object.

**Staff response:** Notice was sent to the appellant (WSCONA c/o Elizabeth Haley) for the Preliminary Plat application, that is the subject of this appeal, on May 1, 2024 and as shown below. The complete email is in the applicant's submittal packet included in the Record.

**Regina Okoye**

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From: Regina Okoye  
 Sent: Wednesday, May 1, 2024 4:27 PM  
 To: ghaconce@gmail.com; elizabethhaley@gmail.com; kym.fleck@gmail.com; sboard111@gmail.com  
 Cc: Angela Williamson  
 Subject: Public Notice of a Proposed Project in the City of Albuquerque for Decisions Requiring a Meeting or Hearing Mailed/Emailed to a Neighborhood Association - Southwest Corner of Paseo del Norte NW & Kimmick Dr. NW  
 Attachments: 01 - Emailed-Mailed-Notice-PublicMeetingHearing-Printed-Fill\_DHO.PDF; Zone Atlas Map C-11-Z.PDF; Proposed Plat.pdf; 02 - CABO-Official\_public\_notice\_form-2018.pdf

**Public Notice of a Proposed Project in the City of Albuquerque for Decisions Requiring a Meeting or Hearing Mailed/Emailed to a Neighborhood Association**

Date of Notice: 5/1/2024

This notice of an application for a proposed project is provided as required by Integrated Development Ordinance (IDO) [Subsection 14.16.6.4\(K\) Public Notice](#) to:

Neighborhood Association (NA): Parade NEA Civic Association, Volunteer Chapter of Neighborhood Association  
 Name of NA Representative: Elizabeth Haley, Kym Fleck, Rene Horvath  
 Email Address\* or Mailing Address\* of NA Representative: elizabethhaley@gmail.com

**Information Required by IDO Subsection 14.16.6.4(K)(1)(a)**

1. Subject Property Address: 9999 PASEO DEL NORTE NW ALBUQUERQUE NM 87120  
 Location Description: Southwest Corner of Paseo del Norte NW & Kimmick Dr NW
2. Property Owner: GROUP II U28 VC LLC C/O WRIGHT BILLY J
3. Agent/Applicant: (if applicable) Modulus Architects & Land Use Planning, Inc. (Agent)
4. Application(s) Type\* per IDO [Table 6.1.3](#) (mark all that apply)
  - Conditional Use Approval
  - Permit: \_\_\_\_\_ (Cease or Waive - Major)
  - Site Plan
  - Subdivision Major Preliminary Plat (Minor or Major)
  - Variance \_\_\_\_\_ (Exemption/Private Use or Public Right-of-Way)
  - Variance \_\_\_\_\_
  - Waiver \_\_\_\_\_
  - Other: \_\_\_\_\_

Summary of project/request<sup>1</sup>:  
We are requesting a Major Subdivision of Land action to create six new tracts from one existing tract.  
This request is also to dedicate Right of Way to the City of Albuquerque for the purpose of Valente Rd NW

The Applicant did hold a facilitated meeting with various stakeholders and noted in the Preliminary Plat Notice of Decision. WSCONA was noted as a participant in the facilitated meeting. (See NOD excerpt below.)

9. A facilitated meeting was held on May 28, 2024 with participation of the following neighborhood associations: WSCONA, Paradise Hills Community Association, Petroglyph National Monument, and other individuals. The Community stated that they believe the March, 2024 property division was not properly done, due primarily to unresolved litigation regarding said property. Therefore, the Community argued that the subject Application is not ripe.

2. **Appellant:** The Appellant did not receive notice of the Extension of the Preliminary Plat or the Final Plat of earlier platting action. (12/6/2023 and 2/7/2024).

The June 12, 2024, DHO hearing was predicated upon the decisions from both the December 6 and February 7 DHO Hearings. As those findings were unknown to the interested parties, there was no opportunity to appeal them. This lack of opportunity to challenge the conclusions, a fundamental right in any legal process, further underscores the procedural irregularity of the DHO Hearings. We thus appeal the June 12 decision because the necessary predicate DHO Hearings were unlawful under NM Stat & 3-21-6 B. (2023). These procedural irregularities have compromised the fairness of the process, and the need for a fair and just process is paramount.

**Staff Response:** The December 6, 2023 DHO approval of the Extension of the Preliminary Plat is a settled matter and cannot be appealed with the current Preliminary Plat (north tract). No mailed/mailed notice to property owners within 100 feet and/or to Neighborhood Associations as identified by the Office of Neighborhood Association (ONC) respectively was required by the Applicant as explained below.

The February 7, 2024 DHO approval of the Final Plat is a settled matter and cannot be appealed as a part of this current appeal of a new Preliminary Plat (north tract).

The IDO clearly outlines that the **primary** review, including public notice and review, occur on a Major Plat at the Preliminary Plat stage. See IDO provision below:

*IDO 6-6(L)(3) Review and Decision Criteria*

*An application for a Subdivision of Land – Major shall be approved if it meets all of the following criteria.*

*6-6(L)(3)(a) A **Preliminary Plat** shall be approved if it complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any conditions specifically applied to development of the property in a prior permit or approval affecting the property.*

*6-6(L)(3)(b) A **Final Plat** shall be approved if it includes all changes, conditions, and requirements contained in the Preliminary Plat approval.*

The substance of a plat is determined in the **Preliminary Plat**, including all matters such as lot sizes and layouts, rights-of-way, easements, and infrastructure improvements. The Preliminary Plat must comply with all applicable provisions of the IDO, DPM, and other adopted City regulations. The public participation in the Preliminary Plat process has potential to effect changes to a plat.

During the one year maximum time to submit the **Final Plat**, the applicant's main responsibility is to: (1) create a financial guarantee for the infrastructure that is to be built and (2) record the Infrastructure Improvement Agreement (financial guarantee) with the County Clerk. There may also be some minor conditions of approval that must be met.

The review and decision criteria for a **Final Plat** is basic and does not cover new matters. The criteria is to include all changes, conditions, and requirements contained in the Preliminary Plat approval. No changes to the Preliminary Plat are allowed. Changes, in fact, would require an Amendment to the Preliminary Plat, and Major Amendments to a Preliminary Plat *do* require public notice. Note that grading of the property and installation of some infrastructure often occurs prior to the Final Plat approval. In the Final Plat review, the core matter is financially guaranteeing the infrastructure that is yet to be built. As the plat layout is set and the guaranteeing of infrastructure is an administrative matter, no public notice is given for a Final Plat other than including the Final Plat on the publicly-available DHO agenda. See the IDO provision below regarding the basic step of a 'Final Plat.'

*IDO 6-6(L)(2)(d) Final Plat*

1. *Within 1 year after DHO approval, or approval with conditions, of a Preliminary Plat, the applicant shall submit a Final Plat that includes all changes, conditions, and requirements contained in the Preliminary Plat approval.*

An applicant may submit an Extension of a Preliminary Plat request that is reviewed by the DHO if the applicant sees they will not be able to submit the Final Plat within the one-year deadline. The extension does not allow any changes to the Preliminary Plat and no notification requirement in Table 6-1-1 of the IDO is noted for an Extension of a Preliminary Plat. Therefore, there is no requirement for public notice from the IDO nor in administrative practice.

The agendas of the Development Hearing Officer are publicly available to all. A neighborhood member or neighborhood association is able to view the monthly agendas posted at least 48 hours prior to a hearing. That allows a neighborhood with special interest in a project to monitor the progress of a Preliminary Plat with its financial guaranty and Infrastructure Improvements Agreement working its way to Final Plat.

3. **Appellant:** It appears to Appellant that if Appellant's main argument prevails in the pending Court of Appeals case for AC-23-1, the plat and site plan proceedings for the 18-acre Final Plat subject site will have to start over again (if the applicant chooses to proceed), with a quasi-judicial hearing to begin the process and fair consideration of the MPOS adjacency issue, the VPO-2 issue, and other issues.



Appellant believes the LUHO Recommendation in AC-23-14 is the correct resolution but as the applicant withdrew its Final Plat application we do not know if the City Council would have accepted or rejected the LUHO Recommendation in AC-23-14.

**Staff Response:** The District Court affirmed the order of City Council in D-202-CV-2023-02627, and no stay of the District Court's order has been issued. Planning told the Applicant that they could proceed at their own risk to continue applications affecting the 18-acre parcels that were subject to AC-23-1 while that matter was subject to the possibility of additional appeals.

The DHO determined that the action on the Preliminary Plat which is the subject of this appeal could proceed and stated the following in the Notice of Decision for the Preliminary Plat for PR-2022-007712 AKA PR-2019-002663, SD-2024-00097:

Official Notice of Decision

Project # PR-2022-007712 AKA PR-2019-002663 Application# SD-2024-00097

Page 2 of 3

4. Given that the prior preliminary and final plats divided the northern (Tract 1-A) and the southern property (Tract 1-B)-- with Tract 1-A being the subject of this action and the southern property not being the subject of this action--and the final plat not having been appealed and standing on its own ground, and with the information in the record and submitted under oath that the court having found in litigation that the property is not adjacent to major public open space, and having no evidence in the record of any stay of further action, the *DHO finds that the property that is subject of this action, approximately 8.2578 acres that is not adjacent to Major Public Open Space, is therefore ripe for decision by the DHO, and does not require an EPC Site Plan.*

The Final Plat that was the subject of AC-23-14 was withdrawn and is no longer relevant to this Preliminary Plat (north tract).

4. **Appellant:** Recusal of DHO Campbell- Since the DHO Hearing of July 12, 2023, we have learned of conflicts of interest that DHO Campbell concealed from the Appellants. Mr. Campbell served as CEO of Mesa Del Sol LLC from December 1, 2020, until approximately October 3, 2023. He owed his employment, at least in part, to Rudy Guzman, a business partner of Steven Chavez in Mesa Del Sol. Rudy Guzman is also an owner and business partner with Billy Wright and Steve Metro in Group II U26 VC, LLC & Tract 5 U26, LLC, the property owners at the DHO hearings. This apparent conflict of interest, undisclosed to appellants and other parties with standing, undermines the impartiality of the DHO and calls for his immediate recusal.

**Staff Response:** The Preliminary Plat (north tract) that is the subject of this appeal was heard by DHO Robert Lucero. The applicant proceeded with a new Preliminary Plat (north tract) as no stay was directed by the Court. DHO Lucero specifically asked if any party objected to his serving as the Hearing Officer for the case. No party objected, inclusive of Michael Vorhees who later gives testimony in the hearing. (See DHO Hearing Transcript, June 12, 2024, p. 3).

Former DHO David Campbell and his action on the Final Plat for PR-2022-007712, SD-2023-00127 at the hearing of July 12, 2023 is not relevant to this Preliminary Plat (north tract). Furthermore, the decision by DHO Campbell is moot because the applicant withdrew that Final Plat application that the DHO reviewed.

5. **Appellant:** Recusal of Dan Lewis from participating in authorizing legislation - It has also come to light that Guzman has made significant contributions to Dan Lewis over the years. Guzman Construction Services is also a member of the Asphalt Pavement Association of New Mexico (APANM), and the APANM recently hired City Councilor Dan Lewis, District 6, as the Executive Director of APANM. District 6 contains the project site. Dan Lewis sponsored legislation in a related case remanded by the District Court back to the City of Albuquerque due to process issues and conflicts of interest, which the DHO used as the basis of the DHO decision.

**Staff Response:** The Preliminary Plat (north tract) has not been part of any legislative action by Councilor Dan Lewis to the best knowledge of staff. This appeal of the Preliminary Plat (north tract) will go to the City Council for final action and it will be up to the appellant to make any claim for recusal.

6. **Appellant:** The Preliminary Plat is invalid because the subject site of 18.23 acres is "adjacent" to the La Cuentista Major Public Open Space ("MPOS"), as the subject site and the La Cuentista MPOS are separated only by a street. Under IDO Section 5-4(C)(6), such an adjacent site must have an approved Site Plan—EPC before any platting action. The subject site does not have an approved Site Plan—EPC.

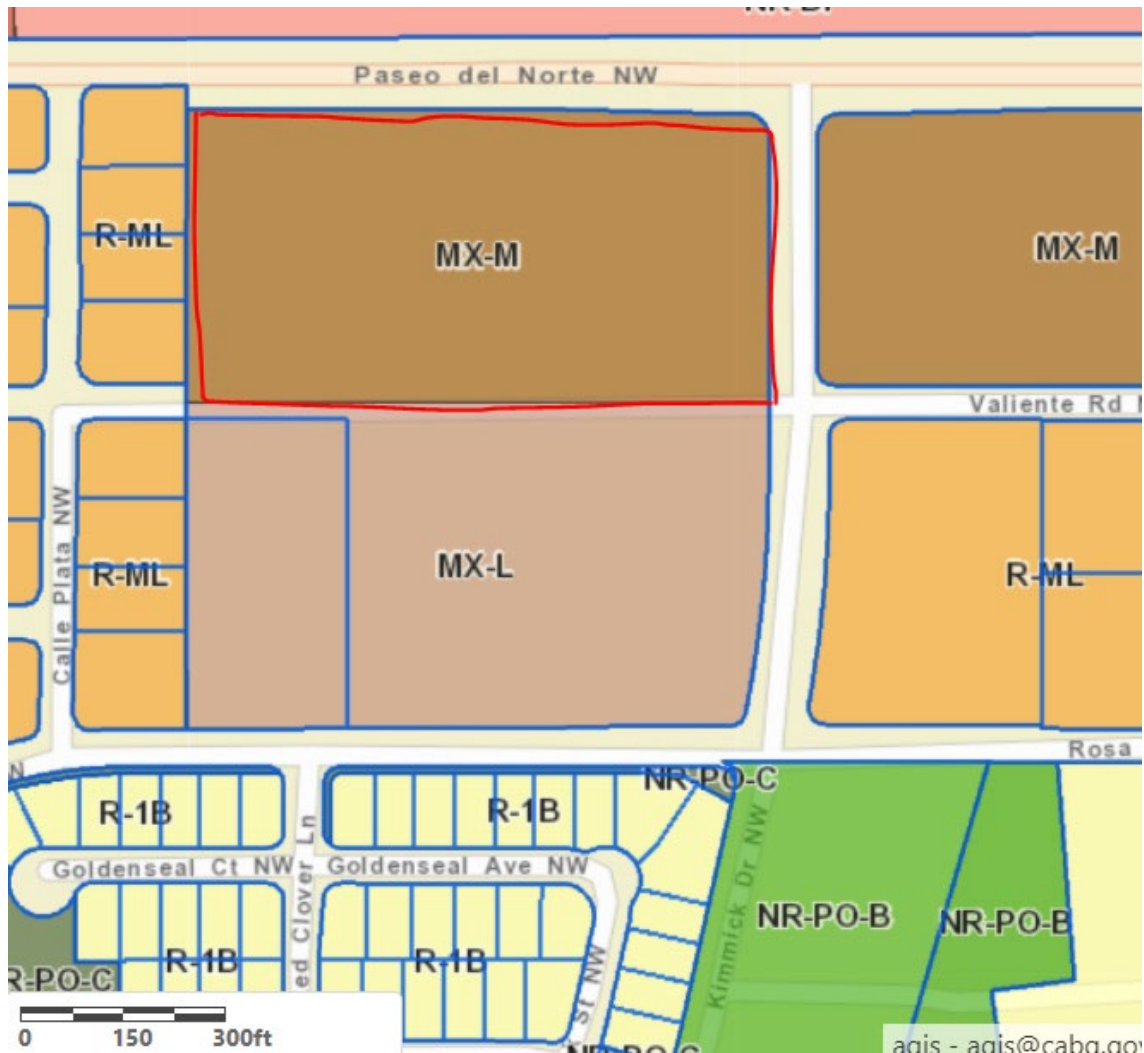
**Staff Response:** The Preliminary Plat (north tract) is 8.3 acres. It is the northern tract of the full 18.23 acres that was subdivided as of February 2024. The northern tract does not meet the **definition of adjacent** per the IDO effective date July 2023 which states:

**Adjacent**

Those properties that are abutting or separated only by a street, alley, trail, or utility easement, whether public or private. See also *Alley, Multi-use Trail, Private Way, Right-of-way, and Street*.

There is no Major Public Open Space (MPOS) separated from the northern tract by a street, alley, trail, or utility easement, whether public or private. Therefore, the plat was not subject to IDO Section 5-4(C)(6), which requires a site adjacent to MPOS to have an approved Site Plan—EPC before any platting action.

Figure 1: AGIS map of 12/5/2024 showing the Preliminary Plat (north tract) outlined in red. NR-PO-B zoning (considered to be MPOS) is shown in green on a parcel at the southwest corner of Kimmick and Rosa Parks.



7. **Appellant:** The Development Hearing Officer ("DHO") did not make any finding about the adjacency of the subject site to the La Cuentista MPOS, despite that Appellants presented that issue to the DHO. Appellant Westside Coalition has standing under IDO Section 6-4(V)(2)(a)(3) to appeal the "declaratory ruling" type decision, apparently made by the Planning Department and accepted by the DHO, that the subject site is not adjacent to the La Cuentista Major Public Open Space ("MPOS"). This issue has not been decided by law because this issue and related issues are currently in the New Mexico Court of Appeals for each separate portion of an original parcel.

The LUHO determined the standing of the Westside Coalition and the subject site adjacency during these two cases by the LUHO for each portion of the original lot. Please see IDO July 2023, Part 14-16-7: Definitions, Acronyms, and Abbreviations 7-1: "Definitions (Project Site A lot or collection of lots shown on a Subdivision – Minor or Major or on a Site Plan.

This term refers to the largest geography specified in the earliest request for a decision on the first application related to a particular development. For example, if a large lot is subdivided and submitted for development in phases, any regulation referring to the project site would apply to the entirety of the land in the original lot included in the Subdivision application."

**Staff response:** The DHO specifically references the issue of 'adjacency' in a finding of his decision:

The DHO specifically states that the "property that is the subject of this action, approximately 8.2578 acres is not adjacent to Major Public Open Space, is therefore ripe for decision by the DHO, and does not require an EPC Site Plan." (See full finding below.)

Official Notice of Decision

Project # PR-2022-007712 AKA PR-2019-002663 Application# SD-2024-00097

Page 2 of 3

4. Given that the prior preliminary and final plats divided the northern (Tract 1-A) and the southern property (Tract 1-B)-- with Tract 1-A being the subject of this action and the southern property not being the subject of this action--and the final plat not having been appealed and standing on its own ground, and with the information in the record and submitted under oath that the court having found in litigation that the property is not adjacent to major public open space, and having no evidence in the record of any stay of further action, the DHO finds that the property that is subject of this action, approximately 8.2578 acres that is not adjacent to Major Public Open Space, is therefore ripe for decision by the DHO, and does not require an EPC Site Plan.

The DHO also relied on the District Court judge decision (No. D-202-CV-2023-02637) that there was substantial evidence in the Council's decision that the full 18.23 acre parcel, including north and south tracts, was not 'adjacent' to MPOS.

*Appellants assert that the Council's finding on adjacency is not based on substantial evidence. The Council and Applicants argue that the finding is supported by maps contained in the record.*

*As an initial matter, Appellants failed to clearly raise this argument before the Council in the proceedings below. Issues not raised in administrative proceedings will generally not be considered for the first time on appeal to a district court. N.M. State Bd. of Psychologist Exam'rs v. Land, 2003-NMCA-034, ¶ 21, 133 N.M. 362; see also Wolfley v. Real Estate Comm'n, 1983-NMSC-064, ¶ 5, 100 N.M. 187. However, as explained below, Appellants' argument also fails based on the record of the proceeding.*

*Substantial evidence in the record supports the finding that the subject site and the major public open space are not "adjacent." Under the IDO, "adjacent" means "abutting or separated only by a street." IDO § 7-1. A map in the record shows that Kimmick Drive is to the east of the subject site and Rosa Parks Road is to the south of the subject site. [RP 39.] The nearby major public open space is to the southeast of the subject site and is described as "diagonally opposite" from the subject site. [RP 432-33, 700.] The map is substantial evidence supporting the finding that there is at least an intersection, i.e., more than one street, between the subject site and the major public open space. (No. D-202-CV-2023-0263, see pages 4 & 5)*

8. **Appellant:** The DHO's decision, which assumes that the subject site is not adjacent to the La Cuentista MPOS, is based on a declaratory ruling-type decision made by the Planning Department. This original declaratory ruling-type decision required a quasi-judicial hearing, but the City of Albuquerque didn't assign the case to an impartial quasi-judicial hearing.

**Staff Response:** The DHO's decision on the subject site not being adjacent to the La Cuentista MPOS was based on the District judge ruling that the 18.23 acre parcel (north and south tracts) was not adjacent to MPOS. No declaratory ruling was issued by the Planning Department Zoning Enforcement Officer regarding the adjacency issue.

9. **Appellant:** The Final Plat is invalid if the Preliminary Plat approved by the DRB is invalid. The Preliminary Plat is invalid because the City's approval was not in a quasi-judicial hearing. IDO Table 6-1-1; IDO Section 6-4(M)(3).

**Staff Response:** The Final Plat referred to by the appellant appears to be the final plat that divided the northern and southern tracts of the original 18.23 acre parcel approved February 7, 2024. The Preliminary Plat for the 18.23 acre subdivision into two tracts was upheld by the District Court judge. Neither the District Court or the NM Court of Appeals issued a stay of matters related to development of the parcels. Therefore, the Final Plat for the 18.23 acres proceeded to completion. A new Preliminary Plat (north tract) and subject of this current appeal also proceeded. The development team was informed that they were proceeding at their own risk.

10. **Appellant:** The Preliminary Plat approval is under appeal in a SCRA 1-074 appeal of the City's denial of AC-23-1, Bernalillo County District Court No. D-202-CV-2023-02637, which is now in the New Mexico Appeals Court. The DHO should have deferred its hearing until the New Mexico Court of Appeals resolved the case.

**Staff Response:** The New Mexico Court of Appeals issued no stay of matters affecting the 18.23 acre parcels. The applicant was allowed to proceed with the Preliminary Plat (north tract) at their own risk. The DHO determined that no stay from the Court meant the application was 'ripe' for decision by the DHO. (See DHO finding above.)

11. **Appellant:** The Preliminary Plat and the Final Plat are invalid because they do not comply with the 2017 site plan for the property, which imposes "conditions specifically applied to the development of the property in a prior permit or approval affecting the property" (IDO Section 6-6(L)(3)).

**Staff Response:** The 2017 Site Plan for Subdivision was a matter that the applicant applied for as a Major Site Plan Amendment – DRB to eliminate/remove the 2017 Site Plan for Subdivision. It was part of the 3 applications that were appealed to District Court. The District Court judge upheld the decision of the City Council to remove the 2017 Site Plan from the property. The NM Court of Appeals did not issue a stay regarding development on the 18.23 acre parcels. Furthermore, a premise of the IDO is that an owner of a property has authority over the applications submitted for that property. Furthermore, the owner of a property may withdraw a site plan from a property using procedures outlined in the IDO. (See relevant IDO provisions below.)

**6-4(D) WHO CAN SUBMIT AN APPLICATION**

6-4(D)(1) Unless specified otherwise in this IDO, an application under this IDO related to a specific property or multiple properties may be submitted by:

6-4(D)(1)(a) The owner of that property or an agent of the property owner with the written consent of the property owner.

*IDO* July, 2022 IDO, which is: **6-4(Y)(3) Major Amendments**

All amendments to permits or approvals that do not qualify as minor amendments under Subsection (2) above may only be approved by the decision making body that issued the permit or approval being amended, following the same procedure (including the payment of a new application fee, new process of staff referral, and any required public notice or public meeting or hearing) used to issue the original permit or approval. Repeals are processed as major amendments for the purpose of this IDO.

12. **Appellant:** The DHO denied Appellants due process by not explicitly addressing and making decisions on Appellants' objections in writing and testimony, including objections that the DHO was biased and should recuse himself.

**Staff response:** This assertion appears to be a carryover from the appeal **AC 23-14, regarding the Final Plat**. The DHO hears public testimony but is not required to specifically address that testimony in writing and in findings of a decision. In the June 12, 2024 DHO hearing on the Preliminary Plat (north tract), no party objected to the DHO hearing the matter. No party testified that he was biased and should recuse himself. (See Hearing transcript in the Record.)

13. **Appellant:** The original DHO written decision was defective because the City of Albuquerque, DHO sent no copy to the Appellants who requested notice of the decision in writing. Such notice is required under NMSA 1978, Section 39-3-1.1, and IDO Section 6-4(M)(6).

**Staff response:** This assertion appears to be a carryover from the appeal **AC-23-14, regarding the Final Plat**. Staff's best recollection is that no request was made by the appellants to receive a copy of the Notice of Decision (NOD) for the Preliminary Plat (north tract), and no evidence of such a request was provided by the Appellant in their current appeal.

The customary practice for all interested parties is to obtain the NOD from the posting on the City's website, Planning Department, Development Hearing Officer. The link to the DHO website where NODs are posted is below:

[Development Hearing Officer Agendas & Archives — City of Albuquerque](#)

## CONCLUSION

The Development Hearing Officer made a decision on an application for a Preliminary Plat that was properly before the DHO as no stay of applications had been issued by any body, including the New Mexico Courts. The applicant was allowed to proceed at their own risk pending any future decision on past applications by the NM Court of Appeals. The DHO acted properly in managing and considering public testimony, and there was no request in the hearing for his recusal. The DHO did not err in applying the requirements of the IDO, including public notice, the applicability of requirements related to 'adjacency' of MPOS, and all other requirements for a Preliminary Plat.

Appendix A. Timeline of Past Cases Related to SWC Kimmick & PdNorte

Case	Date of approval	Subject	Review Body	Acreage	Settled or appealed	Status
Prior to IDO	12/2017	Site Plan for Subdivision	EPC	18.79 plus < 1 acre	Settled	
PR 2019-002263	10/10/19	Rezoning of 16 acres south of PdN and either side of Kimmick	EPC	16 acres	Not Settled	Rezoning requires replat to be effective
PR 2022-7712	11/9/22	Removal of the 2017 Site Plan for Subdivision	DRB	18.79 plus < 1 acre	Appealed AC-23-1. Upheld by City Council and District Court 11/14/23	Waiting appeal review by NM Court of Appeals
PR 2022-7712 (SD-2022-00143)	11/9/22	Preliminary Plat and Easement Vacations. Divide property into northern Tract 1-A and southern Tract 1-B.	DRB	18.23 acres	Appealed (AC 23-1). Upheld by City Council and District Court 11/14/23	Waiting appeal review by NM Court of Appeals
PR-2022-007712 (SD-2023-00127)	7/12/23	Final Plat. Divide property into northern Tract 1-A and southern Tract 1-B.	DHO Campbell	18.23 acres	Appeal (AC 23-14) and heard by LUHO 2/17/23	Application withdrawn by applicant prior to City Council review
PR-2022-007712 (SD-2023-00218, SD-2023-00216)	12/6/23	Extension of Preliminary Plat and Easement Vacations. Divide property into northern Tract 1-A and southern Tract 1-B.	DHO	18.23 acres	Settled	
PR-2022-007712 (SD-2024-00019)	2/7/24	Final Plat. Divide property into northern Tract 1-A and southern Tract 1-B.	DHO	18.23 acres	Settled	Plat recorded.
<b>PR-2022-007712 AKA PR-2019-002663, (SD-2024-00097)</b>	6/12/24	<b>Divide the northern Tract 1-A into 6 tracts</b>	DHO Lucero	<b>8.23 acres</b>	<b>Under this appeal AC-24-28</b>	








# AC-24-28\_Memo\_Final\_1

Final Audit Report

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