

# CITY OF ALBUQUERQUE

## *Planning Department*

*David Campbell, Director*

### *Development Review Division*

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

Albuquerque, NM 87102

## NOTICE OF APPEAL



March 26, 2019

### TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on March 25, 2019. You will receive a Notice of Hearing as to when the appeal will be heard by the **Land Use Hearing Officer**. If you have any questions regarding the appeal please contact Alfredo Salas, Planning Administrative Assistant at (505) 924-3370.

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

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

**CITY COUNCIL APPEAL NUMBER: AC-19-6**

**PLANNING DEPARTMENT CASE FILE NUMBER: PR-2018-001402**

**SI-2018-00171**

**VA-2019-00100**

PO Box 1293

Albuquerque

**APPLICANT: Thomas P. Gulley**  
**4701 Valle Bonita Ln NW**  
**Albuquerque NM 87120**

NM 87103

www.cabq.gov cc: Crystal Ortega, City Council, City county bldg. 9<sup>th</sup> floor  
Kevin Morrow/Legal Department, City Hall, 4<sup>th</sup> Floor-  
EPC File  
Gamma Development, LLC, 9798 Coors Blvd NW #400 ABQ, NM 87114  
Consensus Planning, Inc., 302 Eighth St. NW, ABQ, NM 87102  
La Luz Landowners Assoc., Jonathan Abdalia, 6 Tumbleweed NW, ABQ, NM 87120  
La Luz Landowners Assoc., Kathy Adams, 5Arco NW, ABQ, NM 87120  
Taylor Ranch NA, Jolene Wolfley, 7216 Carson Trail NW, ABQ, NM 87120  
Taylor Ranch NA, Rene Horvath, 5515 Palomino Dr., NW, ABQ, M 87120  
Westside Coalition of Neigh. Assoc., Harry Hendriksen, 10592 Rio del Sol NW., ABQ,  
NM 87114  
Westside Coalition of Neigh. Assoc., Rene Horvath, 5515 Palomino Dr., NW, ABQ, NM  
87120  
Alan Reed, 3105 Don Quixote Ct. NW, ABQ, NM 87104  
Brian Hanson, 9016 Freedom Way NE, ABQ, NM 87109

CC: Ken Churchill, 4612 Almeria Dr., ABQ, NM 87120  
Linda Starr, 509 Aliso Dr. NE, ABQ, NM 87108  
Becky C. Davis, 500 Leeward Dr. NW, ABQ, NM 87121  
Tom Gulley, 4701 Valle Bonita Ln NW, ABQ, NM 87120  
Susan Hunter, 2529 George Dr. NE, ABQ, NM 87112  
Wendy Cox, P.O. Box 6572, ABQ, NM 87197  
Daniel Jensen, 7 Arco NW, ABQ, NM 87120  
Kevin Dullea, 4704 Almeria Dr. NW, ABQ, NM 87120  
Ann Prinz, 4611 Mijas Dr. NW, ABQ, NM 87120  
Shelley Bauer, 4616 Almeria Dr. NW, ABQ, NM 87120  
Kathy Adams, 5 Arco Ct. NW, ABQ, NM 87120  
Perrienne Houghton, 3010 20<sup>th</sup> Ave., Rio Rancho, NM 87124  
Susan Chaudoir, 40404 St. Josephs Pl, ABQ, NM 87120  
Elizabeth Haley, 6005 Chaparral Circle, ABQ, NM 87114  
Ana Medina P.H.D., 3512 Yipee Calle Ct NW, ABQ, NM 87120  
Reid McLean, 6716 Napa Rd. NE, ABQ, NM 87109  
Brillante Cloud, 7700 Compass Dr. NW, ABQ, NM 87120  
Sheena Ramos, 6420 Petirrojo Rd NW, ABQ, NM 87120  
Willa Pilar, 744 Montclair NE, ABQ, NM 87110  
E. Ward, P.O. Box 7434, ABQ, NM 87194  
Pat Gallagher, 24 Lind NW, ABQ, NM 87120  
Alexis Kaminsky, 15 Pool NW, ABQ, NM 87120  
Alexander Wine, 7000 Armeria Dr. NW, ABQ, NM 87120  
John Lopez, 12920 Calle de Sandias NE, ABQ, NM 87111  
Jon Price, 4704 Mi Cordelia, ABQ, NM 87120  
Heather Foote Jasso, 1105 Maciel Dr. NW, ABQ, NM 87104  
Sue Flynt, 8615 Brook St. NE, ABQ, NM 87113  
Chris Madrid, 6627 Rim Rock Circle NW, ABQ, NM 87120  
Santiago Acevez, 1524 Richmond Dr. NE, ABQ, NM 87106  
Walter Putnam, 4 Tennis Ct. NW, ABQ, NM 87120  
Marianne Barlow, 27 Tennis Ct. NW, ABQ, NM 87120  
Victor Lopez, 725 Arizona SE, ABQ, NM 87108  
Norm Gaume, 44 Canoncito Dr. NE, ABQ, NM 87122  
Cynthia Hall, 511 Solar Rd. NW, ABQ, NM 87107  
John A. Garcia, 4100 Wolcott NE, ABQ, NM 87109  
Seth Beecher, 1001 Royene Ct. NE, ABQ, NM 87110  
Peggy Norton, 3810 11<sup>th</sup> St. NW, ABQ, NM 87107  
Pam McBride, 5409 9<sup>th</sup> St. NW, ABQ, NM 87107  
Rene Horvath, 5515 Palomino Dr. ABQ, NM 87120  
Wendy Caruso, 5123 Sevilla AV., NW, ABQ, NM 87120  
Steve Epstein, 5515 Kettle NW, ABQ, NM 87120  
Jolene Wolfley, 7216 Carson Trl. NW, ABQ, NM 87120  
Peggy Neff, 319 Princeton Dr. SE, ABQ, NM 87106  
Jed M. Judson, 9798 Coors NW, ABQ, NM 87144  
Chris Torres, 11023 Park North St. NW, ABQ, NM 87114  
Jeffrey Borrego, 9798 Coors Blvd. ABQ, NM 87114  
Jaron Oliver, 8008 Compass, ABQ, NM 87114  
Barbara Ortiz, 8501 Ravenridge NE, ABQ, NM 87113  
Christopher Oechsler, 8008 Compass, ABQ, NM 87114

Beth Cohen, 707 Arno St. SE, ABQ, NM 87102  
Jonathan Price, 4704 Mi Cordelia Dr. NW, ABQ, NM 87120  
Alfonso Mirabal, 17 Pool St. NW, ABQ, NM 87120  
Kenneth Funk, 4908 Camino Valle Trl. NW, ABQ, NM 87120  
Robert Erselius, 4908 Camino Valle Trl. NW, ABQ, NM 87120  
Antoine Predock, 3200 Grande Vista Pl. NW, ABQ, NM 87120  
Dick Kirschner, 5004 Grande Vista Ct. NW, ABQ, NM 87120  
Barbara Tegtmeier, 4623 Almeria Dr. NW, ABQ, NM 87120  
Dan Regan, 4109 Chama St. NE, ABQ, NM 87109  
Lynn Perls, 18 Berm St. NW, ABQ, NM 87120  
Brenda Broussard, 18 Berm St. NW, ABQ, NM 87120  
Marian Pendleton, 5608 Equestrian Dr. NW, ABQ, NM 87120  
Fabian Lopez, 589 Apache Loop SW, Rio Rancho NM 87124  
Sharon Miles, 2700 Vista Grande NW, #10, ABQ, NM 87120  
Dr. Joe L. Valles, 5020 Grande Vista Ct. NW, ABQ, NM 87120  
Jeff McCroa, 9100 San Mateo Blvd NE, ABQ, NM 87113  
Joan Morrison, 390 Rincon Rd, Corrales, NM 87048  
Jennifer Pohl, 4512 Atherton, ABQ, NM 87120  
John DuBois, [jdubois@cabq.gov](mailto:jdubois@cabq.gov)



<b>Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.</b>		
<b>Administrative Decisions</b>  <input type="checkbox"/> Archaeological Certificate (Form P3)  <input type="checkbox"/> Historic Certificate of Appropriateness – Minor (Form L)  <input type="checkbox"/> Alternative Signage Plan (Form P3)  <input type="checkbox"/> WTF Approval (Form W1)  <input type="checkbox"/> Minor Amendment to Site Plan (Form P3)	<input type="checkbox"/> Historic Certificate of Appropriateness – Major (Form L)  <input type="checkbox"/> Historic Design Standards and Guidelines (Form L)  <input type="checkbox"/> Master Development Plan (Form P1)  <input type="checkbox"/> Site Plan – EPC including any Variances – EPC (Form P1)  <input type="checkbox"/> Site Plan – DRB (Form P2)  <input type="checkbox"/> Subdivision of Land – Minor (Form S2)  <input type="checkbox"/> Subdivision of Land – Major (Form S1)  <input type="checkbox"/> Vacation of Easement or Right-of-way (Form V)  <input type="checkbox"/> Variance – DRB (Form V)  <input type="checkbox"/> Variance – ZHE (Form ZHE)	<input type="checkbox"/> Wireless Telecommunications Facility Waiver (Form W2)  <b>Policy Decisions</b>  <input type="checkbox"/> Adoption or Amendment of Comprehensive Plan or Facility Plan (Form Z)  <input type="checkbox"/> Adoption or Amendment of Historic Designation (Form L)  <input type="checkbox"/> Amendment of IDO Text (Form Z)  <input type="checkbox"/> Annexation of Land (Form Z)  <input type="checkbox"/> Amendment to Zoning Map – EPC (Form Z)  <input type="checkbox"/> Amendment to Zoning Map – Council (Form Z)
<b>Decisions Requiring a Public Meeting or Hearing</b>  <input type="checkbox"/> Conditional Use Approval (Form ZHE)  <input type="checkbox"/> Demolition Outside of HPO (Form L)  <input type="checkbox"/> Expansion of Nonconforming Use or Structure (Form ZHE)		
<b>Appeals</b> <input checked="" type="checkbox"/> Decision by EPC, LC, DRB, ZHE, or City Staff (Form A)		
<b>APPLICATION INFORMATION</b>		
Applicant: <u>THOMAS P. GULLEY</u>		Phone: <u>505 239 9580</u>
Address: <u>4701 VALLE BONITA LN NW</u>		Email: <u>GULLEYT@AOL.COM</u>
City: <u>ALBUQUERQUE</u>	State: <u>NM</u>	Zip: <u>87120</u>
Professional/Agent (if any): <u>N/A</u>		Phone:
Address:		Email:
City:	State:	Zip:
Proprietary Interest in Site:		List <u>all</u> owners:
<b>BRIEF DESCRIPTION OF REQUEST</b>		
<u>APPEAL OF MARCH 14, 2019, EPC APPROVAL OF SITE PLAN IN PROJECT 2018-001402, SI-2018-00171</u>		
<b>SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)</b>		
Lot or Tract No.:	Block:	Unit:
Subdivision/Addition:	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): <u>F-11-Z, F-12-Z</u>	Existing Zoning: <u>R-A</u>	Proposed Zoning:
# of Existing Lots: <u>4</u>	# of Proposed Lots: <u>76</u>	Total Area of Site (acres):
<b>LOCATION OF PROPERTY BY STREETS</b>		
Site Address/Street: <u>5001 NAMASTE NW</u> Between: <u>TRKS GRACIAS ROAD</u>		and: <u>SAN ANTONIO ARROYO AND</u>
<b>CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)</b> <u>MPOS</u>		
<u>2018-001402, SI-2018-00171</u>		
Signature: <u>T. Gulley</u>		Date: <u>3/25/19</u>
Printed Name: <u>THOMAS P. GULLEY</u>		<input checked="" type="checkbox"/> Applicant or <input type="checkbox"/> Agent
<b>FOR OFFICIAL USE ONLY</b>		
Case Numbers	Action	Fees
<u>VA-2019-00100</u>	<u>Appeal</u>	<u>\$130.00</u>
Meeting/Hearing Date: <u>3-25-19</u>		Fee Total: <u>\$130.00</u>
Staff Signature: <u>[Signature]</u>	Date: <u>3-25-19</u>	Project # <u>PR-2018-001402</u>

## FORM A: Appeals

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

- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)
- ☐ APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)

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

Interpreter Needed for Hearing? No if yes, indicate language: \_\_\_\_\_

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

☒ Project number of the case being appealed, if applicable: PR-2018-001402

Application number of the case being appealed, if applicable: SI-2018-00171

Type of decision being appealed: EPC APPROVAL OF SITE PLAN DATED MARCH 14, 2019

Letter of authorization from the appellant if appeal is submitted by an agent N/A

☒ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)

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

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

☒ Appellant's Brief in support of the appeal.

Please note that I will be traveling May 2 through May 18. Please do not set the LUHO hearing then.

I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.

Signature: Thomas P. Gully

Date: 3/25/19

Printed Name: THOMAS P. GULLY

☒ Applicant or ☐ Agent

FOR OFFICIAL USE ONLY

Case Numbers:

Project Number:

VA-2019-00100

PR-2018-001402


Staff Signature: [Signature]

Date: 3-25-19



APPELLANT THOMAS P. GULLEY'S BASIS OF STANDING TO APPEAL THE  
EPC'S MARCH 14, 2019, DECISION APPROVING THE SITE PLAN ON  
PROJECT 2018-001402, SI-2018-00171.

In accordance with IDO Section 14-16-6-4(U)(2)(a)5, I have standing to bring this appeal because I am a property owner within 150 feet of the subject property. My home is at 4701 Valle Bonita Ln NW, Albuquerque 87120. My back lot line abuts the drainage channel along the northeast portion of the subject property. My back lot line is less than 150 feet from the subject property's northeast lot line. Attached is Exhibit A, showing my property in relation to the subject property. In accordance with 14-16-4(U)(2)(b), I submitted a February 4, 2019 memorandum to the record with the reasons for my objection to the then current site plan. I also stated my objections to the EPC at the March 14, 2019, hearing at which the EPC approved the site plan.

 3/25/19  
THOMAS P. GULLEY

PROJECT NUMBER: PF-2016-001402  
Application Number: CJ-2016-00171

This plan is consistent with the specific Site Development Plan approved by the Environmental Planning Commission (EPC) dated \_\_\_\_\_, 2018 and the Findings and Conditions in the Official Notification of Decision are satisfied

to an Infrastructure List request? ( ) Yes ( ) No If yes, then is call of approved EPC plans with a work order is required for any construction within Public Right-of-Way or for construction of public improvements

DRB SITE DEVELOPMENT PLAN APPROVAL \_\_\_\_\_

Traffic Engineering, Transportation Division	Date
ADOTWA	Date
City Engineering/Hydrology	Date
Civil Enforcement	Date
Solid Waste Management	Date
URS Corporation, Planning Department	Date

GENERAL NOTES:  
1. THE OWNER WILL COORDINATE WITH CITY OPEN SPACE STAFF REGARDING PERMITS TO THE TRAILHEADS OF MANASTEE HIDEAWAY TO FACILITATE TRAILHEAD PARKING AND ACCESS.  
2. A VARIANCE TO ACCESS TO THE TRAILHEADS SECTION OF THE FACILITY IS REQUESTED UNDER APPROPRIATE 15 BY THE ORDER OF CHAIRMAN'S, 2016 APPLICATION # 15-001-0018-07.  
3. DEVELOPER IS IN DISCUSSION FOR FUTURE IMPROVEMENTS TO THE TRAILHEADS SECTION FACILITIES ADJACENT TO THE PROPOSED DEVELOPMENT PLANT, INFRASTRUCTURE, AND FLOW IN DECIDUOUS, AS REQUESTED BY THE CITY OF ANN ARBOR. LANDSCAPING AND GEOTECHNICAL REVISIONS WILL BE REQUIRED TO MEET ALL CITY OF ANN ARBOR CLEAR SLOPE REQUIREMENTS. TO REMOVED, BIRCHES, WALNUTS, TREES, AND CLEAR SLOPE BETWEEN 3 AND 8 FEET TALL (AS MEASURED FROM THE GUTTER) WILL NOT BE ALLOWED TO REMAIN IN CLEAR CUT TRIMMING.  
4. SEE COMMUNITY UTILITY PLAN IN SHEET 40 FOR EXISTING EASEMENT INFORMATION.

EXHIBIT A

Prepared By:  
Consensus Planning, Inc.  
Bohannon Huston, Inc.

**PLANNING**  
**CONSENSUS**

**CONSENSUS PLANNING, INC.**  
Planning / Landscape Architecture  
302 Eighth Street NW  
Albuquerque, NM 87102  
(505) 764-0001 Fax 505-6405  
e-mail: cp@consensusplanning.com

**Bohannon & Huston**  
www.bhnc.com 890.877.1337

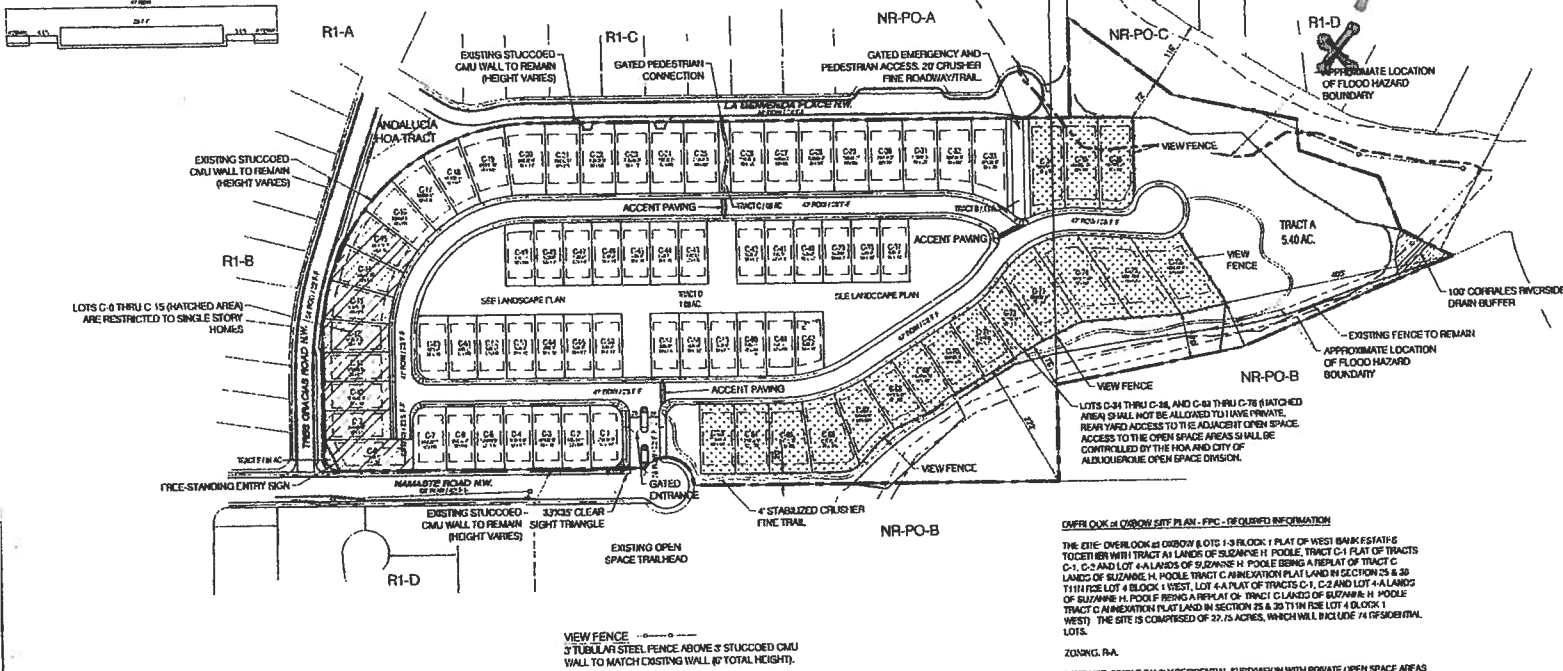
Scale: 1" = 100'

NORTH

50 0 100 200

March 1, 2018

Sheet 1 of 4



CMFR 00K - CARBON SIFT PLAN - FPC - REQUIRED INFORMATION

THE ENTIRE OVERLOOK AT ORROW & LOT 1-3 BLOCK 1 PLAT OF WEST BARK ESTATES TOGETHER WITH TRACT A LAND OF SUZANNE H. POOLIE, TRACT C-1 PLAT OF TRACTS C-1, C-2 AND LOT 4-A LANDS OF SUZANNE H. POOLIE BEING A REPLAT OF TRACT C LAND OF SUZANNE H. POOLIE, TRACT C-A MINERATION PLAT LAND IN SECTION 25 & 30 T11N R2E LOT 4 BLOCK 1 WEST, LOT 4-A PLAT OF TRACTS C-1, C-2 AND LOT 4-A LANDS OF SUZANNE H. POOLIE BEING A REPLAT OF TRACT C LANDS OF SUZANNE H. POOLIE, TRACT C-A MINERATION PLAT LAND IN SECTION 25 & 30 T11N R2E LOT 4 BLOCK 1 WEST) THE SITE IS COMPRISED OF 27.15 ACRES, WHICH WILL INCLUDE 14 RESIDENTIAL LOTS.

ZOLING, RA

LAND USE: SINGLE FAMILY RESIDENTIAL SUBDIVISION WITH PRIVATE OPEN SPACE AREAS AND TRAILS. NO COMMERCIAL USE IS ALLOWED.

PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS

- PRIMARY VEHICULAR ACCESS IS FROM NAMASTE ROAD, AN EXISTING URBAN LOCAL STREET. THE SUBDIVISION SHALL BE GRADUAL.
- PEDESTRIAN ACCESS WILL BE PROVIDED TO ALL EXISTING ACCESS OFF BOTH NAMASTE ROAD AND LA BENVENIDA PLACES. PEDESTRIAN PATHS WITH SIGNIFICANT CIRCULATION IS PROVIDED IN THE SIDEWALKS PLANNED ALONG THE PROPOSED LOCAL ROADWAYS AND TRAILS WITHIN THE OPEN SPACE TRACTS.
- TRAILS SHALL BE SOFT SURFACED, CRUSHER FINES, AND DESIGNED TO ACCOMMODATE PEDESTRIAN AND BICYCLE TRAFFIC.
- TRAIL ACCESS/ TRANSIT ACCESS IS AVAILABLE ON COORS BOULEVARD, APPROXIMATELY 2000 FEET TO THE WEST.
- A GATED EMERGENCY AND PEDESTRIAN ACCESS IS PROVIDED TO LA BENVENIDA PLACE.
- NAMASTE ROAD AND LA BENVENIDA PLACE ARE PROPOSED CYCLE ROUTES FOR THE 20+ MILE LONG RANGE BIKWAY SYSTEM MAP.

BUILDING HEIGHTS:  
20 PER THE R.A.ZONE.

20 PER THE ABOVE.

OF 1 TRACKS:  
L 071 C-1 L 071 C-72

- MINIMUM FRONT YARD SETBACKS: 15 FEET, EXCEPT 20 FEET FOR GARAGES FACING STREET.
- MINIMUM REAR YARD SETBACKS: 15 FEET.
- MINIMUM SIDE YARD SETBACKS: 5 FEET, EXCEPT 10 FEET FOR LOT 18 ADJACENT TO ROADWAY. ZERO LOT LINE IS FORBIDDEN PROVIDED 10 FEET OF SEPARATION BETWEEN BUILDINGS IS MAINTAINED.

LOTS C-73 THRU C-76

- LOT 6 C-73 THRU C-76
- MINIMUM FRONT YARD SETBACKS: 20 FEET.
  - MINIMUM REAR YARD SETBACKS: 25 FEET.
  - MINIMUM SIDE YARD SETBACKS: 10 FEET.

DENSITY  
THE OVERALL DENSITY IS 3.2 DWELLING UNITS PER ACRE.

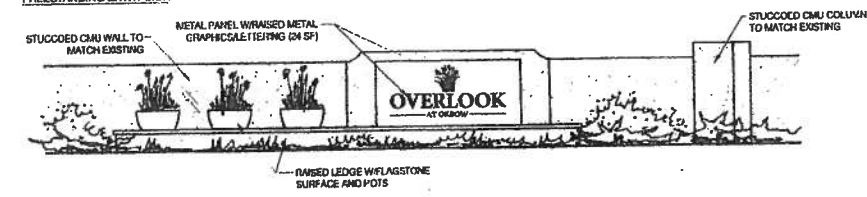
- MECHANICAL EQUIPMENT WILL BE SCREENED FROM PUBLIC VIEW FROM STREETS.

LANDSCAPE PLAN:  
THE LANDSCAPE PLAN IS PROVIDED ON SHEET 2

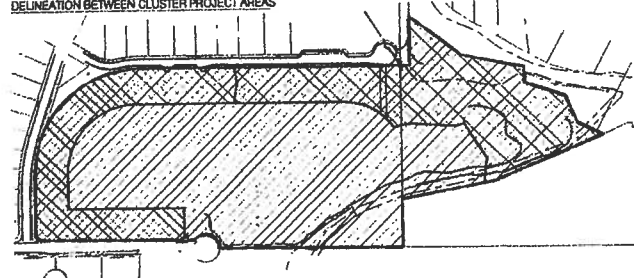
THE LANDSCAPE PLAN IS PROVIDED ON SHEET 2

SITE LIGHTING  
ALL SITE LIGHTING IS LIMITED TO 20 FEET TALL AND SHALL BE NIGHT SKY COMPLIANT

**FREESTANDING ENTRY SIGN**



### DELINEATION BETWEEN CLUSTER PROJECT AREAS



Per (DO section 4-3(B)(2)(d)(1), The common open space area shall be 30 percent of the gross area of the project site or 100 percent of the area gained through lot size reductions, whichever is greater.

Open space calculations by cluster are as follows:

Cluster A

Size: 10.60 ac. (36 Lots)

30% Rule: OS Req. = 3.24 ac.  
Lot Red. Rule: OS Req. = 3.17 ac.  
OS Prov. = 3.31 ac.

Cluster B

Size: 12.95 ac. (40 Lots)

30% Rule: OS Req. = 3.89 ac.


Lot Red. Rule: OS Req. = 4.05 ac.

OS Prov. = 4.07 ac.

Total Project Area:	23.75 ac.
Open Space Required:	7.29 ac.
Open Space Provided:	7.38 ac.
Total Lots:	78

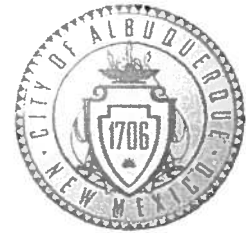
APPELLANT THOMAS P. GULLEY'S REASONS FOR APPEAL OF THE EPC'S  
APPROVAL OF THE SITE PLAN IN PROJECT 2018-001402, SI-2018-00171

I appeal the March 14, 2019, EPC approval of the site plan for the subject property because the site plan has two cluster developments. The IDO, however, allows for only one cluster development on the subject property as clearly set forth in IDO Table 4-2, "Allowable Uses", and in the IDO cluster development regulations in 4-3(B)(2). Accordingly, pursuant to IDO 6-4(U)(4), the EPC's approval of the site plan was erroneous, arbitrary and capricious, not supported by substantial evidence, and the EPC erred in applying the requirements of the IDO. The site plan must be disapproved.

 3/25/19  
THOMAS P. GULLEY



# CITY OF ALBUQUERQUE



**PLANNING DEPARTMENT**  
**URBAN DESIGN & DEVELOPMENT DIVISION**  
600 2nd Street NW, 3rd Floor, 87102  
P.O. Box 1293, Albuquerque, NM 87103  
Office (505) 924-3860 Fax (505) 924-3339

## OFFICIAL NOTIFICATION OF DECISION

March 14, 2019

Gamma Development, LLC  
9798 Coors Blvd NW #400  
Albuquerque, NM 87114

**Project #2018-001402**  
SI-2018-00171, Site Plan - EPC

### LEGAL DESCRIPTION:

The above action for all or a portion of Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West; zoned R-A, located at 5001 Namaste Rd. NW, between LaBienvenida Pl. NW and the Oxbow Open Space, containing approximately 23 acres. (F-11 and F-12)

Staff Planner: Cheryl Somerfeldt (**DEFERRED FROM NOVEMBER 8, 2018**)

PO Box 1293

Albuquerque

On March 14, 2019 the Environmental Planning Commission (EPC) voted to APPROVE Project 2018-001402/SI-2018-00171, a Site Plan, based on the following findings and conditions:  
NM 87103

### FINDINGS:

1. This is a request for a Site Plan-EPC for Lots 1 through 3, Block 1, Plat of West Bank Estates together with Tract A1, Lands of Suzanne H Poole, and Tracts C-1 and Lot 4-A of Plat of Tracts C-1, C-2 and Lot 4-A, Lands of Suzanne H Poole being a Replat of Tract C, Lands of Suzanne H Poole, Tract C, Annexation Plat Land in Section 25 and 36, T11N R2E, Lot 4, Block 1 West located at 5001 Namaste Road NW between La Bienvenida Place NW and the Oxbow Open Space, containing approximately 23 acres.
2. The subject site is comprised of three legally platted County assessor parcels, further subdivided into six City parcels, zoned R-A, surrounded by existing single-family development, a City park to the north, and the Rio Grande Bosque to the east, and designated Major Public Open Space to the south.
3. The standards in Site Design and Sensitive Lands apply to all site development and new subdivisions. All three of the County assessor parcels are adjacent to Major Public Open Space and are subject to applicable regulations (14-16-5-2 (C) Avoidance of Sensitive Lands and 14-16-5-2 (H) Major Public Open Space Edges).

## OFFICIAL NOTICE OF DECISION

Project #2018-001402

March 14, 2019

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4. The applicant proposes two cluster developments, totaling 76 single-family lots. Single-family and cluster development are permitted uses in the R-A zone. In addition to the requirements of the existing R-A Zone District, the Site Plan is subject to IDO site design regulations for Cluster Development (14-16 (B) (2)).
5. The subject site is part of the Coors Boulevard CPO-2 (14-16-3-4 (C)), and the Coors Boulevard VPO-2 (14-16-3-6 (E)), and subject to those regulations.
6. The Albuquerque/Bernalillo County Comprehensive Plan and the Integrated Development Ordinance (IDO) are incorporated herein by reference and made part of the record for all purposes.
7. The subject site is located in an Area of Consistency as designated by the Comprehensive Plan which has policies to protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.
8. This is a request for Site Plan-EPC pursuant to IDO Section 6-6(H), which applies to any development on a site 5 acres or greater adjacent to Major Public Open Space prior to any platting action. The subject site is adjacent to Major Public Open Space and is therefore subject to all of the regulations in IDO Section 5-2(H), Major Public Open Space Edges. The applicant proposes two Cluster developments, which is permitted in the subject R-A zone. This application for a Site Plan-EPC meets the following criteria:
  - a) 6-6(H)(3)(a) The site plan is consistent with the ABC Comp plan, as amended. Applicable Comprehensive Plan Policies include:
    - The request is consistent with Goal 4.1, Policy 4.1.1 and Policy 4.1.2. The subject project's lot sizes range from approximately 5,500 square feet to over 12,000 square feet, which is contextual with the lot sizes of adjacent R-1B, R-1C, and R-1D subdivisions.
    - The request is consistent with Policy 4.1.5. The applicant has responded to the natural setting by preserving an area near the Major Public Open Space and the Bosque to retain some of the natural setting in the context of the site's R-A zoning district entitlements.
    - The request is consistent with Goal 5.3, Policy 5.3.1, and Policy 7.3.4 because the subject site is in an area with existing development, infrastructure, and public facilities thereby the project site is infill development, which is more efficient than development on the edge of the City.
    - The request is consistent with Policy 5.3.3 because the Site Plan shows a cluster development with a private, contiguous, landscaped common open space and trail adjacent to the Major Public Open Space.
    - The request is consistent with Policy 5.3.4 because the cluster development design set aside private open space that preserves the natural landscape within and on the eastern portion of the property.
    - The request is consistent with Policy 5.6.3 because the cluster development lot sizes are similar to the surrounding subdivisions, thereby protecting the character of the existing single-family neighborhoods. The adjacent Major Public Open Space is protected by the Site Plan's private open space buffer.

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- The request is consistent with Policy 7.3.1 because the natural features on the eastern portion of the site adjacent to Major Public Open Space are being preserved via the private open space buffer on the proposed Site Plan, which will also help preserve views into and from the Major Public Open Space.
  - The request is consistent with Policy 9.1.1 because the proposed Site Plan will provide additional housing options for a variety of income levels.
  - The request is consistent with Policy 9.2.3 because the proposed project is for cluster housing and provides private community open space.
  - The request is consistent with 10.2.1 c) because the developer is proposing private common open space for the residents that includes an internal trail system that links linear areas with the larger buffer area on the east end of the subject site.
  - The request is consistent with Policy 11.3.3 and a) because grading is designed to direct stormwater away from the steep slopes at the southeast of the project site, which will help reserve the adjacent Major Public Open Space for future generations.
  - The request is consistent with Policy 11.3.3 b) because the common open space to the east adjacent to the Bosque will be undisturbed or revegetated to a natural setting.
  - The request is consistent with Policy 11.3.3 c) because the proposal is for an allowed cluster development on R-A zoned land adjacent to the Bosque, which will conserve approximately 30% of the land as private open space.
  - The request is consistent with Policy 11.3.3 d) because the project has appropriate buffers and transitions from the Major Public Open Space that meet or exceed what is required
- b) 6-6(H)(3)(b) The Site Plan is consistent with any applicable terms and conditions in any previously approved NR-SU or PC zoning covering the property and any related development agreements and/or regulations.
- The subject site is zoned R-A not NR-SU or PC. The reason this project is being reviewed by the EPC is due to its location adjacent to MPOS, not as a result of the zoning district designation.
- c) 6-6(H)(3)(c) The Site Plan complies with all applicable provisions of this IDO, the DPM, other adopted City regulations, and any terms and conditions specifically applied to development of the property in a prior permit or approval affecting the property.
- The site plan shall comply with all provisions of the IDO applicable to the site and the site plan, including the Coors Boulevard CPO; Coors Boulevard VPO; Major Public Open Space Edges (Open Space Superintendent approved the open space buffer instead of the single loaded street); and Cluster Development use-specific standards.
- d) 6-6(H)(3)(d) The City's existing infrastructure and public improvements, including but not limited to its street, trail, drainage, and sidewalk systems, have adequate capacity to serve the proposed development, and any burdens on those systems have been mitigated to the extent practicable.

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- The project developer will provide any necessary and additional infrastructure to include street, trail, drainage, and sidewalk systems to serve the proposed development. The applicant has also agreed to work with City Open Space and the DRB regarding improvements to the Namaste cul-de-sac and trail head area.
- e) 6-6(H)(3)(e) The application mitigates any significant adverse impacts on the surrounding area to the maximum extent practicable.
- The applicant voluntarily committed to only single-story homes on the western edge of the site (lots backing up to Tres Gracias Drive) to mitigate adverse impact on the views for neighbors to the west. The applicant has also included private common open space and recreation amenities adjacent to Major Public Open Space to mitigate adverse impacts.
9. The DRB-approved Variance to the connectivity standards of the IDO is currently pending appeal via the Land Use Hearing Officer (LUHO), scheduled for March 20, 2019. The City Legal Department has confirmed that DRB actions and EPC actions are not reliant upon one another and may occur separately.
10. The City Hydrology Division states "The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope." Subsequent to EPC review, the project should be reviewed for technical issues such as this by the Development Review Board (DRB).
11. The applicant notified the La Luz Landowners Association, the Taylor Ranch Neighborhood Association, and the Westside Coalition of Neighborhood Associations as well as property owners within 100 feet as required. Several meetings were conducted regarding the proposal, notably an initial neighborhood meeting, staff meetings with the neighbors, a facilitated meeting, and the Open Space Advisory Board meeting.
12. Staff received multiple letters, comments, reviews, and reports in opposition to development on the property. Staff did not receive any comments in support.
13. The subject site is private property in contract with the applicant and therefore evaluated pursuant to the Integrated Development Ordinance (IDO) and all other City Council adopted regulations as described herein.

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### CONDITIONS OF APPROVAL

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

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

6. Note under Maintenance on page 2: 14-16-4-3(B)(2)(e). The common open space for each cluster on a separate subdivided lot or easement. 14-16-4-3(B)(2)(f). Maintenance for common open space areas is the responsibility of the HOA for each cluster.
7. A note shall be added to the Site Plan that states all new Buildings and Landscapes will comply with 14-16-3-6(D)(6) and 14-16-5-2(H).
8. This Site Plan shall be submitted to and approved by the DRB for the below technical issues/requirements:

#### A) HYDROLOGY SECTION:

- An approved Grading and Drainage Plan & Drainage Report is required prior to approval of Preliminary Plat or Site Plan. A separate submittal is required to hydrology to include sufficient engineering analysis and calculations to determine the feasibility and adequacy of the proposed improvements.
- All floodplains need to be shown on the plat and site plan.
- LOMR will be required to remove the floodplain from the lots that have the floodplain.
- AMAFCA approval will be required for connection to their Channel and grading adjacent to their right of way.
- USACE approval will be required for any fill proposed in Waters of the US.
- An infrastructure list will be needed for Preliminary Plat.
- A recorded IIA is required prior to Final Plat.

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- A prudent setback from the Rio Grande is recommended because the slope on City Open Space is not stable and subject to lateral migration of the river. The City has no plans to stabilize the slope and does not want to be burdened with the cost of such improvements. Bank Protection may be constructed to prevent lateral migration of the river, and erosion of the slope.
- Management onsite will be required for the SWQV unless a waiver is demonstrated on the G&D Plan and accepted by Hydrology.
- Note 4 on sheet 3 is incorrect and should be removed. Replace with a note that says "A prudent setback will be established to allow for the future construction of bank protection by the HOA on the HOA's property without any encroachment into the Open Space property or on any of the lots."

### B) TRANSPORTATION DEVELOPMENT SERVICES

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

### C) MUNICIPAL DEVELOPMENT DEPARTMENT (DMD) TRANSPORTATION

- Per the 2040 Long Range Bikeway System Map there is a bicycle route proposed along Namaste Road and at La Bienvenida Pl. adjacent the west side of subject property.

### D) SOLID WASTE MANAGEMENT DEPARTMENT

- Need site plan to (1:40) scale, with dimensions, to verify safe refuse truck access/exit. The circumference of the cul-de-sac next to RA 16/17, will need to be redesigned to allow complete/continuous turnaround for refuse truck. Clarify "Public Lift Station" noted inside cul-de-sac, noted on Pg. #4.

### E) ABC WATER UTILITY AUTHORITY (ABCWUA)

- From the information provided it is understood that a section of the site intends to utilize a public force main to provide sanitary sewer service to the east portion of the development.
- Every opportunity should be utilized to minimize the use of public force main.
- Once development is desired obtain an Availability Statement for the new developments. Requests can be made at the link below:
- [http://www.abcwua.org/Availability\\_Statements.aspx](http://www.abcwua.org/Availability_Statements.aspx)
- Request shall include a zone map showing the site location, as well as a site plan indicating finish floor elevations.
- It should be noted that there is an existing ten inch collector line transecting the development.
- This line is not to be abandoned.

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- If relocation of this line is required for the development to take place the capacity shall be maintained or improved.

**F) ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL (AMAFCA)**

- Identify the AMAFCA Easement, filed for public record in Bernalillo County, NM on October 17, 1996 as Document No. 96114620, on the Site Plan for subdivision and Grading & Drainage Plan including the Storm Water Holding and Sediment Trapping Pond, Riprap bank stabilization, and grade control structure.

**G) PUBLIC SERVICE COMPANY OF NEW MEXICO**

- An existing underground distribution line is located on the subject property to the existing structure to be removed. It is the applicant's obligation to abide by any conditions or terms of these easements.
  - It will be necessary for the developer to contact the PNM New Service Delivery Department to coordinate electric service regarding this project. Contact:  
Andrew Gurule, PNM Service Center, 4201 Edith Boulevard NE, Albuquerque, NM 87107, Phone: (505) 241-0589.
  - Ground-mounted equipment screening will be designed to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Refer to the PNM Electric Service Guide at [www.pnm.com](http://www.pnm.com) for specifications.
9. The EPC delegates its approval authority to the DRB for any changes to the Site Plan that meet the thresholds outlined in IDO Table 6-4-5.
10. The Site Development Plan shall comply with the General Regulations of the IDO, the Subdivision Ordinance, and all other applicable design regulations, except as specifically approved by the EPC.

**APPEAL:** If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **MARCH 29, 2019**. The date of the EPC's decision is not included in the 15-day period for filing an appeal, and if the 15<sup>th</sup> day falls on a Saturday, Sunday or Holiday, the next working day is considered as the deadline for filing the appeal.

For more information regarding the appeal process, please refer to Section 14-16-6 of the IDO, Administration and Enforcement. A Non-Refundable filing fee will be calculated at the Land Development Coordination Counter and is required at the time the appeal is filed. It is not possible to appeal EPC Recommendations to City Council; rather, a formal protest of the EPC's Recommendation can be filed within the 15 day period following the EPC's recommendation.

You will receive notification if any person files an appeal. If there is no appeal, you can receive Building Permits at any time after the appeal deadline quoted above, provided all conditions imposed at the time of approval have been met. Successful applicants are reminded that other regulations of the City Zoning Code must be complied with, even after approval of the referenced application(s).

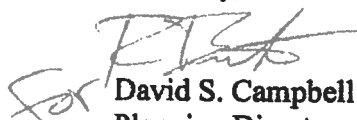
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Sincerely,

  
David S. Campbell  
Planning Director

DSC/CS

cc: Gamma Development, LLC, 9798 Coors Blvd NW #400 ABQ, NM 87114  
Consensus Planning, Inc., 302 Eighth St. NW, ABQ, NM 87102  
La Luz Landowners Assoc., Jonathan Abdalia, 6 Tumbleweed NW, ABQ, NM 87120  
La Luz Landowners Assoc., Kathy Adams, 5 Arco NW, ABQ, NM 87120  
Taylor Ranch NA, Jolene Wolfley, 7216 Carson Trail NW, ABQ, NM 87120  
Taylor Ranch NA, Rene Horvath, 5515 Palomino Dr., NW, ABQ, M 87120  
Westside Coalition of Neigh. Assoc., Harry Hendriksen, 10592 Rio del Sol NW., ABQ, NM 87114  
Westside Coalition of Neigh. Assoc., Rene Horvath, 5515 Palomino Dr., NW, ABQ, NM 87120  
Alan Reed, 3105 Don Quixote Ct. NW, ABQ, NM 87104  
Brian Hanson, 9016 Freedom Way NE, ABQ, NM 87109  
Ken Churchill, 4612 Almeria Dr., ABQ, NM 87120  
Linda Starr, 509 Aliso Dr. NE, ABQ, NM 87108  
Becky C. Davis, 500 Leeward Dr. NW, ABQ, NM 87121  
Tom Gulley, 4701 Valle Bonita Ln NW, ABQ, NM 87120  
Susan Hunter, 2529 George Dr. NE, ABQ, NM 87112  
Wendy Cox, P.O. Box 6572, ABQ, NM 87197  
Daniel Jensen, 7 Arco NW, ABQ, NM 87120  
Kevin Dullea, 4704 Almeria Dr. NW, ABQ, NM 87120  
Ann Prinz, 4611 Mijas Dr. NW, ABQ, NM 87120  
Shelley Bauer, 4616 Almeria Dr. NW, ABQ, NM 87120  
Kathy Adams, 5 Arco Ct. NW, ABQ, NM 87120  
Perrienne Houghton, 3010 20<sup>th</sup> Ave., Rio Rancho, NM 87124  
Susan Chaudoir, 40404 St. Josephs Pl, ABQ, NM 87120  
Elizabeth Haley, 6005 Chaparral Circle, ABQ, NM 87114  
Ana Medina P.H.D., 3512 Yipee Calle Ct NW, ABQ, NM 87120  
Reid McLean, 6716 Napa Rd. NE, ABQ, NM 87109  
Brillante Cloud, 7700 Compass Dr. NW, ABQ, NM 87120  
Sheena Ramos, 6420 Petirrojo Rd NW, ABQ, NM 87120  
Willa Pilar, 744 Montclair NE, ABQ, NM 87110  
E. Ward, P.O. Box 7434, ABQ, NM 87194  
Pat Gallagher, 24 Lind NW, ABQ, NM 87120  
Alexis Kaminsky, 15 Pool NW, ABQ, NM 87120  
Alexander Wine, 7000 Armeria Dr. NW, ABQ, NM 87120  
John Lopez, 12920 Calle de Sandias NE, ABQ, NM 87111  
Jon Price, 4704 Mi Cordelia, ABQ, NM 87120



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Heather Foote Jasso, 1105 Maciel Dr. NW, ABQ, NM 87104  
Sue Flynt, 8615 Brook St. NE, ABQ, NM 87113  
Chris Madrid, 6627 Rim Rock Circle NW, ABQ, NM 87120  
Santiago Acevez, 1524 Richmond Dr. NE, ABQ, NM 87106  
Walter Putnam, 4 Tennis Ct. NW, ABQ, NM 87120  
Marianne Barlow, 27 Tennis Ct. NW, ABQ, NM 87120  
Victor Lopez, 725 Arizona SE, ABQ, NM 87108  
Norm Gaume, 44 Canoncito Dr. NE, ABQ, NM 87122  
Cynthia Hall, 511 Solar Rd. NW, ABQ, NM 87107  
John A. Garcia, 4100 Wolcott NE, ABQ, NM 87109  
Seth Beecher, 1001 Royene Ct. NE, ABQ, NM 87110  
Peggy Norton, 3810 11<sup>th</sup> St. NW, ABQ, NM 87107  
Pam McBride, 5409 9<sup>th</sup> St. NW, ABQ, NM 87107  
Rene Horvath, 5515 Palomino Dr. ABQ, NM 87120  
Wendy Caruso, 5123 Sevilla AV., NW, ABQ, NM 87120  
Steve Epstein, 5515 Kettle NW, ABQ, NM 87120  
Jolene Wolfley, 7216 Carson Trl. NW, ABQ, NM 87120  
Peggy Neff, 319 Princeton Dr. SE, ABQ, NM 87106  
Jed M. Judson, 9798 Coors NW, ABQ, NM 87144  
Chris Torres, 11023 Park North St. NW, ABQ, NM 87114  
Jeffrey Borrego, 9798 Coors Blvd. ABQ, NM 87114  
Jaron Oliver, 8008 Compass, ABQ, NM 87114  
Barbara Ortiz, 8501 Ravenridge NE, ABQ, NM 87113  
Christopher Oechsler, 8008 Compass, ABQ, NM 87114  
Beth Cohen, 707 Arno St. SE, ABQ, NM 87102  
Jonathan Price, 4704 Mi Cordelia Dr. NW, ABQ, NM 87120  
Alfonso Mirabal, 17 Pool St. NW, ABQ, NM 87120  
Kenneth Funk, 4908 Camino Valle Trl. NW, ABQ, NM 87120  
Robert Erselius, 4908 Camino Valle Trl. NW, ABQ, NM 87120  
Antoine Predock, 3200 Grande Vista Pl. NW, ABQ, NM 87120  
Dick Kirschner, 5004 Grande Vista Ct. NW, ABQ, NM 87120  
Barbara Tegtmeier, 4623 Almeria Dr. NW, ABQ, NM 87120  
Dan Regan, 4109 Chama St. NE, ABQ, NM 87109  
Lynn Perls, 18 Berm St. NW, ABQ, NM 87120  
Brenda Broussard, 18 Berm St. NW, ABQ, NM 87120  
Marian Pendleton, 5608 Equestrian Dr. NW, ABQ, NM 87120  
Fabian Lopez, 589 Apache Loop SW, Rio Rancho NM 87124  
Sharon Miles, 2700 Vista Grande NW, #10, ABQ, NM 87120  
Dr. Joe L. Valles, 5020 Grande Vista Ct. NW, ABQ, NM 87120  
Jeff McCroa, 9100 San Mateo Blvd NE, ABQ, NM 87113  
Joan Morrison, 390 Rincon Rd, Corrales, NM 87048  
Jennifer Pohl, 4512 Atherton, ABQ, NM 87120  
John DuBois, [jdubois@cabq.gov](mailto:jdubois@cabq.gov)

APPELLANT THOMAS P. GULLEY'S BRIEF IN SUPPORT OF HIS APPEAL OF THE MARCH 14, 2019, EPC APPROVAL OF THE POOLE PROPERTY SITE PLAN, REQUESTING REVERSAL, PROJECT 2018-001402, SI-2018-00171

This brief is respectfully submitted by Appellant Thomas P. Gulley to the Land Use Hearing Officer for his consideration.

I. STANDING TO BRING THIS APPEAL.

I am an attorney, although a very retired one. I practiced law for 39 years before retiring in 2013.

My home is at 4701 Valle Bonita Ln NW in El Bosque, a part of the Andalusia subdivision. My back lot line abuts the drainage channel along the northeast portion of the Poole property. My back lot line is less than 150 feet from the Poole property's northeast lot line. See attached Exhibit A, the applicant's site plan, showing the location of my lot in relationship to the Poole property. I have standing to bring this appeal.

Pursuant to IDO 6-4(U)(2)(b), I made an appearance of record before the EPC. I submitted a February 4, 2019, memorandum to the record that described in detail the legal reasons why the then current site plan should not be approved. My memorandum equally applies to the March 1, 2019, site plan ("March 1 site plan") before the EPC at the March 14, 2019, hearing ("hearing"). I also addressed the EPC at the hearing stating the reasons the March 1 site plan should not be approved.

II. REASONS FOR MY APPEAL.

I appeal the March 14, 2019, EPC approval of the March 1 site plan ("EPC's approval") because the March 1 site plan has two cluster developments, described as Cluster A and Cluster B. The IDO, however, allows for only one cluster development on a site plan as clearly set forth in Table 4-2, "Allowable Uses", and in the cluster development

regulations in 4-3(B)(2). Accordingly, pursuant to IDO 6-4(U)(4), EPC's approval was erroneous and arbitrary and capricious, not supported by substantial evidence, and the EPC erred in applying the requirements of the IDO. The March 1 site plan violates the IDO. I request that you overturn EPC's approval of it.

### III. PRINCIPLES OF ZONING ORDINANCE INTERPRETATION.

The applicable principles of zoning ordinance interpretation which the EPC must follow were stated by our Supreme Court in High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998 NMSC-050, para. 5 and para. 6. That case involved a request by the property owner to use a portion of its property for a miniature golf course, go-carts and bumper cars. The ZEO and the EPC approved the use, deciding that the language in the ordinance permitting "outside storage or activity" allowed the uses. Then the city reversed, taking the position that the words "outside storage and activity" should be read instead to mean "outside storage or activity related to outside storage." The Court of Appeals confirmed the city's reversal at 1997-NMCA-046.

On appeal to the Supreme Court, the court said the relevant principles of ordinance interpretation are the same as interpretation of statutes. Those principles are: 1) the plain language of an ordinance is the primary indicator of intent, 2) words in an ordinance should be given their ordinary meaning unless the City Council indicated a different intent, 3) **language will not be read into an ordinance which is not there, particularly if the language makes sense as written**, and, most importantly, 4) **"Zoning regulations should not be extended by construction by the fair import of their language and they cannot be construed to include by implication that which is not clearly within their express terms."** (Emphasis added).

The Supreme Court reversed the Court of Appeals, stating that it declined to insert words in the ordinance or depart from its common sense meaning.

#### IV. THE ZEO'S VERBAL DETERMINATION THAT MULTIPLE CLUSTER DEVELOPMENTS ARE ALLOWED ON THE SITE PLAN WAS ERRONEOUS AND ARBITRARY AND CAPRICIOUS.

The ZEO, Mr. Jacobo Martinez, made a **verbal** determination that multiple cluster developments were allowed on the Poole property. That verbal determination was made despite Regulation 6-2(B)(1)(c) requiring the ZEO to make a "formal determination" on matters of this nature.

In order to learn the rationale behind the ZEO's verbal determination, I requested a meeting with the ZEO, thinking that perhaps there was language in the IDO allowing multiple cluster developments that I had overlooked. My request for a meeting was denied. Then I submitted an Inspection of Public Records request for documents concerning or pertaining to his verbal determination on the Poole property site plan and on site plans in general. Not a single pertinent document was provided.

For the first time I learned the basis for the ZEO's verbal determination in the Second Supplemental Staff Report ("Staff Report") submitted prior to the hearing. Page 2 states that "The project complies and the Zoning Enforcement Officer (ZEO) has determined that cluster developments may be adjacent to each other **since there are no statements in the IDO that prohibit it.**" (Emphasis added). And page 22 of that report states that "The ZEO has determined that cluster developments may be developed adjacent to each other as if there were two separate property owners with the same zone. **There is nothing in the IDO that states otherwise.**" (Emphasis added.) See attached Exhibit B, pages 2 and 22.

At the hearing, the ZEO could not point to any regulations in the IDO that allowed multiple cluster developments on a project site. He repeated that there is nothing in the IDO that prohibits multiple cluster developments.

The ZEO, by deciding that multiple cluster developments were allowed because there is no language in the IDO prohibiting multiple cluster developments, is, in effect, reading language into the IDO which is not there, just as the city impermissibly did in High Ridge Hinkle. In other words, the ZEO construed the IDO “to include by implication” language allowing multiple cluster developments, although that language “is not clearly within” the “express terms” of the IDO.

The ZEO’s verbal determination based on there being no language in the IDO prohibiting multiple cluster developments is, therefore, erroneous and arbitrary and capricious.

V. THE EPC’S APPROVAL OF THE SITE PLAN IS CONTRARY TO THE EXPRESS TERMS OF THE IDO, ERRONEOUS AND ARBITRARY AND CAPRICIOUS. HIGH RIDGE HINKLE REQUIRES REVERSAL.

The IDO regulations that allow for only one cluster development are clear. Table 4-2 “Allowable Uses” allows for a “Dwelling, cluster development” in the R-A zoned Poole property. The allowance, however, is for a cluster development (singular), not multiple cluster developments.

At the hearing, Jim Strozier, acting on behalf of the applicant, challenged my reference to the “Allowable Uses” table. He cited the provision in the table allowing a Dwelling, townhouse in certain zones, pointing out that townhouse was in the singular. To paraphrase, he stated that no one would think that townhouse (singular) meant only one townhouse was allowed. Regulation 4-3(B)(5), however, cited in Table 4-2 for Dwelling, townhouse, of course allows for multiple townhouses. In contrast to the townhouse regulations, however, the “Dwelling, Cluster Development” regulations cited in the table, 4-2(B)(2), are **all** in the singular. That makes his challenge of my reference to the table well off the mark.

Furthermore, Regulation 4-3(B)(2)(d) states that “**The cluster development** project site shall include a common open space....” (Emphasis added). Note that “the cluster development” is singular, not plural.

And Regulation 4-3(B)(2)(e) states that “**The cluster development** shall be designated on a Site Plan...” (Emphasis added). Note that cluster development is again singular, not plural.

It would have been simple enough for the City Council when considering and adopting the IDO to use the words “the cluster developments”, plural, if that were the Council’s intent. But the Council did not do that. Instead it chose to use “the cluster development”, singular. The applicant, ZEO and the EPC interpret “the cluster development”, singular, as if it were “the cluster developments”, plural, which is precluded by High Ridge Hinkle.

EPC’s approval disregarded the clear language of the IDO and required the EPC impermissibly “to include by implication” language in the IDO “which is not clearly within” its “express terms”. EPC’s approval cannot stand because it is directly contrary to High Ridge Hinkle.

#### VI. THE STAFF REPORT INCORRECTLY CLAIMS THE SITE PLAN MAY BE TREATED AS IF IT WERE TWO SEPARATE PROJECTS WITH TWO SEPARATE OWNERS.

In an effort to disregard the one cluster development limitation, the Staff Report states that the project site is actually two separate projects with two separate owners. But, the principles of High Ridge Hinkle do not allow the IDO and the March 1 site plan to be treated in that manner.

In the first place, there is no language in the IDO or in the cluster development regulations which allows the site plan to be treated as if it were two separate owners with two separate cluster development projects.

Regulation 4-3(B)(2)(c) states that “The number of dwelling units is determined by dividing the **site area** ....” (Emphasis added).

And, “project site’ is defined in Regulation 7-1 to be [A]...collection of lots shown on a **Site Plan**.” (Emphasis added).

And, Regulation 4-3(B)(2)(e) states that [T]he cluster development shall be designated on a **Site Plan**....” (Emphasis added).

The March 1 site plan correctly shows the project site plan as the entire Poole property. But, to avoid the IDO’s language limiting a site plan to one cluster development, the Staff Report quotes the applicant claiming that “The cluster development project is designed as **two separate projects** adjacent to each other on 22.75 acres.” (Emphasis added). See Exhibit C, page 12 of the Staff Report. There is no language, however, in the IDO, including the cluster development regulations, that allows separation of a site plan into two separate cluster development projects.

Furthermore, the Staff Report states that the ZEO’s determination regarding separate cluster development projects on one site plan as “The ZEO has determined that cluster developments may be developed adjacent to each other **as if there were two separate property owners within the same zone. There is nothing in the IDO that states otherwise.**” (Emphasis added). See page 2 of Exhibit B.

Of course the Poole property has one owner and one site plan. There is no language in the IDO allowing the March 1 site plan to be treated as if there were two separate projects with two separate owners. Again, language cannot be read into the IDO. The express terms of the IDO control. High Ridge Hinkle precludes the EPC from treating the March 1 site plan as two separate projects.

VII. THE APPLICANT'S OBJECTIVE IS TO USE MULTIPLE CLUSTER DEVELOPMENTS TO EVADE THE 50 LOT LIMITATION IN THE CLUSTER DEVELOPMENT REGULATIONS.

Why is it so important for the applicant to have two cluster developments? Cluster Development Regulation 4-3(B)(2)(c) limits a cluster development to no more than 50 lots. The March 1 site plan shows the applicant's objective of using two cluster developments to cram 76 lots on the Poole property and evade the 50 lot limitation.

The applicant's objective to cram lots well above the 50 lot cluster development limitation can be seen by looking at successive site plans the applicant has submitted. An August 20, 2018, site plan had 73 lots with **one** cluster development of 50 lots and 23 R-A lots. The use of one cluster development on that site plan is obviously circumstantial evidence that the applicant knew that only one cluster development was allowed. Later it was determined that a number of lots on the eastern end of that site plan could not be built on, significantly reducing the number of lots if the applicant stayed with the August 20 one cluster development site plan.

The applicant later submitted a November 16, 2018, site plan that had 74 lots with **four** cluster developments of 70 lots and only 4 R-A lots. The applicant's objective obviously was to cram in a similar number of lots as the August 20 site plan had.

But, because this new four cluster developments site plan was not viable, the applicant later submitted the March 1 site plan with **two** cluster developments of 76 lots and no R-A lots. Note that the applicant, the ZEO and the planning department did not contend that the November site plan should be treated as four different owners with four separate projects. Treating the March 1 site plan as if there were two owners and two separate projects first surfaced in the Staff Report on the March 1 site plan, likely because the applicant was searching for



a way to disregard the IDO limitation of one cluster development and try to sell the site plan as two separate projects.

It is obvious that the applicant's objective has also been to cram in as many lots as the August 20 one cluster development site plan had and impermissibly to use multiple cluster developments to achieve its objective of evading the 50 lot limitation. In reality, the March 1 site plan is one big cluster development masquerading as two, which High Ridge Hinkle does not allow.

#### VIII. APPROVAL OF THE MARCH 1 SITE PLAN WOULD SET AN UNWISE PRECEDENT FOR FUTURE DEVELOPMENTS.

There are two main types of zoning ordinances, a permissive use ordinance and a prohibitive use ordinance. The most common type of zoning ordinance is the permissive use ordinance. A permissive use ordinance lists the types of uses that are permitted in a zone district. In a permissive use ordinance, uses not permitted are prohibited. Less common is the prohibitive use type of ordinance. A prohibitive use ordinance lists the types of uses that are prohibited. In a prohibitive use ordinance, a use that is not prohibited is permitted. The IDO is clearly a permissive type ordinance.

The ZEO's determination that multiple cluster developments are allowed because they are not prohibited and the EPC's adoption of that determination turn the IDO from a permissive use ordinance into a prohibitive use ordinance. In other words, the ZEO, city planners and the EPC have decided that the IDO allows that which is not prohibited. The ZEO and city planners' determination and the EPC's adoption of it set an unwise precedent for future developments.

Imagine an applicant/developer with a site plan with a creative use that is not a permissive use in the applicable zone district. The developer will argue that EPC's approval of the March 1 site plan established a precedent that at least some uses that are not specifically

prohibited by the IDO are allowed. Should the ZEO and the EPC find the developer's proposed creative use to be unpalatable, at least in some circumstances it will be difficult and perhaps impossible for the EPC to disregard the precedent and disapprove the site plan with the creative unpalatable use.

If you decide not to reverse EPC's approval outright, at a minimum you should remand because of the precedent the ZEO's determination and the EPC's approval set. You should rule that on remand the ZEO must comply with IDO 6-2(B)(1)(c) and provide a "formal determination" for the basis of his determination that multiple cluster developments are allowed. The formal determination should include a written discussion of 1) the factual basis for his determination, 2) what matters he considered, 3) what input from others, e.g., the applicant and other planning staff, he considered, 4) what IDO regulations, including what cluster development regulations, he considered, 5) why he considered the IDO and cluster development regulations to allow multiple cluster developments, 6) whether his determination applies only to the March 1 site plan or to cluster development projects in general and 7) what other matters you believe are appropriate.

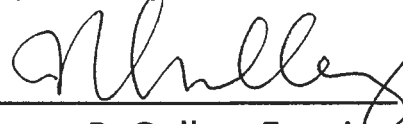
## IX. CONCLUSION.

In conclusion, there is no language in the IDO permitting multiple cluster developments on one project site. Pursuant to High Ridge Hinkle, the IDO cannot be construed to include by implication language allowing multiple cluster developments on the March 1 site plan when that language is not clearly within the IDO's express terms. The IDO clearly limits the Poole Property to one cluster development of no more than 50 lots. The March 1 site plan violates the IDO. I request that you overturn EPC' approval of it.

In the alternative, if you are not inclined to overturn, I request that you remand to require the ZEO to provide a formal basis for his determination that multiple cluster developments are allowed.

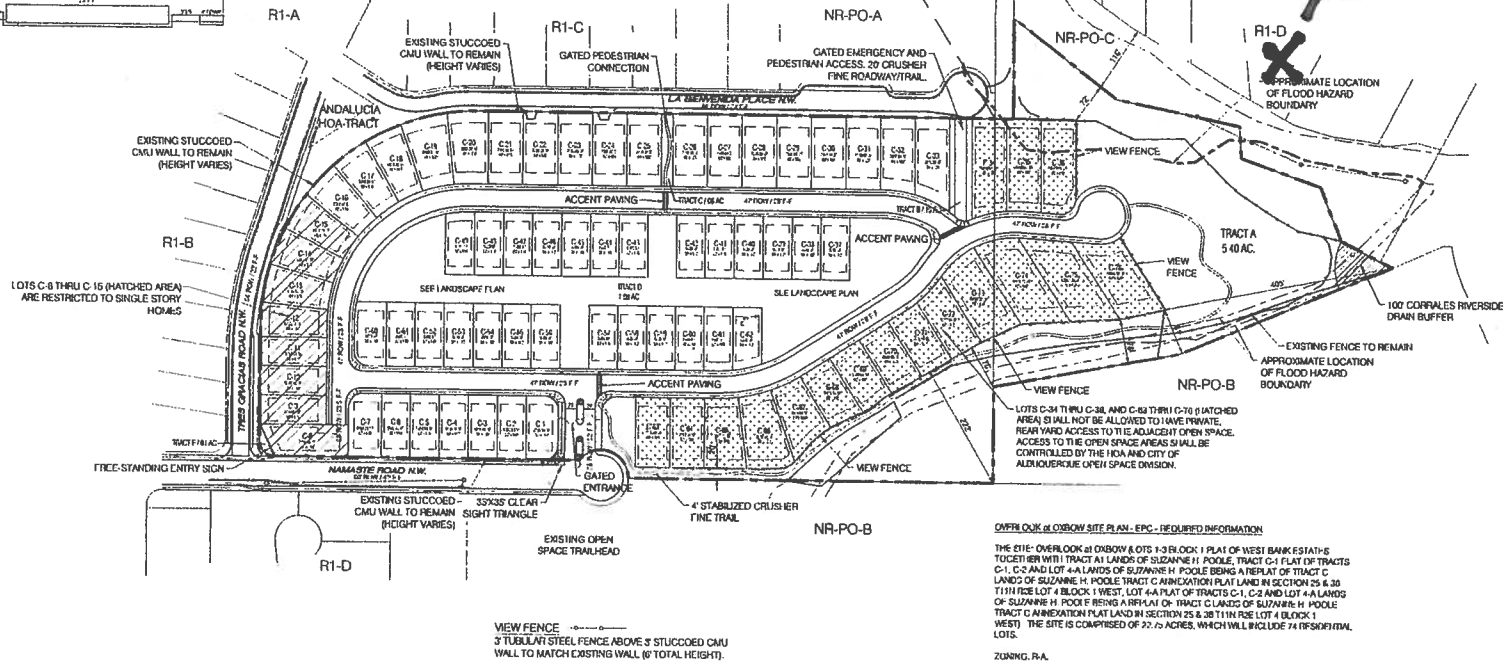
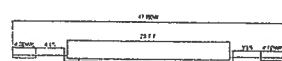
Date 3/25/19

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Gulley", written over a horizontal line.

Thomas P. Gulley, Esquire

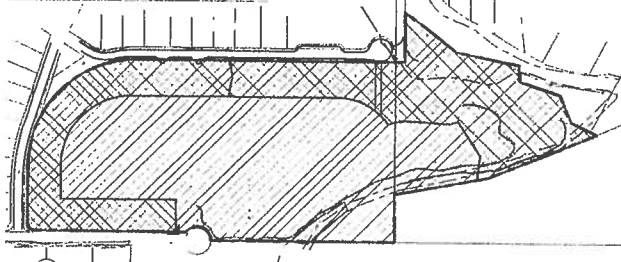
# TYPICAL STREET SECTION SCALE: 1" = 10'



## FREESTANDING ENTRY SIGN



## DELINEATION BETWEEN CLUSTER PROJECT AREAS



For IDU section 4-3(B)(2)(d)(1), The common open space area shall be 30 percent of the gross area of the project site or 100 percent of the area gained through lot size reductions, whichever is greater.

Open space calculations by cluster as follows:

<b>Cluster A</b>	Size: 10.80 ac. (36 Lots)
30% Rule:	OS Req. = 3.24 ac.
Lot Red. Rule:	OS Req. = 3.17 ac.
	OS Prov. = 3.31 ac.
<b>Cluster B</b>	Size: 12.95 ac. (40 Lots)
30% Rule:	OS Req. = 3.89 ac.
Lot Red. Rule:	OS Req. = 4.05 ac.
	OS Prov. = 4.07 ac.
Total Project Area:	23.75 ac.
Open Space Required:	7.29 ac.
Open Space Provided:	7.38 ac.
Total Lots:	76

## OVERLOOK at OXBOW SITE PLAN - EPC - REQUIRED INFORMATION

THE SITE OVERLOOK at OXBOW (LOTS 1-3 BLOCK 1 PLAT OF WEST BANK ESTATE) TOGETHER WITH TRACT A LANDS OF SUZANNE H. POOLE, TRACT C-1 PLAT OF TRACTS C-1, C-2 AND LOT 4-A LANDS OF SUZANNE H. POOLE BEING A REPLAT OF TRACT C LANDS OF SUZANNE H. POOLE TRACT C AMENDATION PLAT LAND IN SECTION 25 & 28 T11N R2E LOT 4 BLOCK 1 WEST LOT 4-A PLAT OF TRACTS C-1, C-2 AND LOT 4-A LANDS OF SUZANNE H. POOLE BEING A REPLAT OF TRACT C LANDS OF SUZANNE H. POOLE TRACT C AMENDATION PLAT LAND IN SECTION 25 & 28 T11N R2E LOT 4 BLOCK 1 WEST. THE SITE IS COMPOSED OF 27.75 ACRES, WHICH WILL INCLUDE 14 (FOURTEEN) LOTS.

ZONING: R.A.

LAND USE: SINGLE FAMILY RESIDENTIAL SUBDIVISION WITH PRIVATE OPEN SPACE AREAS AND TRAILS. NO COMMERCIAL USE IS ALLOWED.

PEDESTRIAN AND VEHICULAR INGRESS AND EGRESS

- PRIMARY VEHICULAR ACCESS IS FROM NAMASTE ROAD, AN EXISTING URBAN LOCAL STREET. THE SUBDIVISION SHALL BE GATED.
- PEDESTRIAN ACCESS SHALL BE PRIVATE, GATED ACCESS OFF BOTH NAMASTE ROAD AND LA BENVENIDA PLACE. INTERNAL, PEDESTRIAN CIRCULATION IS PROVIDED BY THE SIDEWALKS PLANNED ALONG THE PROPOSED LOCAL ROADS AND TRAILS WITHIN THE OPEN SPACE TRACTS.
- TRAILS SHALL BE SOFT SURFACED, CRUSHER FINED, AND DESIGNED TO ACCOMMODATE PEDESTRIANS.
- TRAIL ACCESS: TRAIL ACCESS IS AVAILABLE ON CORRALES BOULEVARD, APPROXIMATELY 2000 FEET TO THE WEST.
- A GATED EMERGENCY AND PEDESTRIAN ACCESS IS PROVIDED TO LA BENVENIDA PLACE.
- NAMASTE ROAD AND LA BENVENIDA PLACE ARE PROPOSED BICYCLE ROUTES PER THE 2040 LONG RANGE BIKWAY SYSTEM MAP.

BUILDING HEIGHT: 20 FEET TO EAVE LINE.

## SETBACKS:

- MINIMUM FRONT YARD SETBACKS: 15 FEET, EXCEPT 20 FEET FOR GARAGES FACING STREET.
- MINIMUM REAR YARD SETBACKS: 15 FEET.
- MINIMUM SIDE YARD SETBACKS: 5 FEET, EXCEPT 10 FEET FOR LOTS ADJACENT TO ROADWAY. ZERO LOT LINE IS PERMITTED PROVIDED 10 FEET OF SEPARATION BETWEEN BUILDINGS IS MAINTAINED.

## LOTS C-1 THROUGH C-2

- MINIMUM FRONT YARD SETBACKS: 15 FEET.
- MINIMUM REAR YARD SETBACKS: 15 FEET.
- MINIMUM SIDE YARD SETBACKS: 10 FEET.

## DENSITY

THE OVERALL DENSITY IS 3.2 DWELLING UNITS PER ACRE.

## ARCHITECTURE

- ACCENT COLORS ON DWELLING UNITS SHALL NOT CONTRAST THE PREDOMINANT COLOR OF THE BUILDING MORE THAN 10 PERCENT OF EACH FACADE.
- MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW FROM STREETS.

## LANDSCAPE PLAN

THE LANDSCAPE PLAN IS PROVIDED ON SHEET 2.

## SITE LIGHTING

ALL SITE LIGHT FIXTURES IS LIMITED TO 20 FEET TALL AND SHALL BE NIGHT SKY COMPLIANT.

# OVERLOOK at OXBOW

## SITE PLAN

Prepared For:

Gamma Development, LLC

Prepared By:

Consensus Planning, Inc.  
Bohannon Huston, Inc.



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March 1, 2019  
Sheet 1 of 4

3/1/19

EXHIBIT A

approval necessary to bring the application into compliance with the requirements of this IDO. This case is a quasi-judicial matter.

*For a description of the History/Background, Context, Roadway System, Comprehensive Plan Corridor Designation, Trails/Bikeways, and Transit service for the property please refer to the December 13, 2018 staff report.*

**Definitions:**

**Cluster Development Design:** A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands.

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

**Block:** An area that is bounded but not crossed by streets, railroad rights-of-way, waterways, unsubdivided areas, or other barriers.

**Common Open Space:** The area of undeveloped land within a cluster development that is set aside for the use and enjoyment by the owners and occupants of the dwellings in the development and includes agriculture, landscaping, on-site ponding, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development.

## **II. Analysis of City Plans and Ordinances**

### **Integrated Development Ordinance (IDO)**

The application for this request was submitted after the Integrated Development Ordinance (IDO) effective date of May 17, 2018, which replaced the City's Zoning Code, and is therefore subject to its regulations. Upon City Council adoption of the IDO, the zoning converted from RA-1 to the existing R-A.

The purpose of the R-A zone district is to provide for low-density, single-family residences and limited agricultural uses, generally on lots of ¼ acre (10,890 square feet) or larger, as well as limited civic and institutional uses to serve the surrounding residential area. In addition to single-family development that meets this minimum lot size, cluster development is also a permitted use in the R-A zone regulated by the Use Specific Regulations IDO Section 4-3(B)(2). Cluster developments are permitted in the R-A zone as long as they are each at least 1 acre and they each meet all cluster requirements. Density for cluster developments is determined by dividing the site area by the minimum lot size allowed in the zone rounded down to the nearest whole number but shall not exceed 50. The project complies and the Zoning Enforcement Officer (ZEO) has determined that cluster developments may be adjacent to each other since there are no statements in the IDO that prohibit it.

*Not  
prohibited  
X*

For the previously scheduled February 14, 2019 EPC public hearing, staff received approximately 16 letters attached under the Public Comments heading. Staff received an additional approximately 10 letters within the 48-hour period. All public comment was in opposition to the request.

For the current March 14, 2019 public hearing, staff received one phone call, three emails from individuals who have not previously commented, and four emails and letters from entities who have previously commented to express opposition to the development.

Subsequent to the original application for the EPC-Site Plan, staff has received a multitude of comments (as described above) in opposition to development on the subject site. However, since the subject project is on private property, currently in contract with the applicant, by law it may be developed according to the City assigned R-A zoning as regulated by the IDO standards. Therefore, the use of the property as a residential subdivision with R-A density per single-family lots or cluster development was previously established by law and is not for consideration by the EPC. The EPC may only consider Site Plan issues not regulated by the IDO such as the placement of the lots, circulation, trails, amenities, landscaping, buffers, etc.

Therefore, public questions/comments related to the use of the property as residential development will not be analyzed in this report. Public questions/comments related to the Site Plan are responded to below:

**Recurrent public comments related to the Site Plan:**

- *In opposition to cluster development instead of single-family in the R-A zone:* Cluster development is a permitted use in the R-A zone pursuant to the Allowable Uses Table 4-2-1. Typically, the R-A zoning permits a minimum lot size of 10,890 square feet for a single-family subdivision. It can be reasonably assumed that 15% of unsubdivided land in any given residential subdivision will have to accommodate streets. The project site's 23 acres minus 15% for streets leaves a buildable area of 19.55 acres, which results in 78 lots. The subject request is currently for 76 lots as part of the cluster development.
- *In opposition to two cluster developments adjacent to each other on one project site:* There is no statement in the IDO that prohibits cluster developments from being adjacent to each other. The ZEO determined that as long as each cluster meets all cluster provisions, multiple clusters may be on adjacent lots. Since the number of lots for cluster development is determined by dividing the lot square footage by the minimum lot size permitted in the zone, the primary difference between single-family lots and cluster development is that clusters preserve *common open space* for the benefit of the residents, and there is no reason these types of developments cannot be adjacent in a residential zone. The ZEO has determined that cluster developments may be developed adjacent to each other as if there were two separate property owners with the same zone. There is nothing in the IDO that states otherwise.

*On November 16, 2018, the Zoning Enforcement Officer (ZEO) made a determination (see email) that several cluster developments may be presented in one Site Plan. Each separate cluster is required to meet all applicable Use Specific Standards per 4-3(B)(2)a-g. Applicable regulations are described in this section.*

4-3(B)(2)(a) Minimum project size for this use is 1 acre.

*The cluster development project is designed as two separate projects adjacent to each other on 22.75 acres.*

*Each of the two proposed clusters are at least 1 acre.*

4-3(B)(2)(b) Setback requirements shall apply to the project site as a whole, not to individual dwellings.

*Contextual lot and setback requirements are used and are similar to R-1B standards.*

*Setbacks along the edges of each of the cluster development are pursuant to the underlying R-A zone (per 4-3(B)(2)(f)). The project is not subject to Contextual setbacks (per 5-1(C)(2)(c)), because the proposed clusters are not facing the same street as adjacent subdivisions, zoned R-1B, R-1C, and R-1D. Therefore the project may not use setbacks similar to R-1B without a zone change.*

*Setbacks should be as follows:*

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

*Calling out the appropriate setbacks is a recommended Condition of Approval. The applicant has indicated that they may reduce the common open space in order to meet the setbacks by increasing the size of the lots. If this results in a major change to the Site Plan, it will be required to be reviewed and approved again by the EPC again.*

4-3(B)(2)(c) The number of dwelling units is determined by dividing the site area by the minimum lot size allowed in the zone rounded down to the nearest whole number but shall not exceed 50.

*The number of dwelling units was determined by dividing the site area (22.75 acres) by the minimum lot size allowed in the zone (10,890 square feet or 0.25 acre). The total of that calculation (rounded down to the nearest whole number) is 91 lots is the maximum number of lots permitted. The use specific standard for cluster housing projects only allows 50 lots per project. Therefore, one cluster development project only has 44 lots and the adjacent project has 32 lots.*

*The project site will be divided into two clusters each with more than 1 acre as required. The area of each acre is then divided by 10,890 to arrive at the total*

*divided*

**EXHIBIT C**