

# CITY OF ALBUQUERQUE

## *Planning Department*

*Brennon Williams, Director*

### *Development Review Division*

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

Albuquerque, NM 87102

## NOTICE OF APPEAL



December 23, 2019

### TO WHOM IT MAY CONCERN:

The Planning Department received an appeal on December 20, 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-19-19**

**PLANNING DEPARTMENT CASE FILE NUMBER:**

**1011232, PR-2019-002629, VA-2019-00450, 17EPC-40011**

PO Box 1293

**APPLICANT: Darlene M. Anaya**  
**2000 Lilac Ave. NW**  
**Albuquerque NM 87104-2537**

Albuquerque

**AGENT: Edward M. Anaya, Anaya Law**  
**1728 Ocean Ave. #240**  
**San Francisco CA 94112**

NM 87103

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

cc: Crystal Ortega, City Council, City county bldg. 9<sup>th</sup> floor  
Kevin Morrow/Legal Department, City Hall, 4<sup>th</sup> Floor-  
Zoning Enforcement  
EPC File  
Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM 87110  
Design Workshop Inc 120 East Main Street, Aspen, CO 81611  
Near North Valley NA, Joe Sabatini, 3514 6th St. NW, ABQ, NM 87107  
Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107  
John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104  
Christina Blatchford, 1009 18<sup>th</sup> St NW, ABQ, NM 87104  
Ed Garcia, 4200 Aspen NE, ABQ, NM 87110  
Christine Dilks, 2458 Rose NW, ABQ, NM 87104  
Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104  
Alan Varela, [avarela@cabq.gov](mailto:avarela@cabq.gov)

Sawmill area NA, Julie Henss, 1724 Band Saw Pla. NW, ABQ, NM 87104  
Sawmill area NA, Dianne Jones, 1400 Lumberton Dr. NW, ABQ, NM 87104  
Los Duranes NA, Jose Viramontes, 1317 Gabaldon DrNW, ABQ, NM 87104  
Los Duranes NA, William C. Herring, 3104 Cocoa Rd NW, ABQ, NM 87104  
Symphony HOA, Inc. Charles Hostetler, 1908 Allegretto Trol NW, ABQ, NM 87104  
Symphony HOA Inc. Bernadette Sanchez, 2012 Allegretto Trl. NW, ABQ, NM 87104  
West Old Town NA, Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104  
West Old Town NA, Glen Effertz, 2918 Mountain Rd. NW, ABQ, NM 87104  
North Valley Coalition, Peggy Norton, PO. Box 70232, ABQ, NM 87197  
North Valley Coalition, Doyle Kimbrough, 2327 Campbell Rd. NW, ABQ, NM 87104  
Ed Paschich, 1512 Summer Ave. NW, ABQ, NM 87104  
Felice Garcia, 1024 Forrester NW, ABQ, NM 87102  
Kathleen Allen, 721 17<sup>th</sup> St NW, ABQ, NM 87104  
Patricia Allen, 1900 Lilac NW, ABQ, NM 87104  
John Wright, 2220 Wilma Rd NW, ABQ, NM 87104  
Ben M. Barreras, 2801 Carson NW, ABQ, NM 87104  
Mimi Lopez, 1209 Amado St. NW, ABQ, NM 87104  
Harold & Nancy Magnusson, 1309 Fruit Ave NW, ABQ, NM 87104  
Anaya Law LLC, Attn: Edward M. Anaya, 1728 Ocean Avenue #240, SF, CA 94112.  
Deborah Ridley, TVNA Board of Directors, 3247 Calle de Deborah NW, ABQ, NM 87104  
Ed Mahr, 1331 Park SW, ABQ, NM 87102  
Gary Pierson, 3819 Palacio Del Rio Grande, ABQ, NM 87107  
GP Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104  
David Lopez, 2416-B Rice NW, ABQ, NM 87104  
Paul Gallegos, 3021 Mackland Ave NE, ABQ, NM 87106  
Theresa Anaya, 2708 Los Anayas Rd NW, ABQ, NM 87104  
Doyle Kimbrough, 2327 Campbell Rd NW, ABQ, NM 87104  
Dennis Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104  
Tim & Sandy Pederson, 1918 Indian School Rd NW, ABQ, NM 87104  
Linda Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104  
Carla Baron, 990 18<sup>th</sup> St NW, ABQ, NM 87104  
Janet Harman, 2432 Rose Ave NW, ABQ, NM 87104  
Jason Kent 2021 Mountain Rd NW, ABQ, NM 87104  
Roger Melone, 2822 Euclid Ave NE, ABQ, NM 87106  
Dimian DuSanti, 2419 Floral NW, ABQ, NM 87104  
Matt Digregory, P.O. Box 914, Placitas, NM 87043  
Connie Nellos, 2717 Sheridan St NW, ABQ, NM 87104  
Charlotte Walton, 3608 Amber Dr. NW, ABQ, NM 87107  
Joe Sabatini, 3514 6<sup>th</sup> St NW, ABQ, NM 87107  
Sarah Robinson, 1920 Indian School Rd NW, ABQ, NM 87104  
Nathan Bush, 1920 Indian School Rd NW, ABQ, NM 87104  
Darlene Anaya 2000 Lilac Dr. NW, ABQ, NM 87104  
Rachel Anaya, 2000 Lilac Dr NW, ABQ, NM 87104  
Edward Anaya 2000 Lilac Dr NW, ABQ, NM 87104  
David Martinez, 1801 Rio Grande NW, ABQ, NM 87104  
Marit Tully, 1107 La Poblana NW, ABQ, NM 87107  
Jodi Colchamiro, 2525 Zearing Ave NW, ABQ, NM 87104  
Alex Allen, 717 17<sup>th</sup> St, ABQ, NM 87104  
Rich Baca, 9805 Kokopelli Dr NW, ABQ, NM 87114



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

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

### APPLICATION INFORMATION

Applicant: Darlene M. Anaya		Phone:
Address: 2000 Lilac Ave, NW		Email:
City: Albuquerque	State: NM	Zip: 87104-2537
Professional/Agent (if any): Edward M. Anaya, Anaya Law		Phone: (505) 333-9529
Address: 1728 Ocean Ave., #240		Email: edward@anayalawllc.com
City: San Francisco	State: CA	Zip: 94112
Proprietary Interest in Site: Owner		List all owners:

### BRIEF DESCRIPTION OF REQUEST

Appeal to City Council re: Approval of Project #1011232, Case No. 17EPC-40011

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

Lot or Tract No.: See application	Block:	Unit:
Subdivision/Addition: Land of JA Garcia	MRGCD Map No.:	UPC Code:
Zone Atlas Page(s): H-13	Existing Zoning: R1 and M1	Proposed Zoning: R-2 and C2
# of Existing Lots:	# of Proposed Lots:	Total Area of Site (acres):

### LOCATION OF PROPERTY BY STREETS

Site Address/Street: North of I-40, East of Rio Grande	Between: Alameda Drain	and: Campbell Ditch
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### CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature:	Date: December 20, 2019
Printed Name: EDWARD M. ANAYA	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

### FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees
VA-2019-00450	Appeal	\$130
-		
-		
Meeting/Hearing Date:		Fee Total: \$130
Staff Signature:	Date: 12-20-19	Project # PR-2019-002629

## FORM A: Appeals


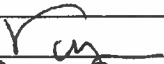

**Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.**

☐ 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: 1011232
- ☒ Application number of the case being appealed, if applicable: 17EPC-40011
- ☒ Type of decision being appealed: EPC approval of zone map amendment
- ☒ Letter of authorization from the appellant if appeal is submitted by an agent
- ☒ 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

<i>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.</i>	
Signature: 	Date: December 20, 2019
Printed Name: EDWARD M. ANAYA	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent
<b>FOR OFFICIAL USE ONLY</b>	
Case Numbers:	Project Number:
VA-2019-004150	PR-2019-002629
Staff Signature: 	
Date: 12-20-19	

1728 Ocean Ave., # 240 | San Francisco, CA 94112  
Tel: (505) 333-9529 | edward@anayalawllc.com

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December 20, 2019Albuquerque City Council  
P.O. Box 1293  
Albuquerque, N.M. 87102**Re: Appeal of EPC Decision**  
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

Dear Councilors,

This is an appeal of the Environmental Planning Commission's (EPC) December 12, 2019, "Official Notification of Decision" in this matter. As set forth herein, the EPC's decision: (1) was arbitrary and capricious; (2) is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan; and (3) is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.

**I. Standing**

This office is litigation counsel for Darlene M. Anaya. Ms. Anaya is the owner of residential property located at 2000 Lilac Drive, NW, in Albuquerque, which is immediately adjacent to the above-referenced zone map amendment. Ms. Anaya also has an ownership interest in residential property in Tract 223D, which is a parcel of residential property directly adjacent to the proposed zone change. Attached immediately to this letter is a Letter of Authorization signed by Ms. Anaya.

**II. Procedural History**

In an Order dated January 7, 2019, Judge C. Shannon Bacon remanded this matter back to the City of Albuquerque regarding: "(1) whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and (2) whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community." (Order, pg. 15).

On August 8, 2019, upon remand, the EPC voted to re-approve the zoning map amendment, without individual written notice to affected parties. On September 30, 2019, the LUHO heard an appeal by this office and the North Valley Coalition. In a recommendation dated October 4, 2019, the LUHO recommended remand back to the EPC for re-hearing and individual written notice to affected parties. On October 22, 2019, the City Council adopted the LUHO's recommendation of remand.

On December 12, 2019, the EPC voted to re-approve the zone map amendment. This appeal follows.

### III. Legal Argument

#### A. The EPC's decision was arbitrary and capricious

##### i) Relevant Case Law

Arbitrary and capricious action on the part of an administrative agency has been defined as willful and unreasonable action, without consideration and in disregard of facts or circumstances. *McDaniel v. New Mexico Bd. of Medical Examiners*, 1974-NMSC-062, ¶ 11, 86 N.M. 447 (1974)(interior quotations and citations omitted). Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. *Id.*

In considering whether an administrative decision is arbitrary or capricious, “we review the whole record to ascertain whether there has been unreasoned action without proper consideration or disregard of the facts and circumstances.” *Vigil v. Public Employees Retirement Bd.*, 2015-NMCA-079, ¶ 26, 355 P.3d 67 (2015)(interior citations omitted). Put another way, a decision is arbitrary and capricious “if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” *Id.* The decision-making agency may not “select and discuss only that evidence which favors [its] ultimate conclusion or fail to consider an entire line of evidence to the contrary.” *Id.*

##### ii) Arbitrary and capricious

In approving the instant zoning action, the EPC acted in a manner that was arbitrary and capricious, including, but not necessarily limited to:

- 1) At the August 8, 2019, hearing, the EPC questioned the authority for the North Valley Coalition's opposition to the proposed zone map amendment;
- 2) At the December 12, 2019, hearing, the EPC again questioned the authority for the North Valley Coalition's opposition to the proposed zone map amendment;
- 3) At the December 12, 2019, hearing, the EPC asserted that “harm” could not be assessed until a site plan was submitted; and
- 4) At the December 12, 2019, hearing, the EPC questioned whether the North Valley Area Plan policies of “stabilization” of residential uses and “village center” principles was relevant, despite the court Order regarding possible limitations on commercial development under the Plan.

Exact references to the record will be provided pending receipt of the final transcripts of these hearings.

**B. The EPC's decision is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan (NVAP or the "Plan").**

- 1.) The EPC's focus on Goal 6 and 11, only, disregards overwhelming evidence to the contrary.

EPC Finding 7(g) states that the instant zoning action is not in significant conflict with the North Valley Area Plan because "the most applicable Goal/Policy language (Goals 6 and 11, page 6) does not limit commercial development on the subject site." Goal 6, on page 6 of the North Valley Area Plan, reads as follows:

6. To encourage quality commercial/industrial development and redevelopment in response to area needs in already developed/ established commercial industrial zones and areas. To discourage future commercial/industrial development on lots not already zoned commercial/industrial.

However, the second sentence of Goal 6 clearly states that future commercial/industrial development on lots not already zoned commercial/industrial is "discourage[d]."

Moreover, while Goal 6 may support the rezoning of the existing 5.26 acres of M-1 light industrial, it does not support the encroachment of commercial uses into residential zones. (See, Appendix, A-3).

The EPC also relies on Goal 11, page 6, of the North Valley Area Plan. Goal 11 reads as follows:

11. To locate commercial and industrial development within the I-25 corridor, and selected areas along the I-40 corridor, especially as an alternative to extensive lower valley commercial/industrial development.

Here, the EPC misconstrues the phrase "selected areas along the I-40 corridor" as support for its position that the 11.61 acres of C-2 commercial zoning approved here is permissible. However, the visual depiction on Page 37 of the North Valley Area Plan does not support this position. On Page 37 of the Plan, "Large Scale Community" development is clearly not supported in this area. Instead, such "Large Scale Community" is restricted to I-40 near the I-25 juncture. (See, Appendix, A-1.)

- 2.) The EPC misconstrues the plain intent of "Village Centers"

The EPC misconstrues "village centers" under the Plan as being consistent with this zone change. However, it is clear under the Plan that "village centers" refers to small-scale development. (See, Appendix, A-2.)

- 3.) The EPC ignores the intent to “stabilize” residential uses and limit encroachment of commercial uses into residential areas.

There are numerous references in the Plan regarding an intent to “stabilize” residential uses and limit encroachment of commercial uses into residential areas. (See, Appendix, A-3.)

- 4.) The EPC ignores other overwhelming evidence in the Plan

As noted, the EPC relies on Goals 6 and 11 to support this zone map amendment. However, it ignores Goals 1 and 2 of the Plan. Goal/Policy No. 1 of the Plan to “recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the metropolitan area.” (Pg. 5). Likewise, Goal/Policy No. 2, which states that the North Valley Area Plan is intended to “preserve and enhance the environmental quality of the North Valley Area.” (Pg. 5). Doubling the C-2 zone is not consistent with “preserving” or “enhancing” the environmental quality of this area. (See, Appendix, A-4.)

**C. The EPC's decision is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.**

There is substantial testimony in the record regarding the harm to the community if this proposed zoning is permitted in the form of traffic, noise, pollution, and harm to the unique character of the area. While the C-2 zoning may be less harmful than some permitted M-1 uses, the encroachment and doubling of C-2 into residential zones is inexcusable and will cause double the harm.

**IV. Conclusion**

In summary, the EPC's action: (1) was arbitrary and capricious; (2) is not supported by substantial evidence regarding its assertion that the C-2 commercial zoning does not substantially conflict with the North Valley Area Plan; and (3) is not supported with substantial evidence that the proposed zoning will not cause harm to the community and/or neighborhood.

Please contact the undersigned if you have any questions or concerns.

Very Truly Yours,



Edward M. Anaya

EMA:

[2019.12.20.Appeal.of.EPC.Decision.3rd.doc]

**Attachment A** – Letter of Authorization

**Attachment B** – Appendix (NVAP references)

**Attachment C** – EPC decision dated December 12, 2019



August 2, 2019

City of Albuquerque  
Planning Department  
600 2nd Street NW, Third Floor  
Albuquerque, NM 87102

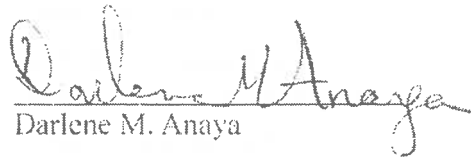
Re: Letter of Authorization  
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

To Whom It May Concern,

I am the owner of residential property located at 2000 Lilac Avenue, NW, in Albuquerque, New Mexico 87104 (Parcel No. 101305915324032828). I also own an interest in residential Parcel No. 101305917021632826, which is situated at approximately Lilac and Saiz roads, NW, in Albuquerque, New Mexico.

Both of these parcels are zoned residential and are in the immediate vicinity and/or adjacent to the above-referenced proposed zone map amendment.

Please be advised that Edward M. Anaya is my agent and is authorized to interact with the Planning and Zoning Departments and the City of Albuquerque to act on my behalf regarding the above referenced matter, including my authorization to act as my legal counsel.

  
Darlene M. Anaya

**APPENDIX**  
**(North Valley Area Plan references)**

<b><u>Issue</u></b>	<b><u>Description</u></b>	<b><u>NVAP Pg.</u></b>
<b>A-1)</b>	Plan depiction of areas suitable for “large scale community and regional commercial” development (I-40 and I-25 juncture).	pg. 37
<b>A-2)</b>	Plan intent regarding smaller-scale “Village Center” Principles	
	a. “Village Center principles shall serve as a guide for evaluating new and redeveloped commercial projects in the plan area.”	pg. 2
	b. “...encourage new development and redevelopment that incorporates Village Center Principles including ... valley scale and character.”	pg. 15
	c. “smaller scale retail would typify Village Centers”	pg. 35
	d. “New commercial uses in the valley would ...be smaller scale and would incorporate Village Center Principles of pedestrian access, mixed use and valley scale and character.”	pg. 38
	e. “Village Center development ideas, including smaller scale mixed use development...”	pg. 55
	f. “Development in the valley today should reflect the area's history. Smaller businesses in smaller stores are most appropriate ... “	pg. 136
	g. “...encourage new development and redevelopment that incorporates Village Center Principles including ... valley scale and character.”	pg. 142
<b>A-3)</b>	Plan intent regarding “stabilize” residential uses and limit commercial encroachment	
	a. “The City and County shall stabilize residential zoning and land use in the North Valley Area.”	pg. 7
	b. “The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing” and “Limit encroachment of non-residential uses into residential areas.”	pg. 14
	c. “[A] trend toward investment in commercial and manufacturing uses in previously residential areas can destabilize residential uses.”	pg. 58
	d. “The City and County shall stabilize residential zoning and land use in the North Valley Area.”	pg. 61
	e. “The City and County shall limit industrial and heavy commercial traffic through residential areas in order to enhance residential stability and preserve area history and character.”	pg. 113
	f. “The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing” and “Limit encroachment of non-residential uses into residential areas.”	pg. 130
<b>A-4)</b>	Plan intent to preserve character	
	a. Goals 1 and 2	pg. 5
	b. “Unique identity of the North Valley”	pg. 23

A-1



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

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### APPLICATION INFORMATION

Applicant: Darlene M. Anaya		Phone:
Address: 2000 Lilac Ave, NW		Email:
City: Albuquerque	State: NM	Zip: 87104-2537
Professional/Agent (if any): Edward M. Anaya, Anaya Law		Phone: (505) 333-9529
Address: 1728 Ocean Ave., #240		Email: edward@anayalawllc.com
City: San Francisco	State: CA	Zip: 94112
Proprietary Interest in Site: Owner		List all owners:

### BRIEF DESCRIPTION OF REQUEST

Appeal to City Council re: Approval of Project #1011232, Case No. 17EPC-40011

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

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### CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)

Signature:	Date: December 20, 2019
Printed Name: EDWARD M. ANAYA	<input type="checkbox"/> Applicant or <input checked="" type="checkbox"/> Agent

### FOR OFFICIAL USE ONLY

Case Numbers	Action	Fees
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Meeting/Hearing Date:	Fee Total: \$130	
Staff Signature:	Date: 12-20-19	Project # PR-2019-002629

## FORM A: Appeals

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

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- ☐ 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: 1011232
- ☒ Application number of the case being appealed, if applicable: 17EPC-40011
- ☒ Type of decision being appealed: EPC approval of zone map amendment
- ☒ Letter of authorization from the appellant if appeal is submitted by an agent
- ☒ 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

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: Edward M. Anaya

Date: December 20, 2019

Printed Name: EDWARD M. ANAYA

☐ Applicant or ☒ Agent

FOR OFFICIAL USE ONLY

Case Numbers:

Project Number:

VA-2019-004150

PR-2019-002629

Staff Signature: [Signature]

Date: 12-20-19



December 20, 2019

Albuquerque City Council  
P.O. Box 1293  
Albuquerque, N.M. 87102**Re: Appeal of EPC Decision**  
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

Dear Councilors,

This is an appeal of the Environmental Planning Commission's (EPC) December 12, 2019, "Official Notification of Decision" in this matter. As set forth herein, the EPC's decision: (1) was arbitrary and capricious; (2) is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan; and (3) is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.

**I. Standing**

This office is litigation counsel for Darlene M. Anaya. Ms. Anaya is the owner of residential property located at 2000 Lilac Drive, NW, in Albuquerque, which is immediately adjacent to the above-referenced zone map amendment. Ms. Anaya also has an ownership interest in residential property in Tract 223D, which is a parcel of residential property directly adjacent to the proposed zone change. Attached immediately to this letter is a Letter of Authorization signed by Ms. Anaya.

**II. Procedural History**

In an Order dated January 7, 2019, Judge C. Shannon Bacon remanded this matter back to the City of Albuquerque regarding: "(1) whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and (2) whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, the neighborhood or the community." (Order, pg. 15).

On August 8, 2019, upon remand, the EPC voted to re-approve the zoning map amendment, without individual written notice to affected parties. On September 30, 2019, the LUHO heard an appeal by this office and the North Valley Coalition. In a recommendation dated October 4, 2019, the LUHO recommended remand back to the EPC for re-hearing and individual written notice to affected parties. On October 22, 2019, the City Council adopted the LUHO's recommendation of remand.

On December 12, 2019, the EPC voted to re-approve the zone map amendment. This appeal follows.

### III. Legal Argument

#### A. The EPC's decision was arbitrary and capricious

##### i) Relevant Case Law

Arbitrary and capricious action on the part of an administrative agency has been defined as willful and unreasonable action, without consideration and in disregard of facts or circumstances. *McDaniel v. New Mexico Bd. of Medical Examiners*, 1974-NMSC-062, ¶ 11, 86 N.M. 447 (1974)(interior quotations and citations omitted). Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. *Id.*

In considering whether an administrative decision is arbitrary or capricious, “we review the whole record to ascertain whether there has been unreasoned action without proper consideration or disregard of the facts and circumstances.” *Vigil v. Public Employees Retirement Bd.*, 2015-NMCA-079, ¶ 26, 355 P.3d 67 (2015)(interior citations omitted). Put another way, a decision is arbitrary and capricious “if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” *Id.* The decision-making agency may not “select and discuss only that evidence which favors [its] ultimate conclusion or fail to consider an entire line of evidence to the contrary.” *Id.*

##### ii) Arbitrary and capricious

In approving the instant zoning action, the EPC acted in a manner that was arbitrary and capricious, including, but not necessarily limited to:

- 1) At the August 8, 2019, hearing, the EPC questioned the authority for the North Valley Coalition's opposition to the proposed zone map amendment;
- 2) At the December 12, 2019, hearing, the EPC again questioned the authority for the North Valley Coalition's opposition to the proposed zone map amendment;
- 3) At the December 12, 2019, hearing, the EPC asserted that “harm” could not be assessed until a site plan was submitted; and
- 4) At the December 12, 2019, hearing, the EPC questioned whether the North Valley Area Plan policies of “stabilization” of residential uses and “village center” principles was relevant, despite the court Order regarding possible limitations on commercial development under the Plan.

Exact references to the record will be provided pending receipt of the final transcripts of these hearings.

**B. The EPC's decision is not supported by substantial evidence with respect to Finding No. 7(g) regarding the North Valley Area Plan (NVAP or the "Plan").**

- 1.) The EPC's focus on Goal 6 and 11, only, disregards overwhelming evidence to the contrary.

EPC Finding 7(g) states that the instant zoning action is not in significant conflict with the North Valley Area Plan because "the most applicable Goal/Policy language (Goals 6 and 11, page 6) does not limit commercial development on the subject site." Goal 6, on page 6 of the North Valley Area Plan, reads as follows:

6. To encourage quality commercial/industrial development and redevelopment in response to area needs in already developed/ established commercial industrial zones and areas. To discourage future commercial/industrial development on lots not already zoned commercial/industrial.

However, the second sentence of Goal 6 clearly states that future commercial/industrial development on lots not already zoned commercial/industrial is "discourage[d]."

Moreover, while Goal 6 may support the rezoning of the existing 5.26 acres of M-1 light industrial, it does not support the encroachment of commercial uses into residential zones. (See, Appendix, A-3).

The EPC also relies on Goal 11, page 6, of the North Valley Area Plan. Goal 11 reads as follows:

11. To locate commercial and industrial development within the I-25 corridor, and selected areas along the I-40 corridor, especially as an alternative to extensive lower valley commercial/industrial development.

Here, the EPC misconstrues the phrase "selected areas along the I-40 corridor" as support for its position that the 11.61 acres of C-2 commercial zoning approved here is permissible. However, the visual depiction on Page 37 of the North Valley Area Plan does not support this position. On Page 37 of the Plan, "Large Scale Community" development is clearly not supported in this area. Instead, such "Large Scale Community" is restricted to I-40 near the I-25 juncture. (See, Appendix, A-1.)

- 2.) The EPC misconstrues the plain intent of "Village Centers"

The EPC misconstrues "village centers" under the Plan as being consistent with this zone change. However, it is clear under the Plan that "village centers" refers to small-scale development. (See, Appendix, A-2.)



- 3.) The EPC ignores the intent to “stabilize” residential uses and limit encroachment of commercial uses into residential areas.

There are numerous references in the Plan regarding an intent to “stabilize” residential uses and limit encroachment of commercial uses into residential areas. (See, Appendix, A-3.)

- 4.) The EPC ignores other overwhelming evidence in the Plan

As noted, the EPC relies on Goals 6 and 11 to support this zone map amendment. However, it ignores Goals 1 and 2 of the Plan. Goal/Policy No. 1 of the Plan to “recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the metropolitan area.” (Pg. 5). Likewise, Goal/Policy No. 2, which states that the North Valley Area Plan is intended to “preserve and enhance the environmental quality of the North Valley Area.” (Pg. 5). Doubling the C-2 zone is not consistent with “preserving” or “enhancing” the environmental quality of this area. (See, Appendix, A-4.)

**C. The EPC's decision is not supported by substantial evidence with respect to Finding No. 9(E) regarding harm to the community.**

There is substantial testimony in the record regarding the harm to the community if this proposed zoning is permitted in the form of traffic, noise, pollution, and harm to the unique character of the area. While the C-2 zoning may be less harmful than some permitted M-1 uses, the encroachment and doubling of C-2 into residential zones is inexcusable and will cause double the harm.

**IV. Conclusion**

In summary, the EPC's action: (1) was arbitrary and capricious; (2) is not supported by substantial evidence regarding its assertion that the C-2 commercial zoning does not substantially conflict with the North Valley Area Plan; and (3) is not supported with substantial evidence that the proposed zoning will not cause harm to the community and/or neighborhood.

Please contact the undersigned if you have any questions or concerns.

Very Truly Yours,



Edward M. Anaya

EMA:

[2019.12.20.Appeal.of.EPC.Decision.3rd.doc]

**Attachment A** – Letter of Authorization

**Attachment B** – Appendix (NVAP references)

**Attachment C** – EPC decision dated December 12, 2019

August 2, 2019

City of Albuquerque  
Planning Department  
600 2nd Street NW, Third Floor  
Albuquerque, NM 87102

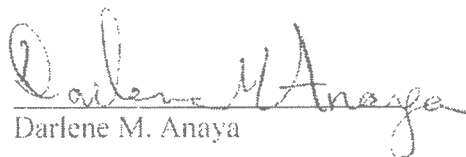
Re: Letter of Authorization  
OC-19-31 / AC-17-7 / Project #1011232 / 17EPC-40011

To Whom It May Concern,

I am the owner of residential property located at 2000 Lilac Avenue, NW, in Albuquerque, New Mexico 87104 (Parcel No. 101305915324032828). I also own an interest in residential Parcel No. 101305917021632826, which is situated at approximately Lilac and Saiz roads, NW, in Albuquerque, New Mexico.

Both of these parcels are zoned residential and are in the immediate vicinity and/or adjacent to the above-referenced proposed zone map amendment.

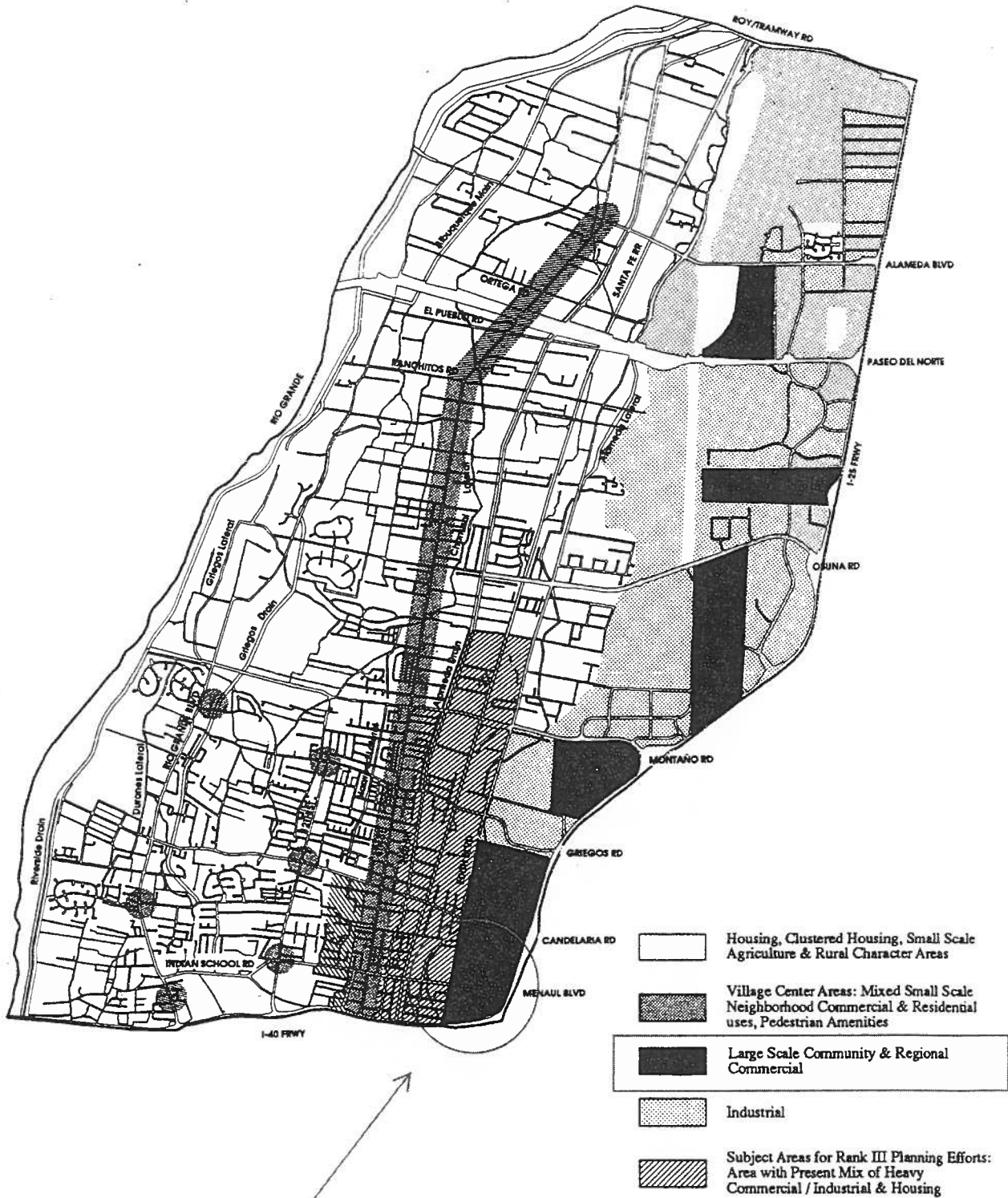
Please be advised that Edward M. Anaya is my agent and is authorized to interact with the Planning and Zoning Departments and the City of Albuquerque to act on my behalf regarding the above referenced matter, including my authorization to act as my legal counsel.

  
Darlene M. Anaya

**APPENDIX**  
(North Valley Area Plan references)

<b>Issue</b>	<b>Description</b>	<b>NVAP Pg.</b>
<b>A-1)</b>	Plan depiction of areas suitable for “large scale community and regional commercial” development (I-40 and I-25 juncture)	pg. 37
<b>A-2)</b>	Plan intent regarding smaller-scale “Village Center” Principles	
	a. “Village Center principles shall serve as a guide for evaluating new and redeveloped commercial projects in the plan area.”	pg. 2
	b. “...encourage new development and redevelopment that incorporates Village Center Principles including ... valley scale and character.”	pg. 15
	c. “smaller scale retail would typify Village Centers”	pg. 35
	d. “New commercial uses in the valley would ...be smaller scale and would incorporate Village Center Principles of pedestrian access, mixed use and valley scale and character.”	pg. 38
	e. “Village Center development ideas, including smaller scale mixed use development...”	pg. 55
	f. “Development in the valley today should reflect the area's history. Smaller businesses in smaller stores are most appropriate ... “	pg. 136
	g. “...encourage new development and redevelopment that incorporates Village Center Principles including ... valley scale and character.”	pg. 142
<b>A-3)</b>	Plan intent regarding “stabilize” residential uses and limit commercial encroachment	
	a. “The City and County shall stabilize residential zoning and land use in the North Valley Area.”	pg. 7
	b. “The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing” and “Limit encroachment of non-residential uses into residential areas.”	pg. 14
	c. “[A] trend toward investment in commercial and manufacturing uses in previously residential areas can destabilize residential uses.”	pg. 58
	d. “The City and County shall stabilize residential zoning and land use in the North Valley Area.”	pg. 61
	e. “The City and County shall limit industrial and heavy commercial traffic through residential areas in order to enhance residential stability and preserve area history and character.”	pg. 113
	f. “The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing” and “Limit encroachment of non-residential uses into residential areas.”	pg. 130
<b>A-4)</b>	Plan intent to preserve character	
	a. Goals 1 and 2	pg. 5
	b. “Unique identity of the North Valley”	pg. 23

A-1



January 1993

PREFERRED SCENARIO  
LAND USE PLAN

# North Valley Area Plan

A-2

CITY of ALBUQUERQUE  
TENTH COUNCIL

COUNCIL BILL NO.

**R-255**

ENACTMENT NO.

**60-1993**

SPONSORED BY:

*Vincent E. Guigo*

**RESOLUTION**

ADOPTING THE NORTH VALLEY AREA PLAN AS A RANK 2 AREA PLAN.

WHEREAS, the City Council has the authority to adopt plans for geographic areas within the planning jurisdiction of the City as authorized by New Mexico Statutes; and

WHEREAS, the City Council recognizes the need for Area Plans to guide the County, other agencies, property owners, and other individuals to ensure orderly development and effective utilization of resources; and

WHEREAS, the Albuquerque/Bernalillo County Comprehensive Plan directs that lower ranking plans should provide specific recommendations within general density and character guidelines of that plan; and

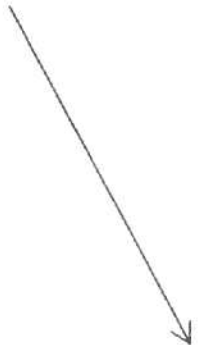
WHEREAS, the North Valley Area Plan, a Rank Two Plan, provides the framework and direction for any more specific planning for smaller geographic subareas of the plan area; and

WHEREAS, the City of Albuquerque has prepared the North Valley Area plan to guide future development by addressing general land use, zoning, air quality, wastewater, drainage, transportation, housing, community design, agriculture and implementation; and

WHEREAS, the North Valley Area Plan was prepared with assistance of residents and property owners, business people and others in accordance with their desires as expressed in public meetings and Volume II North Valley Area Plan Goals and Issues; and

WHEREAS, the North Valley Area Plan responds to citizen goals of recognizing the North Valley as a unique and fragile resource and as an

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1 inestimable and irreplaceable part of the entire metropolitan  
2 community; and

3 WHEREAS, the North Valley Plan Area includes lands within the  
4 municipal limits and outside of those limits but within the City's  
5 planning jurisdiction; and

6 WHEREAS, the Environmental Planning Commission in its advisory  
7 role on all matters related to planning, zoning, and environmental  
8 protection has approved and recommended adoption of the North Valley  
9 Area Plan at a public hearing.

10 BE IT RESOLVED BY THE CITY COUNCIL, THE GOVERNING BODY OF THE CITY OF  
11 ALBUQUERQUE THAT:

12 Section 1. The North Valley Area Plan attached hereto and made a  
13 part hereof, is hereby adopted as a Rank Two Area Plan.

14 Section 2. The North Valley Area Plan goals, policies and  
15 principles, including goals identified in Volume II and included in the  
16 Plan Introduction, shall guide the density, character and design of all  
17 public and private land uses and development within the plan area.

18 A. Cluster Housing principles shall serve as a guide for  
19 evaluating new residential development in the plan area.

20 B. Village Center principles shall serve as a guide for  
21 evaluating new and redeveloped commercial projects in the plan area.

22 C. The text in each chapter shall serve to interpret the intent  
23 of goals and policies contained in the plan.

24 Section 3. The North Valley Area Plan shall guide subsequent  
25 planning and regulatory actions in the plan area including, but not  
26 limited to, sector plans and design overlay zoning.

27 Section 4. Development densities shall not be determined on the  
28 basis of the presence of sanitary sewer alone but shall also be  
29 determined through Comprehensive Plan designation, existing zoning, and  
30 area character.

31 Section 5. Subdivisions in the Semi-Urban and Rural Areas of the  
32 North Valley Area Plan shall be subject to rural development standards  
33 to encourage retention and expansion of rural character features,



1 including diverse lot sizes and shapes and housing types within  
2 subdivisions, retention of ditch access for irrigation and/or  
3 recreation and non-asphalt streets and soft-surfaced trails instead of  
4 sidewalks.

5 Section 6. The North Valley Area Plan and the policies herein  
6 shall not be interpreted to either support or oppose construction of  
7 the Montano Bridge. If this roadway is built, its design and  
8 subsequent development will be guided by applicable policies of this  
9 plan.

10 Section 7. Solid Waste Transfer Stations shall be allowed in the  
11 North Valley Plan area only on land zoned for manufacturing uses and  
12 only if, after thorough investigation of relative benefits and costs,  
13 such location is deemed appropriate and the potential impacts on  
14 adjacent residential land can be mitigated through proper site design.

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1 PASSED AND ADOPTED THIS 17th DAY OF MAY, 1993  
2 BY A VOTE OF 8 FOR AND 0 AGAINST.

3  
4 Yes: 8  
Excused: Griego

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Steve D. Gallegos, Presiding President  
City Council

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12 APPROVED THIS 2nd DAY OF June, 1993.

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Louis E. Saavedra, Mayor  
City of Albuquerque

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17 ATTEST:  
  
18 City Clerk

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- a. Encourage rezoning land in the Edith Boulevard, and Mid-North Valley East subareas for residential and mixed uses.
3. The City and County shall promote lower-income rehabilitation projects in neighborhoods with existing moderately-priced homes and areas vulnerable to speculation, redevelopment, and displacement of lower-income residents.
  - a. Expand efforts to leverage private investment in housing programs for lower-income North Valley residents and target resources to assistance of very low-income renters.
  - b. Study the implications and impacts of accessory apartments in some residential areas.
  - c. Undertake a survey to compile reliable data on incomes and housing cost burdens for North Valley households.
4. The County and City shall remove disincentives, provide incentives, and/or require housing development which meets the Cluster Housing Principles of preserving open land, providing new housing at appropriate densities, lower infrastructure costs, and design flexibility and creativity.
  - a. Amend the City Zoning Ordinance to add cluster principles and reduce the cluster housing district "minimum district size" in RA-2 to two acres.
  - b. Amend the County Zoning Ordinance to add cluster principles and to include Cluster Housing as a Special Use.
  - c. Provide for densities greater than 1 dwelling unit/acre in Rural and Semi-Urban Areas through adoption and promotion of Cluster Housing Principles.
  - d. Adopt standards for homeowner associations, including provisions which would enable the City or County to bill the association for maintenance costs if necessary and requirements for open space in perpetuity.

## Village Centers

1. The City and County shall encourage new development and redevelopment that incorporates Village Center Principles including: pedestrian attraction and accessibility, mixed use development, and valley scale and character.

## Albuquerque/Bernalillo County Comprehensive Plan

### Housing

Under the Comprehensive Plan Scenario, new residential growth in the Semi-Urban and Rural portions of the North Valley would be integrated into existing neighborhoods and clustered to retain open land. In suitable areas, such as village centers, higher density townhomes would provide a more affordable housing option.

### Commercial Uses

Most commercial development in the valley would be oriented to the local service needs of residents and located at major intersections in Village Centers. Pedestrian and bicycle access and access to mass transit, mixed uses, and smaller scale retail would typify Village Centers. Older storefronts would be preserved as structures which reflect the history and scale of the valley.


### Industrial and Heavy Commercial Uses

Large scale industrial development would continue in the North I-25 area under the Comprehensive Plan Scenario. These areas would be appropriately landscaped and linked to residential areas through effective transit, paratransit and trails. A planning effort would result in a mixed use or multipurpose site in the northern portion of the North I-25 area. Smaller scale manufacturing and "cottage industries" would be located in the valley. There would be a compatible mixing of different land uses in the North I-25 area which would reduce the need for motorized travel. Vacant properties unsuitable for heavy commercial and industrial uses would be rezoned to allow residential uses.

### Agriculture and Rural Character

In the Comprehensive Plan Scenario a limited amount of agricultural land in the Rural and Semi-Urban areas would be maintained through a combination of methods including transfer of development rights and conservation easements. Remaining agriculture in the Comprehensive Plan Established and Developing Urban Areas, however, would not be specifically addressed. The requirement for clustering housing would retain some land in common ownership for gardens, vineyards, and orchards.

## Commercial Uses



New commercial uses in the valley would meet local neighborhood needs and would be oriented to those neighborhoods through provision of access to pedestrians and bicyclists. These businesses would be smaller scale and would incorporate Village Center Principles of pedestrian access, mixed use and valley scale and character. Existing small scale commercial uses would be revitalized through public/private efforts to provide pedestrian and bicycle amenities, shared parking, promotion, and landscaping. Mixed commercial and residential use patterns would continue to exist along Fourth Street with enhancements to the pedestrian paths and details, especially transit amenities. Present disincentives and barriers to development of Village Centers would be removed. Such disincentives include reliance on automobile use for local neighborhood, commercial, social and civic functions. Providing for alternative modes of travel and safe pedestrian routes and paths will be an incentive to private investment in Village Centers.

Larger scale community or regional commercial development would be located in the available areas within the North I-25 Corridor. This area is also appropriate for heavy commercial and large scale industrial development served with transit and Ridepool alternatives. Improved non-vehicular connections to and from residential areas on the valley floor would also be made to improve the potential for non-vehicular work travel.

## Industrial and Heavy Commercial

Large scale uses would be located only on the east mesa and would be served with transit. County SUP's for these purposes would be limited. Businesses would be assisted in efforts to improve and create non-vehicular connections to residential areas on the valley floor and to the east of I-25. Landscaping to control water erosion and dust and to create a visually pleasing environment would be encouraged. The edges between residences and industries would be designed to buffer residences and eliminate traffic from businesses through the neighborhoods.

## Public Uses

Village Center principles would be applied with the location and construction of public facilities. The park and ride station for a Santa Fe/Albuquerque rail line would be located so as to foster successful and necessary redevelopment in the Central Urban area. Transit would extend bus service to County areas under a revised joint powers agreement between the City and County. Intracity rail and transit service would be planned to reduce the impacts of cross-valley automobile travel.

along the river, to guide development in and around Village Center locations, and/or to cluster residential development in certain locations.

Streets with scenic or historic character such as Alameda or North Edith Boulevards might benefit from an overlay zone which could be used to regulate uses, siting of buildings, size and location of walls, fences, landscaping and signage. Land next to the Riverside Drain and bosque might be placed under an overlay zone to protect vegetation, wildlife populations, and aesthetic qualities that distinguish these lands. Homes could be clustered to preserve cottonwoods and large scale or intense commercial development could be limited. This area might also be appropriate for landscaping that provides continuity for bosque habitat - clusters of trees, wetlands reconstruction, and especially retention of irrigation ditches to carry water to the landscaping.

Village Center development ideas, including smaller scale mixed use development, a greater amount of landscaping, and pedestrian improvements could be governed by an overlay zone. These principles are included only as guidelines in the plan. Cluster housing could also be governed by a DOZ that specified location, density, open space use, and other specifics that general provisions in the regular zoning code would not cover.

Shortcomings of Design Overlay Zoning include their administrative complexity and necessary commitment to stronger land use control. Strong political will, agreement on the importance of the regulation, and consistent enforcement would be necessary. If it is easier to get a zone change than to comply with the requirements of an existing zone, then augmenting those regulations with a design overlay zone will have little beneficial effect. If enforcement of existing regulations is difficult, an increase in requirements without subsequent increases in enforcement staff and capacity will be unsuccessful.

The history of zone changes, administration of Special Use Permits, and State Court cases regarding land use, indicate a general unwillingness to exert strong regulatory control over land uses in the valley. Stronger regulations promulgated in this political climate are unlikely to gain acceptance. The interest in and promotion of techniques such as the DOZ must come from the community and be developed in response to their needs and concerns.

The interest in and promotion of techniques such as the DOZ must come from the community and be developed in response to their needs and concerns.

## Mixed Use Development

Mixed use development in Village Center locations can serve to reduce motoring needs in the valley, match the characteristic pattern of mixed uses in older valley areas, and to build community. Mixed use development can be defined as new or existing development that incorporates **more than one type of use, including housing**. Promoting a mix of uses in Village Centers includes developing residential uses in or near commercial areas. Examples include **apartments above shops or offices, and townhomes adjacent to shopping areas**.

Existing housing densities for four Village Center Areas in the North Valley were estimated. Patterns indicate that the higher density development in these areas is approximately 9 dwelling units per acre. This is generally in the form of townhomes as private residences. To retain the scale and character of the valley and promote mixed uses, such residential development should be located near Village Center Areas and within the Fourth Street corridor.

## Scale and Character

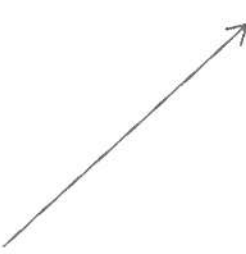
Development in the valley today should reflect the area's history. **Smaller businesses in smaller stores** are most appropriate given the existing context of small commercial lots and structures. Where larger buildings are desired, Village Center Principles can still be incorporated by **breaking up building mass and parking into smaller parts**. This can be accomplished through building design by use of portals, windows and vertical elements and through site design by placing parking in smaller lots separated by buildings or landscaped areas. The use of crusher fines instead of asphalt in parking lots can reduce the "sea of parking" and result in lower area temperatures and healthier landscapes.

Development should relate to the surrounding **context of the site** and special attention should be given to **existing area character**. Landscaping and landscaped public spaces should be incorporated into site design. Large signs, standardized architecture, and a large supply of parking directly in front of the store are in conflict with the Village Center Principles. The valley is most appropriate for businesses that can either locate on existing small lots or in existing shopping centers in need of redevelopment.

The drawings of several Village Center Areas are included to generate discussion about how the Principles could be applied at existing vacant "opportunity sites". This is not a proposal for rezoning nor do the drawings represent an endorsement of development at those locations. The ideas should, however, give landowners, developers, area residents, and the planning commissions an idea of how the principles might be applied.

The valley is most appropriate for businesses that can either locate on existing small lots or in existing shopping centers in need of redevelopment.

## Village Center Policies

- 
1. The City and County shall encourage new development and redevelopment that incorporates Village Center Principles including: pedestrian attraction and accessibility, mixed use development, and valley scale and character.
    - a. Evaluate proposed development and redevelopment projects using Village Center Principles and the following guidelines.
      - i. Within 300 feet of intersections, building setbacks should not exceed 10 feet from the public right-of-way.
      - ii. Within 100 feet of intersections, sidewalks should be unobstructed by curb cuts or driveways.
      - iii. Main entrances should be visible to the pedestrian and directly accessible.
    - b. Utilize the guidelines to test ideas and build support for the Village Center Principles prior to establishing new requirements.
    - c. Target public investments which meet Village Center Principles including right-of-way improvements and public buildings.
  2. The County and City shall explore techniques for implementing Village Center Principles including Transferable Development Rights, Design Overlay Zoning, and zoning ordinance amendments.
    - a. Draft a map of possible receiving and sending areas for transferable development rights and use the effort to evaluate the TDR method of controlling density and to guide decision making under the present zoning laws.
    - b. Undertake a rank three planning process to create Design Overlay Zones for one or several Village Center locations.
    - c. Explore possible Zoning Ordinance amendments to create other zoning tools such as Rural Commercial Zoning to implement the principles including possible limits to floor area ratio or total square footage of new commercial structures.



A-3

# Plan Policies

## Zoning and Land Use

1. The Comprehensive Plan area boundaries shall reflect existing character, resources and development potential in the North Valley.
  - a. City and County shall adopt the following proposed Comprehensive Plan boundary changes:

Developing Urban to Rural, north of Calle Del Fuego, east of Edith Boulevard, south of Tramway Road, and west of the North Diversion Channel.

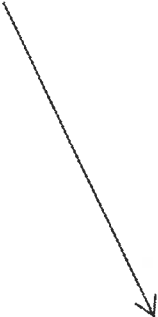
Developing Urban to Semi-Urban, north of Osuna Road, east of the AT&SF Railroad tracks, south of Ranchitos, and west of the Municipal Limits.

Established Urban to Semi-Urban, north of the Gallegos Lateral, east of the Chamisal Lateral, south of Osuna Road, and west of the Alameda Lateral railroad tracks.

Established Urban to Semi-Urban, north of Montañño Road, east of the AT&SF Railroad tracks, south of Osuna Road, and west of the Municipal Limits.

Established Urban to Semi-Urban, north of I-40, east of the Rio Grande, south of the Municipal boundary, and west of Gabaldon Road.

2. The City and County shall stabilize residential zoning and land use in the North Valley Area.
  - a. Limit the location, duration and type of new uses allowed by Special Use Permit.
    - i. Restrict new Special Use Permits for heavy commercial and manufacturing uses in North Valley residential zones to owner-occupied businesses with five or fewer employees on 1/2 acre or greater.
    - ii. Limit the time period between approval of new Special Use Permits and issuance of a building permit to one year.
  - b. Cancel discontinued Special Use Permits, permits granted where existing conditions of approval are not met, and permits that are otherwise in violation of the Zoning Ordinance.

- 
- b. Consider removal of the Elena/Balboa Study Corridor from the Long Range Major Street Plan.
    - i. Undertake a transportation analysis to determine the impact of this recommendation on the transportation system.
  - c. Limit the future number of lanes on Edith Boulevard north of Osuna Road by changing the functional classification of Edith Boulevard on the Long Range Major Street Plan from a minor arterial to a collector, or adding an exception for Edith Boulevard to the General Standards for rights-of-way for minor arterial streets contained in the addendum to the Long Range Major Street Plan to limit the right-of-way width of Edith to 68 feet.
  - d. Retain and expand residential zoning of land in the lower valley especially in the Edith, Mid-North Valley east, Second/Fourth, and Alameda Subareas.
4. The City and County shall limit conflicts between rail travel, roadways, and land use.
- a. Consider grade separation of Alameda Boulevard and Montañó Road at AT&SF tracks.
  - b. Examine land use impacts of potential rail station park and ride locations on residential areas.
  - c. Seek agreements to limit future rail spur locations to commercially zoned land.

## Housing

- 1. The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.
  - a. Maintain and expand areas zoned for residential uses including A-1, R-1, MH.
  - b. Limit encroachment of non-residential uses into residential areas.
  - c. Encourage residential zoning of parcels with residential use.
- 2. The County and City shall encourage mixed use development and redevelopment which incorporates housing.

## Land Use Patterns

### Housing

Housing is the predominant land use in the North Valley comprising over 57% of all uses. Homes are located throughout the plan area except for the North I-25 Subarea where housing makes up just 3% of the uses. Homes are located in diverse settings including standard suburban subdivisions and older historic settlement patterns. Mobile home parks are a popular housing alternative with their residents and make up a substantial proportion of the higher density housing found in the plan area.

Much of the new housing in the valley is built on land used for agricultural purposes. This accounts for lot patterns and subdivisions that reflect these earlier uses such as streets which dead end on irrigation or drainage ditches. In some subareas, particularly the Second and Fourth Street Corridors and the Edith Corridor, housing is located near or between manufacturing and heavy commercial uses. This has created some land use conflicts but also provides opportunities for linking jobs and commerce to the existing neighborhood fabric and therefore strengthening the community as a whole. Where potential negative impacts of large scale businesses, such as traffic, can be limited, neighborhoods gain employment opportunities and businesses become good neighbors.

Alternately, a trend toward investment in commercial and manufacturing uses in previously residential areas can destabilize residential uses. Conversions of residential property can have negative impacts on remaining residences. Lending institutions and potential homeowners may regard commercial and manufacturing uses in a residential area as undesirable. The opposite conversion, of commercial land to housing, is not a present trend in the plan area, although large tracts of vacant manufacturing land have provided locations for mobile home parks in the past.

Most residences in the North Valley are single-family homes. Mobile homes make up 14% of homes in the plan area and 20% of all homes in Bernalillo County. There are few apartments in the plan area compared to other portions of the metropolitan area. However, living quarters associated with a main house are an alternative desired by some residents.

Housing in the valley is far less homogeneous than other portions of the metropolitan area. A mix of housing types and lot sizes are desired by residents and there are opportunities to accommodate new housing in different ways. The relatively small vacant parcels lend themselves to custom housing construction. Amendments to Comprehensive Plan boundaries will provide a better basis for differentiating between areas and

Housing in the valley is far less homogeneous than other portions of the metropolitan area.

## Zoning and Land Use Policies

1. The Comprehensive Plan area boundaries shall reflect existing character, resources and development potential in the North Valley.

- a. City and County shall adopt the following proposed Comprehensive Plan boundary changes:

Developing Urban to Rural, north of Calle Del Fuego, east of Edith Boulevard, south of Tramway Road, and west of the North Diversion Channel.

Developing Urban to Semi-Urban, north of Osuna Road, east of the Alameda Lateral Railroad tracks, south of Ranchitos, and west of the Municipal Limits.

Established Urban to Semi-Urban, north of the Gallegos Lateral, east of the Charnisal Lateral, south of Osuna Road, and west of the AT&SF railroad tracks.

Established Urban to Semi-Urban, north of Montañño Road, east of the AT&SF Railroad tracks, south of Osuna Road, and west of the Municipal Limits.

Established Urban to Semi-Urban, north of I-40, east of the Rio Grande, south of the Municipal boundary, and west of Gabaldon Road.

2. The City and County shall stabilize residential zoning and land use in the North Valley Area.

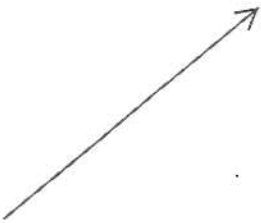
- a. Limit the location, duration and type of new uses allowed by Special Use Permit.
    - i. Restrict new Special Use Permits for heavy commercial and manufacturing uses in North Valley residential zones to owner-occupied businesses with five or fewer employees on 1/2 acre or greater.
    - ii. Limit the time period between approval of new Special Use Permits and issuance of a building permit to one year.
  - b. Cancel discontinued Special Use Permits, permits granted where existing conditions of approval are not met, and permits that are otherwise in violation of the Zoning Ordinance.

- ii. With the MRGCD, undertake a study of multiple use of ditches and associated rights-of-way.

- 3. The City and County shall limit industrial and heavy commercial traffic through residential areas in order to enhance residential stability and preserve area history and character.

- a. Consider alternative access to the North I-25 Subarea by extending the Alexander Roadway Study Corridor north of Osuna Road to Paseo del Norte.
  - i. Undertake a transportation analysis to determine the impact of the recommendation on the transportation system.
- b. Consider removal of the Elena/Balboa Study Corridor from the Long Range Major Street Plan.
  - i. Undertake a transportation analysis to determine the impact of this recommendation on the transportation system.
- c. Limit the future number of lanes on Edith Boulevard north of Osuna Road by changing the functional classification of Edith Boulevard on the Long Range Major Street Plan from a minor arterial to a collector, or adding an exception for Edith Boulevard to the General Standards for rights-of-way for minor arterial streets contained in the addendum to the Long Range Major Street Plan to limit the right-of-way width of Edith to 68 feet.
- d. Retain and expand residential zoning of land in the lower valley especially in the Edith, Mid-North Valley east, Second/Fourth, and Alameda Subareas.
- 4. The City and County shall limit conflicts between rail travel, roadways, and land use.
  - a. Consider grade separation of Alameda Boulevard and Montañito Road at AT&SF tracks.
  - b. Examine land use impacts of potential rail station park and ride locations on residential areas.
  - c. Seek agreements to limit future rail spur locations to commercially zoned land.

## Housing Policies

- 
1. The City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.
    - a. Maintain and expand areas zoned for residential uses including A-1, R-1, MH.
    - b. Limit encroachment of non-residential uses into residential areas.
    - c. Encourage residential zoning of parcels with residential use.
  2. The County and City shall encourage mixed use development and redevelopment which incorporates housing.
    - a. Encourage rezoning land in the Edith Boulevard, Mid-North Valley East subareas for residential and mixed uses.
  3. The City and County shall promote lower-income rehabilitation projects in neighborhoods with existing moderately-priced homes and areas vulnerable to land speculation, redevelopment, and displacement of lower-income residents.
    - a. Expand efforts to leverage private investment in housing programs for lower-income North Valley residents and target resources to assistance of very low-income renters.
    - b. Study the implications and impacts of accessory apartments in some residential areas.
    - c. Undertake a survey to compile reliable data on incomes and housing cost burdens for North Valley households.
  4. The County and City shall remove disincentives, provide incentives, and/or require housing development which meets the Cluster Housing Principles of preserving open land, providing new housing at appropriate densities, lower infrastructure costs, and design flexibility and creativity.
    - a. Amend the City Zoning Ordinance to add cluster principles and reduce the cluster housing district "minimum district size" in RA2 to two acres.
    - b. Amend the County Zoning Ordinance to add cluster principles and to include Cluster Housing as a Special Use.

A-4



# North Valley Area Plan Summary

*The North Valley is a precious area, cherished in the minds of all. The metropolitan area has a real opportunity to retain a special and unique character, distinct from other cities. The mountains, the volcanoes, and pueblo lands define our limits. The ribbon of valley piercing the city offers a startling possibility of refreshing change within the metropolitan matrix. Few metropolitan areas have a comparable resource. And the forward thinking among those cities have acted to preserve and enhance their assets. This plan attempts to protect and enhance the unique qualities of the valley, simultaneously enriching the metropolitan area as a whole.*

*Jonathan Siegel, CATF Member*

## Goals and Issues

Goals and issues related to the plan area were identified by the North Valley Citizens' Advisory Task Force and technical staff and published in January 1988. The North Valley Area Plan Goals are listed below.

1. To recognize the North Valley area as a unique and fragile resource and as an inestimable and irreplaceable part of the entire metropolitan community.
2. To preserve and enhance the environmental quality of the North Valley Area by:
  - a) maintaining the rural flavor of the North Valley
  - b) controlling growth and maintaining low density development
  - c) providing a variety of housing opportunities and life styles including differing socioeconomic types
  - d) reducing noise level impacts
3. To preserve air, water and soil quality in the North Valley area. To prohibit hazardous waste disposal sites and transfer stations and solid waste disposal sites; and to address problems of individual waste disposal systems on lots of inadequate size.

# Introduction

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*If you want to see where you are, you will have to get out of your space vehicle, out of your car, off your horse, and walk over the ground. On foot you will find the earth is still satisfyingly large, and full of beguiling nooks and crannies.*

- Wendell Berry

*These places we forget and rediscover are the best. These spots under our overpasses, over the tree canopy, and behind the parking lots. The valley has many such places. \**

## The Unique Identity of the North Valley

Albuquerque's North Valley area faces choices about its future. The urbanization of the mesas on either side of this portion of the valley may have the consequences of permanently altering the valley's physical and historic features in ways not intended. These features provide Albuquerque with much of its community identity.

Certain physical and historic features make the valley unique. The irrigation ditches (or acequias), drainage ditches, old homes and village areas, open fields, cottonwood trees and bosque, and the river distinguish valley lands from those of the nearby mesas. They are visible reminders of the valley's long history of agriculture and of the fact that the area is a low lying river valley. Neglect and a failure to appreciate these qualities will likely destroy them. An alternative is the integration and celebration of these features. Examples of both approaches can be seen in the North Valley today.

The Comprehensive Plan is a policy framework for making choices about issues of metropolitan-wide importance. An area plan is needed to state the choices specific to the valley within this policy framework.

Certain physical and historic features make the valley unique.

*\*Except where otherwise noted, the quotes throughout the text were made anonymously by technical team members, Citizen Advisory Task Force members, and valley residents.*

**PLANNING DEPARTMENT**  
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Office (505) 924-3860 Fax (505) 924-3339

## **OFFICIAL NOTIFICATION OF DECISION**

December 12, 2019

Edward T. Garcia  
c/o Garcia Auto Group LLC  
8100 Lomas Blvd NE  
ABQ, NM 87110

**Project# 2019-002629 (1011232)**  
17EPC-40011 Zone Map Amendment (Zone Change)

### **LEGAL DESCRIPTION:**

The above action for all or a portion of Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35, zoned M-1 and R-1 to C-2 and R-2, located North of I-40 and East of Rio Grande Blvd. between the Alameda Drain and Campbell Ditch, containing approximately 20 acres. (H-13) Staff Planner: Russell Brito

On December 12, 2019 the Environmental Planning Commission (EPC) voted to approve Project 2019-002629 (1011232), 17EPC-40011, a Zone Map Amendment (Zone Change), based on the following findings:

1. This is a request for a Zone Map Amendment (Zone Change) for Tracts 224D3B, 225B2A1A1 & 226C2B, 225B2A1A2, 225B2B, 225B2C, 225B2D, 225B2E, 225B2F & 225B2A2, 225B2G, 225B2H, 225B2I, 226A, 227, 228, 232, 233A, 236-A, 236-B, and Land of J A Garcia Tract A, MRGCD Map #35 located north of Interstate 40 and east of Rio Grande Blvd between the Alameda Drain and Campbell Ditch and containing approximately 20 acres.
2. The subject site is currently zoned a combination of R-1 (Residential Zone) and M-1 (Light Industrial Zone). The request is for a zone change for approximately 11.61 acres to C-2 (Community Commercial Zone) and 7.85 acres to R-2 (Residential Zone). The R-2 zone would allow townhomes and apartments in addition to what is currently allowed under the R-1 designation, and the C-2 zone would allow for a wide variety of office, commercial and service, and some institutional uses generally of a lower intensity than is allowed by the existing M-1 zone.
3. The existing R-1 zoning is the original zoning of the subject site. The M-1 zoning was the subject of a zone change request in 1957 (Z-440) and pre-dated the existence of I-40.

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4. The 2017 Albuquerque/Bernalillo County Comprehensive Plan (Comp Plan), North Valley Area Plan, Alameda Drain and Trail Master Plan, and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is just northwest of the I-40 and Rio Grande Blvd interchange, which is the nexus of three Comp Plan Corridors: Rio Grande Blvd immediately west of the subject site from I-40 going north and then east on Indian School Road is a Multi-Modal Corridor; Rio Grande Blvd south of I-40 and heading west on I-40 is a Major Transit Corridor; and I-40 east of Rio Grande Blvd is a Commuter Corridor.
6. The subject site is within both the Area of Change and the Area of Consistency of the Comp Plan. The request is in compliance with and furthers the following applicable goals and policies of the Comprehensive Plan:

Policy 5.1.1 Desired Growth: Capture regional growth in Centers and Corridors to help shape the built environment into a sustainable development pattern.

(c) Encourage employment density, compact development, redevelopment, and infill in Centers and Corridors as the most appropriate areas to accommodate growth over time and discourage the need for development at the urban edge.

The request furthers Policy 5.1.1 c) because the subject site is a large infill site in close proximity to multiple corridor types, including Major Transit, and the change in zoning will allow for additional employment and housing density in a location not at the urban edge.

Policy 5.1.10 Major Transit Corridors: Foster corridors that prioritize high-frequency transit service with pedestrian-oriented development.

(b) Minimize negative impacts on nearby neighborhoods by providing transitions between development along Transit Corridors and abutting single-family residential areas.

The request furthers Policy 5.1.10 b) because the requested zone change creates a step-down from more intense commercial uses adjacent to I-40 and Rio Grande Boulevard to medium density residential down to single-family residential to the north.

(c) Encourage mixed-use development in Centers and near intersections.

The request furthers Policy 5.1.10 c) because the combination of Community Commercial and medium density multi-family development would foster more active mixed-use development near the intersection of three different Comprehensive Plan corridor types at the I-40 and Rio Grande Blvd interchange.

Policy 5.2.1 Land Uses: Create healthy, sustainable, and distinct communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

(a) Encourage development and redevelopment that brings goods, services, and amenities within walking and biking distance of neighborhoods and promotes good access for all residents.

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The request furthers Policy 5.2.1 a) because the requested zone change will facilitate redevelopment of long vacant land with goods, services, and amenities that is accessible to nearby residents within the Los Duranes neighborhood, as well as farther away, via walking and along a number of existing and proposed bicycle facilities.

(b) Encourage development that offers choice in transportation, work areas, and lifestyles.

The request furthers Policy 5.2.1 b) because the subject site is within ¼ mile of multiple transit stops, adjacent to convenient bicycle facilities, and close to a major interchange between I-40 and an arterial roadway that offers easy access for automobiles allowing for choice in transportation and lifestyles for both those residents living in the proposed development and those who live elsewhere and will travel to the development for employment and other activities.

(d) Encourage development that broadens housing options to meet a range of incomes and lifestyles.

The request furthers Policy 5.2.1 d) because changing some of the zoning from R-1 to R-2 will allow for a wider variety of housing options than currently exists on the subject site including single-family houses, townhomes, and medium density apartments.

(e) Create healthy, sustainable communities with a mix of uses that are conveniently accessible from surrounding neighborhoods.

The request furthers Policy 5.2.1 e) because the combination of R-2 and C-2 zoning requested allows for a wide mix of uses that will benefit the surrounding neighborhoods that can access the site via automobile, transit, bicycle, or walking.

(f) Encourage higher density housing as an appropriate use in the following situations:

iii. In areas where a mixed density pattern is already established by zoning or by use, where it is compatible with existing area land uses, and where adequate infrastructure is or will be available;

iv. In areas now predominately zoned single-family only where it comprises a complete block face and faces onto a similar or higher density development;

v. In areas where a transition is needed between single-family homes and much more intensive development;

The request furthers Policy 5.2.1 f) because it includes higher density housing at the subject site in an area with a mix of uses already established, infrastructure in place, is of a size comparable to an entire block face, and will abut and be a transition between more intensive commercial development and existing developed single-family homes.

(n) Encourage more productive use of vacant lots and under-utilized lots, including surface parking.

The request furthers Policy 5.2.1 n) because it will facilitate redevelopment of long vacant and under-utilized lots.

Policy 5.3.1 Infill Development: Support additional growth in areas with existing infrastructure and public facilities.

The request furthers Policy 5.3.1 because rezoning the vacant subject site supports growth in an infill location surrounded by existing infrastructure including paved roads and various utilities.

Policy 5.6.1 Community Green Space: Provide visual relief from urbanization and offer opportunities for education, recreation, cultural activities, and conservation of natural resources by setting aside publicly-owned Open Space, parks, trail corridors, and open areas throughout the Comp Plan area as mapped in Figure 5-3.

(a) Maintain existing irrigation systems as Community Green Space and to help ensure agricultural lands in rural areas.

The request furthers Policy 5.6.1 a) because the development will maintain and enhance the Alameda Drain and Campbell Ditch adjacent to the subject site thus offering recreation and some visual relief from the surrounding urbanization, as well as contributing to the vision for this section of the Alameda Drain as described in the Alameda Drain and Trail Master Plan.

Policy 5.6.2 Areas of Change: Direct growth and more intense development to Centers, Corridors, industrial and business parks, and Metropolitan Redevelopment Areas where change is encouraged.

(b) Encourage development that expands employment opportunities.

The request will allow for development of long vacant parcels with a more productive use, including commercial uses that will expand employment opportunities on land that is partially designated as an Area of Change thus furthering Policy 5.6.2 b).

(c) Foster a range of housing options at various densities according to each Center and Corridor type.

The request includes R-2 zoning, which allows for a variety of housing options and densities up to medium density apartments thus furthering Policy 5.6.2 c).

(d) Encourage higher-density housing and mixed-use development as appropriate land uses that support transit and commercial and retail uses.

The request furthers Policy 5.6.2 d) because the combination of R-2 and C-2 zoning requested will allow for higher-density housing and mixed-use development that will support transit along Rio Grande Boulevard, as well as supporting the existing and future commercial and retail uses in the area.

(f) Minimize potential negative impacts of development on existing residential uses with respect to noise, stormwater runoff, contaminants, lighting, air quality, and traffic.

The proposed zoning steps down in intensity from south to north and development of the vacant parcels will add an additional buffer between the existing residential and Interstate 40. Future development proposals will need to address stormwater, lighting that is in compliance with

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Night Sky and zoning regulations, and traffic circulation. In particular, a Traffic Impact Study has been completed for all of the proposed Rio Grande Crossing and shows that the transportation system can support this request thus furthering Policy 5.6.2 f).

(g) Encourage development where adequate infrastructure and community services exist.

The request furthers Policy 5.6.2 g) because redevelopment of the subject site will utilize existing available infrastructure including water, sewer, and electricity, as well as better utilizing other existing services as an infill location rather than new edge development.

Policy 5.6.3 Areas of Consistency: Protect and enhance the character of existing single-family neighborhoods, areas outside of Centers and Corridors, parks, and Major Public Open Space.

(b) Ensure that development reinforces the scale, intensity, and setbacks of the immediately surrounding context.

The requested R-2 and C-2 zones reinforce the surrounding context by allowing similar uses and intensities of development as the commercial zoning to the west and R-3 to the east, as well as creating a step-down transition of intensities to the existing R-1 located to the north of the subject site, so the request furthers Policy 5.6.3 b).

(c) Carefully consider zone changes from residential to non-residential zones in terms of scale, impact on land use compatibility with abutting properties, and context.

A portion of this request is to change the zoning from residential to commercial, and it has been considered carefully based on its context. The proposed zones are compatible with and reinforce the land uses on properties located immediately east and west of the subject site and step down in intensity to the properties to the north including leaving a portion of the applicant's property zoned R-1 to maintain land use compatibility thus furthering Policy 5.6.3 c).

Policy 5.6.4 Appropriate Transitions: Provide transitions in Areas of Change for development abutting Areas of Consistency through adequate setbacks, buffering, and limits on building height and massing.

(a) Provide appropriate transitions between uses of different intensity or density and between non-residential uses and single-family neighborhoods to protect the character and integrity of existing residential areas.

The request furthers Policy 5.6.4 a) because the applicant has made a request with appropriate variations in housing densities and commercial intensity in appropriate locations as to effectively transition to the existing residential areas to the north of the subject site. In addition, the applicant will need to comply with all zoning standards for setbacks, height, landscaping, and buffering when the site is eventually developed.

Policy 9.1.1 Housing options: Support the development, improvement, and conservation of housing for a variety of income levels and types of residents and households.

(a) Increase the supply of housing that is affordable for all income levels.

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The request furthers Policy 9.1.1 a) because the requested R-2 zone allows for a variety of housing types and densities such as single-family houses, townhomes, and apartments that allows for free-market housing options to suit various income levels.

(e) Provide for the development of quality housing for elderly residents.

The applicant indicates a desire to develop a senior living facility as allowed by the requested zoning that will provide for quality housing for elderly residents thus furthering Policy 9.1.1 e).

(i) Provide for the development of multi-family housing close to public services, transit, and shopping.

The request for R-2 adjacent to C-2 will allow for development of multi-family housing immediately adjacent to shopping options, and the proposed development will be in close proximity to transit options along Rio Grande Boulevard, so the request furthers Policy 9.1.1 i).

Policy 9.3.2 Other areas: Increase housing density and housing options in other areas by locating near appropriate uses and services and maintaining the scale of surrounding development.

(a) Encourage higher density residential and mixed use development as appropriate uses near existing public facilities, educational facilities, job centers, social services, and shopping districts.

The proposed mixed-use development is near to existing public facilities, educational facilities, job centers, and shopping districts such as Duranes Elementary School, which has capacity, the Indian Pueblo Cultural Center and new development along 12<sup>th</sup> Street between Menaul and I-40, and Old Town thus furthering Policy 9.3.2 a).

(b) Encourage multi-family and mixed use development in areas where a transition is needed between single-family homes and more intense development.

The request furthers Policy 9.3.2 b) because the proposed multi-family zoning is a transition between existing single-family residential and the proposed C-2 zoning and the Interstate 40 corridor.

Policy 10.1.1 Distribution: Improve the community's access to recreational opportunities by balancing the City and County's parks and Open Space systems with the built environment.

The requested zone change will help better balance the parks and Open Space system by establishing more active commercial uses adjacent to the Alameda Drain and Trail system, which will encourage more users and activation of the future trail facility thus furthering Policy 10.1.1.

Policy 12.1.5 Irrigation System: Coordinate with MRGCD and other stakeholders to protect the irrigation system.

The request furthers Policy 12.1.5 because, in addition to being a stakeholder as a property owner abutting the Alameda Drain, the applicant has forged a relationship with MRGCD to support and protect the irrigation system abutting the subject site by improving access and generally supporting development of the Alameda Drain and Trail Master Plan.

Policy 13.5.1 Land Use Impacts: Prevent environmental hazards related to land uses.



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(b) Protect public health, safety, and welfare by discouraging incompatible land uses in close proximity, such as housing and industrial activity.

The request furthers Policy 13.5.1 b) because it will replace an incompatible industrial zone that is currently adjacent to residential with a more appropriate commercial zone, while creating an effective transition from the busy I-40 corridor and the commercial zoning down to the lower density single-family residential north of the subject site.

7. The subject site is within the boundaries of the North Valley Area Plan. The request generally furthers the North Valley Area Plan goals and policies by:
  - a. providing a variety of choices for housing and lifestyles,
  - b. planning to address land use conflicts such as between industrial and residential zoning,
  - c. redevelopment of vacant land,
  - d. promoting higher density development where there is adequate infrastructure,
  - e. encouraging mixed use development,
  - f. promoting development that encourages more sustainable transportation options, and
  - g. The requested C-2 zone is not in significant conflict with purported NVAP limitations on commercial development because the most applicable Goal/Policy language (Goals 6 and 11, page 6) does not limit commercial development on the subject site. Any perceived or alleged limitation on commercial development in the Rank II NVAP is tempered and superseded by the Policy direction of the Rank I Comp Plan, per Section 14-13-2-2 Rank Importance of City Plans.
8. The subject site abuts the Alameda Drain on its west side, so considerations of the Alameda Drain and Trail Master Plan apply. The Alameda Drain and Trail Master Plan is primarily concerned with the design and routing of the proposed trail along the Alameda Drain, but it contemplated the future development of the subject site in its narrative stating the southern portion of the trail is fronted by vacant properties “with potential commercial uses.” The request furthers the Master Plan because the proposed development offers an opportunity to create additional amenities along the trail corridor, as well as provide access and a destination for future trail users.
9. The zone change request has been justified pursuant to *R-270-1980* as follows:
  - A. The applicant’s justification letter and the policies cited and analyzed in Findings 6 through 8 substantiate the claim that the request is consistent with the health, safety, morals, and general welfare of the city.
  - B. The proposed zoning categories allow for similarly intense uses as those surrounding the subject site – commercial to the west and multi-family residential to the east – and the request lays them out in a thoughtful manner stepping the intensity of the freeway to commercial zoning, followed by a medium density multi-family transition to the existing single-family residential located to the north of the subject site, which improves land use stability not found with vacant properties and industrial zoning adjacent to single-family residential.

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- C. The request is consistent with and furthers adopted plans and policies, including the Comprehensive Plan, North Valley Area Plan, and Alameda Drain and Trail Master Plan as summarized in Findings 6 through 8.
- D. The existing zoning is inappropriate because it predates significant changes in the area, as well as the existing M-1 in particular being in an inappropriate location abutting single-family residential. Changed community conditions include the routing of Interstate 40 and the adoption of the Los Duranes Sector Development Plan by the City. The industrial zoning of the subject site was bisected by Interstate 40 when the highway was built, and the remaining portion is too small and inappropriately close to residential to be properly developed and utilized. Adoption of the plan, which affected the properties on the west side of the Alameda Drain and are not a part of this request, created zoning along Rio Grande Boulevard that allows for a mix of uses. The requested zone change would extend a mix of commercial and residential uses farther east and could lead to a more cohesive development with those other properties to the west. In addition, as shown in the policy analysis, the request furthers numerous policies of the Comprehensive Plan and generally supports the North Valley Area Plan and Alameda Drain and Trail Master Plan, so the requested use categories are more advantageous to the community.
- E. The proposed R-2 and C-2 zones allow uses that will not be harmful to the adjacent property, neighborhood, or community because the uses of these two zones are the same or less harmful than the uses already allowed on the subject site in the M-1 zone or in the adjacent R-3 zone to the east and the SU-2 LD MUD-2, which refers to the C-2 zone to the west. Given the context of the site, the down-zoning of 5.29 acres of M-1 to C-2 associated with the 6.32 acres of new C-2, and the proposed zoning pattern with transitions of use intensity from I-40 northward, none of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community because many of the commercial uses are either already allowed in some fashion by the existing M-1 zoning and/or any adverse impacts of the C-2 uses will be addressed by site design requirements, distance separation requirements, required off-site infrastructure (vehicular access) per use and intensity, and/or by required landscape and buffering, including the new R-2 buffering proposed by the Applicant. A table of the M-1 and C-2 permissive uses is attached to and incorporated in these findings.
- F. Approval of the requested amendment will not require any capital improvements because the site is located in an area that already has infrastructure. If future development requires additional infrastructure the applicant will have to make those improvements themselves.
- G. Economic considerations are not the determining factor in the request, rather the request is justified based on changed community conditions and being more advantageous to the community in accordance with the policies of the Comprehensive Plan.
- H. The subject site does not front directly onto any major street except for I-40, which does not allow for direct access, and the request is not justified by the location. The request is justified based on changed community conditions and as being more advantageous to the community as articulated by the Comprehensive Plan.
- I. The request is not creating a small area of zoning different from the surrounding zoning, so the request does not constitute a spot zone.

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- J. The request is not for a strip of land along a street, so it does not constitute a request for strip zoning.
- 10. The Near North Valley, Sawmill Area, Los Duranes, and West Old Town Neighborhood Associations, Symphony HOA, and the North Valley Coalition, as well as property owners within 100 feet were notified of the request, as required.
- 11. A facilitated meeting was held on May 23, 2017. The meeting report submitted by the facilitator indicates a primary concern of the neighbors related to traffic and what the impacts development of commercial uses on the subject site will have on Rio Grande Blvd and the I-40 interchange, including a request that the application be deferred until a Traffic Impact Study can be completed. Other questions and comments included discussion about the height and density allowed by the R-2 zone, as well as the possibility of a grocery store and what type it could be.
- 12. Staff has talked with numerous individuals about the request in person or over the phone indicating varying levels of support and concern over aspects of the proposal. Six written letters of support were received before the June 8, 2017 hearing, as well as four letters in opposition to the request – two of which are from the owner and family of the closest neighboring R-1 zoned properties. The letters in opposition question the intensity and allowed uses of the C-2 zone, as well as reiterate the traffic concerns that were discussed extensively at the facilitated meeting.
- 13. At its June 8, 2017 hearing, the EPC voted to defer the request to the July 13, 2017 hearing to allow for continued discussion with affected neighbors regarding traffic and other issues related to the development proposal.
- 14. Since the deferral, approximately 32 more written public comments were received. Six of these comments are in support of the request with an additional two comments from the Los Duranes Neighborhood Association and homeowners within the Symphony subdivision offering conditional support.
- 15. 17 letters are opposed and three ask for another deferral related to continued concerns related to traffic, the potential closure of the Campbell Ditch to accommodate vehicular ingress/egress, the scale of development and density allowed by the requested zones, and the proposal taking away from the rural character of the North Valley.
- 16. Four letters take a more neutral tone asking questions and offering possible solutions to concerns that have been raised.
- 17. A Traffic Impact Study (TIS) was not required by Transportation Development for this zone change request; however, in the time since the deferral, the applicant has completed a TIS showing the impacts of their proposed development on the surrounding transportation system. The TIS shows there is sufficient capacity on Rio Grande Blvd. to handle the additional trips generated by the proposed development.
- 18. A second TIS was completed looking at the use of the Campbell Ditch alignment for ingress/egress, and it was shown that such a connection did not yield enough benefit to warrant an alternative connection.

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19. The requested C-2 zoning is greater than 5 acres in size, which under the current Zoning Code would constitute a Shopping Center site and future development would have to comply with those regulations.
20. The Environmental Planning Commission (EPC) approved the requested zone change at the July 13, 2017 hearing. That decision was appealed to City Council, who in October 2017 accepted the Land Use Hearing Officer's recommendation to deny the appeal. The City Council's decision was appealed to District Court.
21. The Second Judicial District Court affirmed the City Council's decision to grant the zone map amendment request in January 2017 except for two items that are remanded back to the City for further consideration:
  - 1) Whether the proposed C-2 zone is in significant conflict with purported NVAP limitations on commercial development; and
  - 2) Whether some of the permissive uses of the proposed C-2 zone would be harmful to adjacent property, neighborhood, or community
22. The applicant has replatted the site and created lot lines that correspond to the proposed zoning boundaries as accurately shown on Exhibit 1 of the applicant's Appendix to the July 29, 2019 letter.
23. The EPC approved the requested zone change at the August 8, 2019 hearing. That decision was appealed by two parties to the City Council. The Land Use Hearing Officer (LUHO) heard the appeals jointly in September 2019 and the City Council voted to remand the case back to the EPC per the recommendation of the LUHO.
24. The City Council's remand of this case related to appeals AC-19-14 and 15 required notice be sent to owners of property within 100 feet of the subject site per Zoning Code section 14-16-4-1(C)(6)(b). As has been the practice since at least 2013, the Planning Department put the burden of the notification requirement on the applicant, both the expense and the mailing.
25. 93 Certified Mail notices were sent to owners of property within 100 feet of the subject site as required and also to contact persons for the 7 nearest Neighborhood Associations.
26. The Planning Department received letters of support and opposition to the request. Concerns and issues raised include traffic, air quality, and neighborhood character, which are all items most appropriately addressed with subsequent site plan review.

APPEAL: If you wish to appeal this decision, you must do so within 15 days of the EPC's decision or by **December 27, 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

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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).

Sincerely,

Brennon Williams  
Planning Director

BW/CL

cc: Edward T. Garcia, co/o Garcia Auto Group LLC, 8100 Lomas Blvd NE, ABQ, NM 87110  
Design Workshop Inc 120 East Main Street, Aspen, CO 81611  
Near North Valley NA, Joe Sabatini, 3514 6<sup>th</sup> St. NW, ABQ, NM 87107  
Near North Valley NA, Randy Cole, 1501 Los Arboles NW, ABQ, NM 87107  
Sawmill Area NA, Julie Henss, 1724 Band Saw Pla. NW, ABQ, NM 87104  
Sawmill area NA, Dianne Jones, 1400 Lumberton Dr. NW, ABQ, NM 87104  
Los Duranes NA, Jose Viramontes, 1317 Gabaldon Dr NW, ABQ, NM 87104  
Los Duranes NA, William C. Herring, 3104 Cocoa Rd NW, ABQ, NM 87104  
Symphony HOA, Inc. Charles Hostetler, 1908 Allegretto Trol NW, ABQ, NM 87104  
Symphony HOA Inc. Bernadette Sanchez, 2012 Allegretto Trl. NW, ABQ, NM 87104  
West Old Town NA, Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104  
West Old Town NA, Glen Effertz, 2918 Mountain Rd. NW, ABQ, NM 87104  
North Valley Coalition, Peggy Norton, PO. Box 70232, ABQ, NM 87197  
North Valley Coalition, Doyle Kimbrough, 2327 Campbell Rd. NW, ABQ, NM 87104  
Ed Paschich, 1512 Summer Ave. NW, ABQ, NM 87104  
Felice Garcia, 1024 Forrester NW, ABQ, NM 87102  
Kathleen Allen, 721 17<sup>th</sup> St NW, ABQ, NM 87104  
Patricia Allen, 1900 Lilac NW, ABQ, NM 87104  
John Wright, 2220 Wilma Rd NW, ABQ, NM 87104  
Ben M. Barreras, 2801 Carson NW, ABQ, NM 87104  
Mimi Lopez, 1209 Amado St. NW, ABQ, NM 87104  
Harold & Nancy Magnusson, 1309 Fruit Ave NW, ABQ, NM 87104  
Anaya Law LLC, Attn: Edward M. Anaya, 1728 Ocean Avenue #240, SF, CA 94112  
Deborah Ridley, TVNA Board of Directors, 3247 Calle de Deborah NW, ABQ, NM 87104  
Ed Mahr, 1331 Park SW, ABQ, NM 87102  
Gary Pierson, 3819 Palacio Del Rio Grande, ABQ, NM 87107  
GP Benjamin Lovato, 2820 Azar Pl. NW, ABQ, NM 87104  
David Lopez, 2416-B Rice NW, ABQ, NM 87104  
Paul Gallegos, 3021 Mackland Ave NE, ABQ, NM 87106

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Theresa Anaya, 2708 Los Anayas Rd NW, ABQ, NM 87104  
Doyle Kimbrough, 2327 Campbell Rd NW, ABQ, NM 87104  
Dennis Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104  
Tim & Sandy Pederson, 1918 Indian School Rd NW, ABQ, NM 87104  
Linda Lapcik, 1916 Indian School Rd NW, ABQ, NM 87104  
Carla Baron, 990 18<sup>th</sup> St NW, ABQ, NM 87104  
Janet Harman, 2432 Rose Ave NW, ABQ, NM 87104  
Jason Kent 2021 Mountain Rd NW, ABQ, NM 87104  
Roger Melone, 2822 Euclid Ave NE, ABQ, NM 87106  
Dimian DuSanti, 2419 Floral NW, ABQ, NM 87104  
Matt Digregory, P.O. Box 914, Placitas, NM 87043  
Connie Nellos, 2717 Sheridan St NW, ABQ, NM 87104  
Charlotte Walton, 3608 Amber Dr. NW, ABQ, NM 87107  
Joe Sabatini, 3514 6<sup>th</sup> St NW, ABQ, NM 87107  
Sarah Robinson, 1920 Indian School Rd NW, ABQ, NM 87104  
Nathan Bush, 1920 Indian School Rd NW, ABQ, NM 87104  
Darlene Anaya 2000 Lilac Dr. NW, ABQ, NM 87104  
Rachel Anaya, 2000 Lilac Dr NW, ABQ, NM 87104  
Edward Anaya 2000 Lilac Dr NW, ABQ, NM 87104  
David Martinez, 1801 Rio Grande NW, ABQ, NM 87104  
Marit Tully, 1107 La Poblana NW, ABQ, NM 87107  
Jodi Colchamiro, 2525 Zearing Ave NW, ABQ, NM 87104  
Alex Allen, 717 17<sup>th</sup> St, ABQ, NM 87104  
Rich Baca, 9805 Kokopelli Dr NW, ABQ, NM 87114  
John Roche, 1814 Old Town Rd, NW, ABQ, NM 87104  
Christina Blatchford, 1009 18<sup>th</sup> St NW, ABQ, NM 87104  
Ed Garcia, 4200 Aspen NE, ABQ, NM 87110  
Christine Dilks, 2458 Rose NW, ABQ, NM 87104  
Jackie Fishman, 1820 Gabaldon NW, ABQ, NM 87104  
Alan Varela, [avarela@cabq.gov](mailto:avarela@cabq.gov)  
Sheilah Garcia, 8301 Lomas NE, Albuquerque NM 87110  
Ginny Liddlecoat, 2127 Paseo Del Prado, Albuquerque NM 87104  
Carl Gonzales, 2000 Lento Way NW, Albuquerque NM 87104  
Patricia Stelnzer, 3521 Campbell Ct. NW, Albuquerque NM 87104  
Peggy Norton, 3810 11<sup>th</sup> Street NW, Albuquerque NM 87107  
Angelicia Allen, 1900 Lilac NW, Albuquerque NM 87104  
Jamie Jaramillo, 2001 Allegnetto Trail NW, Albuquerque NM 87104

Attachments: C-2 and M-1 Permissive Uses Lists

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**M-1 permissive uses under § 14-16-2-20(A):**

(1)	All C-2 Permissive Uses
(2)	All C-3 Permissive Uses
(3)	All IP (Industrial Park) Permissive Uses <b>PLUS</b>
(4)	Manufacturing
(5)	Adult amusement/adult book stores
(6)	Vehicle dismantling
(7)	Truck terminal
(8)	Commercial agriculture, including poultry and rabbit killing/dressing
(9)	Antenna, unlimited height
(10)	Concrete batch plant
(11)	Storage yard, gravel stockpiling
(12)	Trailer sales
(13)	Bottling plant
(14)	Ice plant
(15)	Cold storage
(16)	Dry cleaning plant
(17)	Construction/farm equipment sales

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**Table of C-2 Permissive Uses under § 14-16-2-17(A)**

Sub #	Use
(1)	Antenna (up to 65 feet)
(2)	Clinic
(3)	Copying, blueprinting
(4)	Institution (club, day-care, library, school, museum)
(5)	Office
(6)	Park-and-ride temporary facilities
(7)	Public utility structure
(8)	Residential uses permissive in R-3 Zone (subject to conditions)
(9)	Sign, off-premise (subject to conditions)
(10)	Sign, on-premise (subject to conditions)
(11)	Radio or television studio or station
(12)	Recycling bin (accessory use)
(13)	Retailing of consumer products and services
	<b>Excluding:</b>
	• Adult amusement/adult book stores §14-16-2-17(A)(13)
	• Hospitals for humans §14-16-2-17(A)(13)
	• Transit facilities §14-16-2-17(A)(13)
	• Auto dismantling §14-16-2-17(A)(13)(s)
	• Sheet metal working §14-16-2-17(A)(13)(s)
	• Tire retreading §14-16-2-17(A)(13)(s)
	<b>Including, subject to specified conditions:</b>
(13)-a	• Alcoholic drink sales for consumption off-premises (subject to conditions)
(13)-b	• Vehicle sales, rental, service, repair and storage (subject to conditions, excluding truck terminal)
(13)-c	• Banking, loaning money, including pawn
(13)-d	• Building materials (subject to conditions)
(13)-e	• Temporary circus or carnival operation (only 7 days per year)
(13)-f	• Drive-in restaurant (subject to conditions)
(13)-g	• Dry cleaning, laundry, clothes pressing (subject to conditions)
(13)-h	• Flowers and plants
(13)-i	• Gasoline, oil, and liquefied petroleum gas retailing (excluding truck terminal)
(13)-j	• Golf driving range, miniature golf course, baseball batting range (subject to conditions)
(13)-k	• Hospital for animals (subject to conditions)
(13)-l	• One mobile home for watchman or caretaker on same lot with otherwise permitted commercial uses (subject to conditions)
(13)-m	• Parking lot, as regulated in O-1 zone
(13)-n	• Pet shop
(13)-o	• Restaurant, including outdoor seating
(13)-p	• Sample dwelling unit used to sell similar dwelling units
(13)-q	• Second-hand store (subject to conditions)
(13)-r	• Stand or vehicle selling fruit, vegetables or nursery stock, up to 90 days per year
(14)	Temporary storage incidental to on-site construction
(15)	Wholesaling of jewelry
(16)	Otherwise permitted uses but in a tent, temporarily for 7 days twice per year
(17)	Wireless telecommunications facility (subject to conditions)