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

APPEAL NO. AC-26-01
PR-2022-007712, SP-2025-00093

The Pueblo of Santa Clara, the
Pueblo of Laguna, and the West Side
Coalition of Neighborhood Associations, Appellants,

and

Jubilee Developments, LLC, Applicants-Appellees.

PROPOSED DECISION

I. INTRODUCTION

This is an appeal regarding the city of Albuquerque's Environmental Planning Commission's (EPC) approval of a site plan. Since 2022, the land on which the site plan in this appeal pertains has been the subject of multiple previous decisions and appeals culminating in a New Mexico Court of Appeals remand of the site plan to the EPC. The detailed history is somewhat cumbersome, but it must be summarized and discussed to fully understand some of the Appellants' claims of error in this appeal.

However, after reviewing the record in full, holding a quasi-judicial hearing on the appeal, a hearing in which the Appellants and others were afforded an opportunity to testify, cross examine testimony, and supplement the record, I respectfully recommend that the City Council deny the Appellants' claims of appeal. As discussed in detail below, the EPC's decision is well supported with substantial evidence in the record. Conversely, the Appellants have not met their minimal burdens of proof under the IDO to support their appeal on any of the issues presented. What follows is a brief discussion of the relevant factual and procedural history, a discussion of the standard of appellant review, and a detailed discussion of the facts and the IDO criteria applicable to the application issues presented by the Appellants.

Although the history of the land involved in this appeal is extensive, a complicating factor intwined in this appeal involves the antecedent question about whether any of the Appellants should be dismissed from this appeal for lack of standing under the *April 2025 IDO*. Because an Appellant's lack of standing under the IDO will preclude administrative appellate relief, the Appellants' standing is a threshold question that must be resolved before the substantive merits of the appeal can be discussed. See generally, IDO, § 6-4(U)(2).[1]

II. RELEVANT BACKGROUND

The site plan which is the subject of the EPC's approval decision encompasses 9.5477 acres of land and is located at the Northwestern corner of Kimmick Drive and Rosa Parks

1. The April 2025 Amended IDO is applicable in this matter.

Road, NW (hereinafter the "Jubilee site") **[R. 106]**. Under the IDO, the Jubilee site is zoned MX-L for low intensity mixed uses **[R. 107]**. How the 9.5477 acre Jubilee site was created involves a complicated procedural history in of itself and, except for the final platting of it, is mostly undisputed.[2] Chronologically, prior to the IDO's enactment in 2017, the land which is the subject of this appeal was part of a larger tract of land encompassing approximately 18.5 acres of land **[R. 111]**. This fact is undisputed. There was also an approved site plan recorded with the pre-IDO plating of the land **[R. 199]**. In 2022, the then-owners of the land obtained approval of a replat of the larger tract into three smaller tracts, and the city approved a new site plan for its development **[R. 201]**. That approval was appealed to the District Court by the West Side Coalition of Neighborhood Association (WSCONA) Appellants, and after it was upheld by the District Court, the WSCONA further appealed to the Court of Appeals.[3]

In the meantime, during the pendency of the appeal, the Applicants-Appellees applied to the city's Development Hearing Officer (DHO) for approval of a final plat of the larger 18.5 acre preliminary plat, which necessarily encompassed the 9.5477 acre Jubilee site **[R. 266]**. After the DHO approved the application, the WSCONA and others appealed that decision to the City through the Land Use Hearing Officer (LUHO) **[Appeal No. AC-23-14]**. Notably, in the AC-23-14 appeal, the WSCONA appealed the preliminary plat as well as the site plan; the WSCONA alleged that because the physical site was adjacent to MPOS, the platting and the

2. As discussed further below, the Appellants contend that the platting of the tract of land that encompasses the Jubilee site is void requiring a decision that the EPC's approval of the site plan also be voided.

3. See *Westside Coalition of Neighborhood Associations and Michael Voorhees v. City of Albuquerque*, et al., No. D-202-CV-2023-02637 and *Westside Coalition of Neighborhood Associations and Michael Voorhees v. City of Albuquerque*, et al., No. A-1-CA-41831, respectively.

site plan can only be approved by the EPC not the DHO.[4]

On the grounds that the site was adjacent to MPOS, in a proposed disposition of AC-23-14, I proposed that the City Council grant the appeal and reverse the approvals of the DHO. Before the City Council ruled on the appeal, however, the Applicants-Appellees withdrew the application; the withdraw of the application resulted in the appeal being moot which resulted in the City Council not deciding on the appeal.

As a practical matter, and relevant to the appeal in this matter, the withdrawal of the application for final plat and site plan, fundamentally reestablished the *status quo* of the approved preliminary plat which was still entangled in the appeal to the Court of Appeals in *Westside Coalition of Neighborhood Associations and Michael Voorhees v. City of Albuquerque, et al.*, No. A-1-CA-41831. See Footnote 3 above. For purposes of this appeal this is a key point.

Then (before the Court of Appeals ruled on the appeal), on January 25, 2024, the Applicants-Appellees submitted to the DHO an application to finalize the preliminary plat with a new final plat **[see Appellee Ltr. Brief, p. 3]**.[5] On February 7, 2024, the DHO, held a public hearing on the final plat application and in a written decision approved the final plat **[Appellees' Ex. 3]**.[6] Then, on March 4, 2024, the final plat was subsequently filed and

4. Under the iteration of the IDO that was applicable at the time of the application and appeal, site plans that involve land adjacent to MPOS could only be approved by the EPC.

5. In this appeal, the Applicants-Appellees' attorney submitted a 26-page letter brief accompanied by Exhibits 1-10, and Exhibits A-B, essentially laying out much of the procedural history involving the platting and site plans of the larger tract of land which encompasses the Jubilee site. The Appellants did not object or otherwise dispute the history.

6. It is important to point out that a site plan was not considered by the DHO; only a final plat was approved.

recorded with the Bernalillo County Clerk **[Appellees' Ex. 4]**. The approved, filed, and recorded final plat comprised a subdivision of the larger 18.5 acre tract into Tracts 1-A and 1-B.[7]

Next, chronologically, the Applicants-Appellees applied to the DHO for approval of a major preliminary plat application to further subdivide the Northern tract 1-A into six lots.[8] On June 12, 2024, in a public hearing, the DHO approved the application. Then, the WSCONA filed a timely appeal regarding the DHO's decision allowing for the subdivision of tract 1-A **[AC-24-28, Appellee, Ex. 5]**. Principally, however, in that appeal, the WSCONA appellants also included in their appeal a collateral challenge of the DHO's February 7, 2024, previous decision of the final plat regarding the larger 18.5 acre.[9] On April 7, 2025, finding that the collateral challenge of the final plat was untimely filed, the City Council adopted the proposed disposition of the LUHO and denied the appeal as well as collateral challenge to the final plat approval. Dispositive to an appeal issue regarding the plat in this appeal (AC-26-01), the appeal of the final plat ended with the City Council's decision upholding it.

In the meantime, on September 15, 2025, the Court of Appeals ruled on the earlier pending appeal from the District Court. In a written decision, the Court of Appeals essentially held that the 18.5 acre larger tract of land as it existed then (unsubdivided into tracts 1-A and

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7. Tract 1-B comprises the Jubilee site which is the subject of this appeal.

8. Note that tract 1-A is not adjacent to MPOS. Only the Southern tract 1-B is adjacent to the MPOS.

9. In the appeal of the June 12, 2024, DHO decision, the WSCONA appellants argued that the DHO's decision approving the final plat on February 7, 2024, should be voided because notice to the WSCONA Appellants was never sent to them regarding the final plat application and February 7, 2024, hearing. The details of the facts, timeline, and issues under law are laid out in LUHO proposed disposition number **AC-24-28** which was adopted by the City Council.

1-B) was in fact adjacent to major public open space, and it further ruled that the *site plan*, not the plating, should have been reviewed by the EPC as a Site Plan-EPC. The Court of Appeals also concluded that the 18.5 acre larger parcel was not within the VPO-2 Height Restriction Sub-area of the IDO. In doing so, the Court of Appeals remanded the case to the District Court **[R. 067- 086]**. The District Court then expressly remanded the case to the City *"for a new site plan and site plan amendment evaluations under ...[the] current Integrated Development Ordinance..."* **[R. 087]** (Emphasis added).

Importantly, although that appeal involved both the preliminary plat that was approved by the Development Review Board (DRB) on November 28, 2022 and which created the tracts 1-A and 1-B, and the associated site plan and site plan amendments of the old site plan (that was adopted pre-IDO), the Court of Appeals declined to rule on the preliminary plating of the site **[R. 070]**.[10]

On November 3, 2025, in accordance with the Court of Appeals' instructions the Applicants-Appellees in this matter, for the second time withdrew their site plan application **[Appellees' Ex. 7]**. In its place, on November 11, 2025, a new application was submitted (this time) to the EPC as required by the Court of Appeals **[R. 199]**. The application only included a site plan encompassing tract 1-B (the Jubilee site). The EPC held a hearing and approved the application on December 18, 2025 **[R. 303, 088]**. This timely appeal followed **[R. 036 - 051]**.

First, both the WSCONA and Pueblo Appellants contend that the EPC did not have

10. Note also that the final plat was approved by the DHO on February 7, 2024, and although it was appealed in a collateral challenge manner, that appeal ran its course and was ultimately denied by the City Council. See footnote 8 above.

authority to approve the Site Plan-EPC because the underlying platting of the site is "invalid" or void **[R. 045]**. Specifically, the WSCONA contend that the *"replat was invalidated by the Court of Appeals (sic) reversal of the Site Plan-DRB..."* The Santa Clara Pueblo and the Pueblo of Laguna Appellants (hereinafter collectively, "Pueblo Appellants") argue that the final plat is simply "void," but failed to point to any facts in the record that would support this contention **[LUHO hrg.]**.[11]

Next, the WSCONA Appellants presented two issues regarding the evidentiary requirements for a Site Plan-EPC that they contend were not met by the EPC. First, they assert that the EPC's findings and conclusions that the site plan is only *"generally"* consistent with applicable Comprehensive Plan goals and policies and is inadequate to satisfy IDO, § 6-6(I)(3)(a). IDO, § 6-6(I)(3)(a) expressly requires that a site plan be *"consistent with"* the Comprehensive Plan **[R. 047-048]**. Next, they specifically claim that in its decision, the EPC disregarded building height restrictions under the Northwest Mesa Escarpment-View Protection Overlay 2 sub area (VPO-2) regulations of IDO, § 3-6(E).

Another issue presented by the WSCONA and Pueblo Appellants relates to IDO, § 6-4(I), Referrals to Commenting Agencies. Specifically, they contend that the "referral" of the application for comment to Indian Tribes and specifically to the Pueblo Appellants was inadequate under IDO, § 6-4(I) **[R. 048]**. The WSCONA Appellants also argue that EPC Finding Number 20 inaccurately states that *"[n]o comments were received from Indian Tribes,"* because Indian Tribes in fact did submit comments to the EPC at the hearing.

11. Relying on their oral arguments in the appeal hearing, the Pueblo Appellants did not submit written arguments.

III. STANDARD OF REVIEW

A review of an appeal under the IDO is a whole record review to determine whether the EPC's decision approving the Site Plan-EPC was fraudulent, arbitrary, or capricious under the IDO; or whether the decision is not supported by substantial evidence; or if in approving the application, the EPC erred in the facts, in applying the requirements of the IDO regulations, or in applying the Comprehensive Plan or any other applicable regulatory provision. See IDO, § 6-4(U)(3)(d). The Land Use Hearing Officer (LUHO) has been delegated the authority by the City Council to hold a quasi-judicial appeal hearing, make findings, and to propose a disposition of an appeal, including whether the decision should be affirmed, reversed, or otherwise modified to bring the decision into compliance with the standards and criteria of the IDO. If a remand is necessary to clarify or to supplement the record, or if a remand will expeditiously dispose of the matter, the City Council has delegated authority to the LUHO to remand appeals independently and directly to the original decision maker for reconsideration or for further review. IDO, § 14-16-6-4(U)(3)(d).

IV. DISCUSSION

In this matter, I first find that a remand is unnecessary. Although Appellants contend that the Pueblo Appellants and other Indian Tribes lacked an adequate "referral" for commenting on the application, as discussed below, without conjecture, there are no facts in the record to support that the referral was inadequate. This issue is discussed further in Section IV.E, below.

A. Standing of the WSCONA Appellants.

The WSCONA Appellants claim that its neighborhood association members have standing to appeal the EPC's decision under two theories for standing under IDO, § 6-4(U)(2)(a)(2) **[R. 039]**. First, they claim that they have standing based on the proximity of the physical boundaries of the association in relation to the application site under§ 6-4(U)(2)(a)(5). Second, they claim that they have standing because the proposed development contemplated in the site plan "specially and adversely affects" the "property rights or other legal rights" of property owners in the association under § 6-4(U)(2)(a)(4) **[R. 039-040]**.

Regarding standing in relation to proximity, under the recent amended April 2025 iteration of the IDO, a neighborhood association's standing under this basis of standing has changed; if a neighborhood association representatives claim that the basis of the association's standing is the proximity of its association boundaries to the application site, it must also:

> submit a petition in support of the appeal, signed by a majority of all property owners or tenants located within 660 feet of the application site, inclusive of all rights-of-way.

IDO, § 6-4(U)(2)(a)(5)(b).[12]

In this matter the WSCONA Appellants submitted a petition supporting their appeal signed by 45 residents, presumably within the WSCONA boundary and within 660 feet of the application site **[R. 042-044]**. They contend that there are 70 households within 660 feet of the application site within the WSCONA boundaries and that the petition signatures represent a majority of those 70 properties that are within 660 feet of the application site, and therefore

12. This added evidentiary showing for standing for "proximity" is only applicable to neighborhood association entities.

satisfies IDO, § 6-4(U)(2)(a)(5)(b) **[R. 040-041]**.

In this appeal, the Applicants-Appellees through counsel dispute that there are only 70 WSCONA households within 660 feet of the application site **[see Appellee Ltr. Brief, pg. 5, and Ex. 9]**. The Appellees argue that their Exhibit 9 clearly demonstrates that there are 127 residential property owners and or tenants that reside or own residential properties within 660 feet of the application site and who are within the WSCONA boundary **[R. Appellee, Ex. 9]**. The WSCONA Appellants did not dispute this evidence, and I find that the Appellees' Exhibit 9 is substantial evidence.[13] Exhibit 9 shows that the WSCONA Appellants' petition of 45 signatures is not a *"majority of all property owners or tenants located within 660 feet of the application site, inclusive of all rights-of-way."* Thus, the WSCONA Appellants have failed to sufficiently demonstrate standing under IDO, § 6-4(U)(2)(a)(5)(b) regarding their proximity to the application site.

As for standing under IDO, § 6-4(U)(2)(a)(4), the Applicant-Appellees claim that the only basis for standing of neighborhood associations, under the April 2025 IDO is through IDO, § 6-4(U)(2)(a)(5), by proving standing only by proximity. I agree. Proximity to the application site is the only manner in which neighborhood associations can have standing to appeal. If there were other manners through which a neighborhood association could demonstrate standing, the arduous test encompassed in § 6-4(U)(2)(a)(5) would be superfluous. Thus, it must be the only basis of standing under the April 2025 iteration of the IDO.

13. In the appeal hearing, the WSCONA Appellants were afforded an opportunity to testify and or make additional oral arguments but declined to do so.

The WSCONA Appellants also contend that they have standing on the basis that they were parties in the *Westside Coalition of Neighborhood Associations and Michael Voorhees v. City of Albuquerque, et al.*, No. D-202-CV-2023-02637 and *Westside Coalition of Neighborhood Associations and Michael Voorhees v. City of Albuquerque, et al*., No. A-1-CA-41831, respectively. Notwithstanding, the application in this matter is not what was appealed in the previous matters; it is an entirely new application under a new provision of standing under the current IDO which includes standing requirements that were not in the IDO in the previous appeals Although I find that WSCONA has failed to satisfy the standing requirements set forth in § 6-4(U)(2)(a)(5)(b), and that the IDO would therefore require summary dismissal of its appeal for lack of standing, I will, out of an abundance of caution, treat WSCONA as having standing and address all issues raised in its appeal for the benefit of the City Council.

B. Standing of the Pueblo Appellants.

As stated above, the petition requirement for standing is unmistakably only applicable to neighborhood associations under the IDO; it is inapplicable to the filing of an appeal by private persons, Indian Tribes or other entities. In fact, the only limitation to standing for any other party to an appeal (other than neighborhood associations) is the general limitations encompassed in § 6-4(U)(2)(a)2 and 4. These provisions generally require that a person or entity demonstrate that *"services, properties, facilities, interest, or operations **may** be affected by the application"* or that *"property rights or other legal rights have been specially and adversely affected by the decision,"* respectively. (Emphasis added). The demonstration under § 6-4(U)(2)(a)2 is less stringent than the demonstration required under § 6-4(U)(2)(a)4. That

is under § 6-4(U)(2)(a)2, an appellant only has to show that interests *"may"* be affected by the application. The term "may" is generally used to indicate possibility and often used where something "might" occur—a low thresholds for standing.

The Pueblo Appellants assert that the development proposed in the application may affect their views of the landscape, which they contend holds sacred and spiritual significance within their culture. **[R. LUHO Hrg.]** Although this proclaimed basis for standing is not clearly articulated, I find that it minimally satisfies the scope of standing envisioned in § 6-4(U)(2)(a)2.

C. Despite Appellants' contentions, there is insufficient evidence to support a finding that the final plat is void.

Appellants claim that the underlying plat regarding the development described in the application and site plan is void. Appellants' arguments supporting this broad contention is unsupported by any facts in the record. Appellants essentially argue that the forum in which the plats (preliminary and or final) were approved, presumably on February 7, 2024, violated the IDO. How this violated the IDO is not clear or supported by facts or the IDO. It appears that the fulcrum or pillar holding together Appellants' thesis is the belief that because the preliminary plat was entangled in the Court appeal, the DHO did not have authority to approve the final plat. Appellants suggest that the Court appeal created a presumption that the appeal somehow automatically freezes or stays any further action relating to the land in the appeal.[14]

14. If the Court of Appeals had voided the preliminary plat, then the final plat would obviously also be void as a matter of law, but that is not the case in this matter. The preliminary plat was never declared to be void. It is important to emphasize that in fact the Court of Appeals declared that because the preliminary plat was not a final decision, it refused to review it or otherwise pass judgment on its propriety **[R. 076, footnote 4]**. It was essentially not appealable at that time.

Other than their supposition, Appellants have offered no factual or legal precedential support for their theory. Moreover, there is no evidence in the record that any Court had issued a stay on any further proceeding regarding the land entangled in the appeal during the pendency of the appeal process. In addition, the Appellants have not pointed to any IDO provision in which prohibited the Applicants-Appellants from applying for final plat approval while the preliminary plat was enmeshed in the appeal process.

I find that the IDO did not prevent the Applicants-Appellants from applying for final plat approval when it did in 2024. I further find that there is no evidence or support for Appellants' claim that the platting is void. At the time the Preliminary Plat was approved, the larger 18.5 acre tract was legally platted.[15] Everything that occurred after that with the original platting involved replating. That is, at the time when the DHO approved the final plat in February 2024, the larger 18.5 acre tract had been legally preliminarily replatted and resubdivided into Tracts 1-A and 1-B. And, as the Applicants-Appellees correctly point out, the replatting is not affected by the Court of Appeals' decision and remand regarding the issue of the site plan and on adjacency.

Finally, the platting of the site cannot now be collaterally challenged in this appeal of the EPC's decision regarding the site plan for tract 1-B. as shown above in the Procedural History section, the appeals of all platting of the site have concluded, and a collateral challenge to them cannot now be legally bootstrapped with this appeal just because the site plan involves

15. In the appeal, Appellants submitted a section of the IDO Zone Atlas from the AGIS system maps with the City to support their claims that the platting is void for purposes of IDO, § 6-6(I)(1)(a) **[R. 046]**. That map depicts the original platting of the larger site prior to the replating actions under the IDO and prior to 2018. Even if the 2024 replatting of the site was somehow void, this platting also clearly satisfies § 6-6(I)(1)(a).

the same platted lands. The factual and procedural history is complicated, but it demonstrates that the platting action(s) were separate actions accompanied by appeals that ran their course and are over. The result is a legally recorded plat of the tracts 1-A and 1-B **[R. Appellee, Ex. 3]**.

I therefore find that the plat as depicted in the Applicants-Appellees' Exhibit 3 is not void. I further find that it is self-evident that the plat depicted in Exhibit 3 contains legally platted, subdivided tracts of land that comply with the threshold regulation of IDO, § 6-6(I)(1)(a) for applying for a Site Plan-EPC. In addition, because the appeals have concluded regarding the 2024 platting, I finally find that Appellants cannot now lawfully collaterally challenge the plating of this land.

D. The EPC's findings that the application is "generally consistent" with the Comprehensive Plan goals and policies does not contravene the Review and Decision Criteria of IDO, § 6-6(I)(3).

In their written arguments on this issue, the WSCONA Appellants do not *per se* challenge the EPC's analysis and findings regarding the Comprehensive Plan goals and policies. In its decision, the EPC concluded that the site plan is "generally consistent" with applicable Comprehensive Plan Goals and Policies. The WSCONA Appellants contend that the EPC failed to meet the precise mandate of IDO § 6-6(I)(3), expressly requiring that the EPC determine whether *"[t]he Site Plan is consistent with the ABC Comp Plan, as amended.*" The crux of the argument is based on the expressive distinction between the term "generally consistent" and the term "consistent." Appellants claim that the former falls short to satisfy IDO § 6-6(I)(3).

The Applicants-Appellees contend that the distinction is without a difference; they

argue that the distinction *"turns on a semantic distinction that New Mexico law does not recognize as dispositive"* **[see Appellee Ltr. Brief, pgs. 13-14]**. Referencing dictionary definitions of the word "consistent," in their briefing, I respectfully agree with the Applicants-Appellees. **[Appellee Ltr. Brief, pgs. 13-14]**. The EPC's findings that the site plan is" generally consistent" with the Comprehensive Plan is functionally the equivalent to satisfying the consistency provisions of IDO § 6-6(I)(3).

Appellants also argue that the site plan cannot be consistent with Comprehensive Plan Policy 11.3.4 because the EPC disregarded Appellants' testimony that the development in the site plan will disrupt and erode the viewshed of the Petroglyph National Monument **[R. 048]**. The record does not support this factual contention. The record, however, does support that the EPC allowed considerable testimony at its hearing from anyone who wanted to testify. Much of the opposition testimony came from people who argued that the development will adversely impact them in various manners including the cultural landscape, the views, and use of the open space around and to the nearby Petroglyph National Monument **[R. 316-336]**. The fact that the EPC did not agree with the opposition testimony and went ahead and approved the site plan is not objective evidence that the EPC disregarded the alleged impacts opponents claimed will exist. Objectively, all that it means is that the EPC did not agree with Appellants' contentions.[16] Thus, Appellants have not proved their contention.

E. The referral for comments to the Indian Tribes/Pueblos was not inadequate.

16. In this appeal, Appellants did not make any claim that the findings are not supported with substantial evidence. Thus, I can only assume that Appellants do not dispute that the EPC's findings are supported with substantial evidence in the record.

The WSCONA and the Pueblo Appellants challenge the advisory referral that was sent from Planning Staff to the Indian Tribes regarding the site plan application; they essentially contend that it contained insufficient information to apprise them of what the EPC would be reviewing at its upcoming hearing **[R. 048]**. Specifically, they argue that the referral should have contained the physical application, not just a digital link to the application.

Under IDO, § 6-6(I)(2)(c), City Planning Department staff *"shall refer applications for comment"* to Indian Tribes and Pueblos and other agencies described in IDO, § 6-4(I). Indian Tribes/ Pueblos must be sent referrals for comment if the application is for an Archeological Certificate, development in the Northwest Mesa Escarpment View Protection Overlay Zone (VPO-2), development within 660 feet of MPOS or the Petroglyph National Monument. See, IDO, § 6-4(I)(3), (8), (9), and (10) respectively. Planning Staff must send referrals to commenting agencies *"following a determination that an application is complete."* IDO, § 6-4(I). There is no dispute that the site plan in this matter includes proposed development within 660 feet of MPOS, and therefore the Planning Staff were required to send the Pueblo Appellants and others an advisory referring the application to them for comment.

The record demonstrates that both Pueblo Appellants were well represented at the EPC's hearing on the application **[R. 317 and 325]**. The record further demonstrates that the representatives of the Pueblo Appellants had an opportunity to present evidence, testify, and to cross examine witnesses at the EPC hearing. Moreover, the record further shows that Planning Staff sent an "interoffice memorandum" (hereinafter "the referral") to the Pueblo Appellants on November 12, 2025--35 days before the EPC's December 18, 2025, hearing on the application **[R. 372-373]**. Planning Staff testified at the EPC hearing that the referrals were

sent either via email to the Tribes or via USPS to a Tribe's physical address both of which were confirmed as the accurate addresses by the City's liaison for Indian Tribes **[R. 318]**. This testimony was not disputed at the EPC's hearing or in the subsequent appeal hearing.

However, the Pueblo Appellants do not claim that they did not receive the referrals, only that the referrals lacked the physical application. The Pueblo Appellants contend that because the referrals did not contain the physical application, the referrals were inadequate under § 6-6(I)(2)(c) and § 6-4(I). I respectfully disagree.

As explained above, what is expressly required of Staff *"following a determination that an application is complete"* is that Staff *"shall refer applications for comment."* The clear purpose of the referrals is to give notice of specific types of pending applications so that representatives of Indian Tribes, Pueblos, and other agency representatives can comment on the pending application if they so choose. In reviewing the referral (interoffice memorandum), it is clear that the referral includes a digital link to the City cloud portal in which the application is contained **[R. 373]**.[17] In addition, the referral also includes a brief description of the application which states:

> Modulus Architects & Land Use Planning, agent for Jubilee Developments LLC requests a Site Plan EPC, for all or a portion of Tract 1-A and Tract 1-B, Block 2 of Volcano Cliffs Subdivision, Unit 26 (a replat of Tract 1, Block 2 and Lot 5, Block 6 Volcano Cliffs Subdivision, Unit 26), located at 99999 Paseo del Norte, between Paseo del Norte NW and Kimmick Dr NW, approximately 9.5477 acres **[R. 373]**.

The referral also included a statement advising to *"direct questions to the case planner noted*

17. The link is the project number of the application, in this case SP-2025-00093 **[R. 373]**.

below and available by email: PlanningEPC@CABQ.gov" **[R. 372]**. I find that the information substantially complied with the IDO. The information communicated in the referral included a precise legal description of the development site, a description of the application (*"Site Plan-EPC"*), and a link to the City's cloud portal where the application was contained.

Appellants' contention that the notice did not sufficiently apprise them of the application is unavailing and belied by the referral document, as well as the evidence in the record showing that they appeared at the hearing. The referral contained sufficient information which would cause a reasonable person to further inquire of the matter. See generally, *City of Rio Rancho v. Amrep SW, Inc*., 2011-NMSC-037.

The record reveals that 35 days prior to the hearing, the referral was sent to the Appellant Pueblos. Thus, under § 6-6(I)(2)(c), it was timely.[18] Under law, receiving notice of a hearing imposes several affirmative, or active, duties on a person or entity to protect their legal interests which includes reading the referral and, if more information is desired, accessing the link or sending an email to the case planner at the email address provided in the referral notice. The Pueblo Appellants had an open window of ample time and opportunity to inquire or investigate further by simply opening the link and or emailing the case planner about any perceived problems with the link. Moreover, the description of the application in the referral advisory, as well as the provision of the link therein, served the purpose of apprising the commenting agencies of the application. Although Appellants now claim that the link had not

18. Note that in the EPC, a Staff Planner testified that the referrals were sent to commenting agencies when the application was complete **[R. 318]**. This testimony was not disputed.

been populated with the application when they received the referral, there is no evidence in the record that in the 35-day period before the hearing that they acted on this alleged problem by communicating to the case planner about the issue.

F. As a matter of law, the VPO-2 height restrictions are inapplicable to the land comprising the site plan.

The WSCONA Appellants next believe that the EPC erred because the EPC in its Finding number 19 failed to explain how the development in the site plan complies with the maximum 26-foot building height restrictions of the original, the 2017 site plan or the VPO-2 height restrictions. Appellants also believe that the Court Appeals decision regarding the VPO-2 height restrictions was wrong. Appellants arguments are ill-conceived and baseless.

First, the site is not controlled by the 2017 site plan. That site plan expired pursuant to the applicable pre-IDO provisions in effect [R. 152, 199, 201]. The testimony of the Applicants' agent confirmed this in testimony at the EPC hearing [R. 310]. This evidence was not disputed by anyone at the EPC's hearing and is not disputed in this appeal. See, 1974 Zoning Code, 14-16-3-11(C)(1)(a) and compare IDO, the applicable provision in Table 6-4-3. Moreover, there is no evidence in the record that the 7-year expiration period was extended.[19] In addition, there can be only one approved site plan for a single development site. See IDO, § 6-6(I)(2)(d). Therefore, there is substantial evidence in the record that the current approved Site Plan-EPC is the only site plan applicable to any future development at the site on tract 1-

19. Note that the original 2017 site plan was not approved pursuant to a master plan and there is no evidence in the record that there is at least 75 percent of required on-site drainage infrastructure at the site. See IDO, § 6-4(W)(3)(a).

B. Therefore, the restrictions in the previous 2017 site plan are inapplicable.

As for Appellants' theory that the VPO-2 height restrictions apply to the site plan of tract 1-B in this matter, the Court of Appeals unambiguously concluded that it does not. The precise ruling of the Court of Appeals on this issue is:

> Based on these maps, we conclude that substantial evidence supports a determination that the proposed development site was not within the VPO-2 'Height Restriction Sub-area' and additional building and structure height standards therefore did not apply" **[R. 084]**.[20]

Appellants suggest that the Court of Appeals made a mistake and that this ruling was based on inaccurate mapping evidence in the record, and therefore the decision should be disregarded **[R. 050]**. However, regardless of Appellants' beliefs, the ruling is the law of the case. It cannot be simply disregarded. If Appellants believed that the Court of Appeals made a mistake based on the evidence it reviewed, Appellants' remedy is not in this forum. Appellants' remedy was to motion the Court of Appeals to reconsider, or to appeal the decision to the New Mexico State Supreme Court.[21] There is no evidence in the record that Appellants did either. The decision of the Court of Appeals on the Height Restriction Sub-area of the VPO-2 is the law and cannot be disregarded. Thus, Appellants' argument is misguided, and the EPC did not err in its Finding number 19.

G. To the extent that EPC Finding number 20 states that no comments were received from the Pueblo Appellants, the finding is inaccurate, but the error is harmless and does not prejudice Appellants, or otherwise adversely impact the approval of the site plan.

20. The Court's decision is also clearly applicable to the land encompassed in the site plan in this matter.

21. I note that the Court Appeals also found that the Appellants failed to supplement the record with any documentation showing that the site was in the Height Restriction Sub-area of the VPO-2 **[R. 083]**.

The WSCONA and the Pueblo Appellants take issue with the last sentence of EPC Finding number 20 which states *"[n]o comments were received from Indian Nations, Tribes, or Pueblos and Tribal Representatives"* [R. 099]. I agree that this finding is technically inaccurate; however, the error is harmless because it does not prejudice the rights of Appellants, nor does it impact the substantive findings or decision of the EPC.

Although the Pueblo Appellants did not submit *written* comments prior to the hearing, the evidence supports that the Pueblo Appellants did in fact submit *oral* comments (arguments) and testimony to the EPC during the hearing. Thus, from a technical standpoint the Finding 20 is inaccurate. Notwithstanding, however, the Appellants have not shown how the technical error prejudices their rights; how the EPC acted fraudulently, arbitrarily, or capriciously; or how the approval of the site plan is a decision not supported with substantial evidence under IDO, § 6-4(U)(3)(d). In effect, the Appellants have not shown that the error is anything more than harmless error.

Conversely, I find that the mistake in Finding number 20 is a non-substantive error. It is not an error under IDO, § 6-4(U)(4). I further find that the mistake did not impact the rights of any appellants in this matter. In addition, there is no evidence that the mistake was made with any ill-intent to prejudice any Appellants. I recommend that the mistake be corrected with the final disposition of this matter by the City Council.

H. Cost and fees pursuant to IDO, § 6-4(U)(5)(b).

Under the current iteration of the IDO, the LUHO is responsible to make findings regarding costs and fees under IDO, § 6-4(U)(5)(b). Specifically, in an appeal to the City

Council under the IDO and related to an application *"that was approved, if the appellant loses their appeal, they **shall** be responsible for paying $1,000 for the costs and fees of the appellee."* See, IDO, § 6-4(U)(5)(b) (Emphasis added).

In this matter, as proposed below and as supported by the analyses above, the WSCONA Appellants' appeal and the Pueblo Appellants' appeal should be denied. In this appeal the WSCONA Appellants did not argue or otherwise present any evidence supporting an exception to costs and fees under § 6-4(U)(5)(b).2. Thus, fees and costs must be assessed against the WSCONA Appellants.

Unless clearly waived, under Federal law, Indian Tribes and or Pueblo sovereign governments have immunity from being assessed the fees and costs required under IDO, § 6-4(U)(5)(b). See, *Nanomantube v. Kickapoo Tribe in Kan.*, 631 F.3d 1150, 1152 (10th Cir.) 2011 (Following the "clear statement rule" regarding waiver of immunity, the Tenth Circuit held that a Tribe's agreement to "comply" with a law is not an unequivocal waiver of sovereign immunity from suit). In the LUHO hearing, the Pueblo Appellants established that there participation is this appeal is not a waiver of their sovereign immunity and there is no evidence in the record that Congress has waived sovereign immunity under similar circumstances. Thus, the fees and costs as stated in § 6-4(U)(5)(b) cannot be assessed by the City of Albuquerque against the Pueblo Appellants.

V. PROPOSED FINDINGS

1. The decision appealed is a decision of the EPC approving a Site Plan-EPC under the IDO.

2. The appellants' appeal is timely filed under § 6-4(U)(3)(a)1.

3. A quasi-judicial appeal hearing was held on February 13, 2026, in which the Appellants, and others were all allowed to present evidence, and cross examine testimony.

4. The WSCONA Appellants have not sufficiently shown that they have standing to appeal.

5. The WSCONA Appellants did not satisfy the standing requirement of IDO, § 6-4(U)(2)(a)5.b.

6. There is substantial evidence in the record that the petition the WSCONA Appellants submitted as required by IDO, § 6-4(U)(2)(a)5 was not "signed by a majority of all property owners or tenants located within 660 feet of the application site, inclusive of all rights-of-way."

7. As "commenting agencies," under IDO, § 6-6(I)(2) and because the Pueblo Appellants have shown that they satisfy § 6-4(U)(2)(a)2, the Pueblo Appellants have standing under the IDO to appeal the decision of the EPC.

8. Although the WSCONA Appellants do not meet the requirements of IDO, § 6-4(U)(2)(a)5, out of caution, their appeal is evaluated as if the WSCONA Appellants have standing.

9. The Appellants challenge the approval of the Site Plan-EPC on the basis that the underlying plat on which the Site Plan-EPC is applicable, is void.

10. The Appellants did not meet their burden of proof in showing that the plat is void.

11. There is substantial evidence in the record showing that the plat is not void.

12. The WSCONA Appellants challenge the approval of the Site Plan-EPC, on the

basis that the EPC contravened IDO, § 6-6(I)(3) because it concluded that the Site Plan-EPC is "generally consistent" with the Comprehensive Plan.

13. For purposes of determining conformance with the Comprehensive Plan, the EPC's findings that the site plan is "generally consistent" with the Comprehensive Plan is functionally the equivalent to satisfying the consistency provisions of IDO § 6-6(I)(3).

14. The WSCONA Appellants also contend that the EPC disregarded Appellants' testimony that the development in the site plan will disrupt and erode the viewshed of the Petroglyph National Monument.

15. The record does not support Appellants' factual contention that the EPC disregarded their testimony.

16. There is substantial evidence in the record demonstrating that Appellants and others were accorded an opportunity to testify, cross examine witnesses, and to submit evidence at the EPC's hearing. Other than the fact that, despite the opposition testimony, the EPC approved the Site Plan-EPC, there is no evidence that the EPC disregarded any testimony.

17. The WSCONA and the Pueblo Appellants claim that the referral notices sent to the Pueblo Appellants was insufficient under IDO, § 6-6(I)(2)(c).

18. There is substantial evidence in the record that the referral notices sent to the Pueblo Appellants substantially satisfied IDO, § 6-6(I)(2)(c).

19. The WSCONA Appellants claim that the EPC erred because it did not explain why the Site Plan-EPC fails to satisfy the VPO-2, Height Restriction Sub-area regulations of the IDO.

20. There is substantial evidence in the record supporting that the VPO-2 Height

Restriction Sub-area regulations of the IDO are inapplicable to the Site-Plan, thus the EPC did not err.

21. The Appellants challenge EPC Finding Number 20 which states in relevant portion *"n]o comments were received from Indian Nations, Tribes, or Pueblos and Tribal Representatives."*

22. EPC Finding Number 20 is technically factually inaccurate because the Pueblo Appellants submitted comments to the EPC in the form of oral testimony and argument at the EPC hearing.

23. Although EPC, Finding Number 20 is inaccurate regarding comments by the Pueblo Appellants, the inaccuracy is harmless error; it did not prejudice or adversely impact the rights of any Appellant.

24. In addition, the error does not satisfy an appealable error under IDO, § 6-4(U)(4).

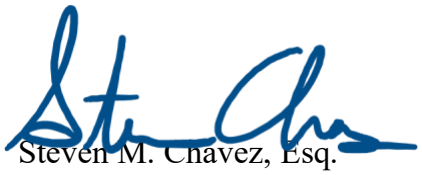
25. Appellants have not shown that the EPC's decision is not supported by substantial evidence in the record.

26. The appeals of the WSCONA Appellants and the Pueblo Appellants are denied, and the decision of the EPC is upheld.

27. As required under IDO, § 6-4(U)(5)(b), the WSCONA Appellants shall pay fees and costs of $1,000.

28. The Pueblo Appellants have sovereign immunity from the fees and costs provision of IDO, § 6-4(U)(5)(b), and therefore fees and costs cannot be assessed against them.

Respectfully Submitted:



Steven M. Chavez, Esq.
Land Use Hearing Officer
February 25, 2026

Copies via email sent to:
City Council
Appellants
Applicants-Appellees
Planning Staff

Notice Regarding City Council Rules

When the Council receives the Hearing Officer's proposed disposition of an appeal, the Council shall place the decision on the agenda of the next regular full Council meeting provided that there is a period of at least 10 days between the receipt of the decision and the Council meeting. The parties may submit comments to the Council through the Clerk of the Council regarding the Hearing Officer's decision and findings provided such comments are in writing and received by the Clerk of the Council and the other parties of record four (4) consecutive days prior to the Council "accept or reject" hearing. Parties submitting comments in this manner must include a signed, written attestation that the comments being submitted were delivered to all parties of record within this time frame, which attestation shall list the individual(s) to whom delivery was made. Comments received by the Clerk of the Council that are not in conformance with the requirements of this Section will not be distributed to Councilors.