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TIERRA WEST, LLC

January 17, 2012

Ms. Carmen Marrone
EPC Planner
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

RE: RESPONSE TO 11EPC-40067 & 40068

Dear Ms. Marrone:

The purpose of this letter is to provide responses to Staff's comments on the above-referenced project.

Page 6 Governing Site Development Plan for Subdivision MH

3. The previously approved Site Development Plan by the EPC showed parking, loading docks, and service entrances to the rear of commercial buildings on the O-1 Tract. Those uses are permissive in the O-1 zone. The plan was approved June 17, 2005. The proposed use is similar and in compliance with that previously approved plan.

Page 11 Policy II.B.7c MH

The massing of the building is not larger than the size and massing of the Montano Plaza Shopping center to the north. The center has a façade length of 1075 feet with a total of 105,200 square feet of building in the core of the center.

Page 12 Policy IIC.8a

The visual features and intent of the Coors Corridor are met which respects the Mountains and has views of the Bosque. The center façade was raised at the request of the staff which will be lowered by 1.85 feet to bring the building height into compliance.

Page 13 Policy II.D.4g

Shown on the attached exhibit are the pedestrian connections provided through and to this site. These connections provide safe and ADA compliant access to the site. **INCLUDE EXHIBIT**

Page 17 WSSP Policy 4.6.g

Shown on the attached exhibit are the locations of the transit stops on Coors and Montano. The distance from the Coors bus stop to the front of the store is 1,144 feet and

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is an ADA accessible route. The distance from Montano to the front of the store is 1,013 feet and is also ADA compliant.

The City has established along the entire corridor where the main body of the development faces Coors Boulevard and has parking along the front of the building. The grade difference along Coors effectively screens the parking and provides better curb appeal for the building. Backing buildings up to Coors would violate the View Corridor of the Coors plan.

Page 17 Policy 4.6.h

The center is grouping or clustering the buildings along the southern boundary. The functional parking for these clustered developments will allow alternate higher uses to use those parking areas as overflow parking into the center which reduces parking needs overall. It also increases the Floor Area Ratio to allow more intense uses (such as restaurants) the ability to meet the market demand in the center at peak times.

Page 22

Policy 4.b.10-Architectural Design (B)(2)

This matter was addressed in a response letter dated December 22, located on page 8 specifically stating that all roof top units will be screened. It is also stated in note 9 on the Site Plan for Building Permit, Sheet C4.

Page 23

Zoning Code 14-16-3-5, General Sign Regulations Number 4

The signs will not be turned off.

Page 23 Policy 1 – View Preservation

The building height will be reduced by 1.85 feet to be in compliance with the View Corridor. The buildings that were raised at the request of the Planning Staff will be lowered back to the original height.

Page 24

Existing & Proposed Site Development Plans for Subdivision

The existing land area is not changing. There is a mathematical error in the acreage given on the Amended Site Plan for Subdivision. The total C-2 area will remain 22.51 acres and the total O-1 area will remain 1.38 acres. The boundary will be verified with the surveyor and the Tract acreage will be redistributed to total 22.51 and 1.38 respectively.

Page 34 View Plane Exhibit

The building height will be reduced by 1.85 feet to be in compliance with the View Corridor.

Page 37 Screening Walls/ Fences

There is only one trash enclosure and it is located at the rear of the building. The varying landscape buffer and 8 foot high screen wall along Mirandela Street screens the trash enclosure as well as the rear of the building.

Page 38 Lighting

All lighting is LED lighting on the site. As a condition of approval a note on the plans can be made to prohibit high pressure sodium lighting and added to sheet C-13.

Page 38 Signage

This sign is an entry sign. As stated in the design guidelines on Sheet C3 Signage, bullet point 2, "Entry signs shall be monument type and shall complement the materials, color, and architectural character of the building. There is nothing in the design guidelines that prohibit any signage along Mirandela Street.

Page 42 (h) landscaping

The spacing on the trees will be increased from 60 feet on center to 50 feet on center. We have shown that as a condition of approval.

Page 43 Pedestrian Walkways

Shown on the exhibit is the location of the pathways and connection to the surrounding street network. As a condition of the approval a concrete or alternate material will be used for all crossings.

Page 44 Subsection (D)(6)- Main Structures

(a) Setback

The site and building is screened from Coors Blvd with a 35 foot setback and double rows of trees as well as a varying set back along Mirandela with a double row of trees.

p 41, Subsection (D)(5)-Site Design (b)(4)

As stated **every third double row** of double parking shall have a minimum 10' wide continuous walkway. This only happens in one place in the parking field and that third row of double parking has a 10' wide walkway. The other double rows of parking are broken up by an internal drive access that meets the LRF requirements for dividing up a block. That drive aisle is described on Page 40 under Subsection (D)(3)-Site Division (b).

The following responses address the comments received from Tim Flynn-O'Brien:

Bosque School Drainage:

1. The drainage pond serves the entire development of 70.65 acres including Bosque School, the apartments and the commercial tracks.
2. The drainage master plan is designed as a 100-year retention system retaining all of the developed flows from the project and prevents low flows and those under the 100-year events from entering the Rio Grande.

3. The retention ponds create an area for infiltration and are the very basic low impact development. Retention ponds reduce adverse impacts from all of the developments draining to the pond and also prevent drainage flows from reaching the river.
4. Low Impact Development techniques will be detailed and utilized in the construction of the commercial center.
5. First flush AMAFCA approved connections will be utilized to reduce the debris and other sediment from reaching the pond where provided.
6. Any required modifications to the existing ponds or completion of items necessary for the system to meet the City Hydrology Department approval can be detailed and made a condition of the DRB approval of the site plan and final drainage plan for the commercial development.

Exhibit B-1, B-2 & B-3 Traffic

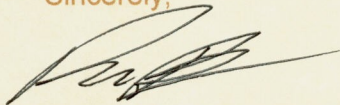
1. The traffic study was prepared and approved by the City of Albuquerque in 2005.
2. The trip generation for the proposed development is 29 percent less than the previously approved study.
3. An updated study based upon the scoping meeting and criteria established by the City was prepared and submitted to the City of Albuquerque. All current and established criteria and methodology was used based upon the City criteria.
4. The City Traffic Engineer is the basis for the approval of the study and methodology for the study and is consistent with all traffic studies currently being conducted.
5. The methodology outlined in Mr. Tim Flynn O'Brian letter has not been vetted within the engineering community and while Mr. Albright is a good planner is not a traffic engineer licensed to practice in the State of New Mexico.
6. The results of the study indicate that additional delays at Coors & Montano will result in an additional 5 seconds of delay as a result of this study. The intersection is experiencing a level of service which does create delays at the intersection and the TIS update calculated the additional delay created by the development of the center.
7. The City has been utilizing the improvements approved and built by the owner and utilizing the capacity from the previously approved study. Those improvements were built for the Commercial, school, and multifamily development.

8. The long term solution to the congestion to the river crossing and the lack of north south arterials is currently underway by the City of Albuquerque, the New Mexico Department of Transportation (NMDOT) and the Middle Rio Grande Council of Governments (MRCOG). The long term solution of congestion on the west side is a regional issue that is not the result of this individual project. The long term solution will be a combination of additional lanes, interchange development and alternate transportation solutions.

9. The regional component of the solution is set up in impact fees which this project will pay its share of the impact fees for the west side roadway network.

If you have any questions or need additional information regarding this matter, please do not hesitate to call me.

Sincerely,



Ronald R. Bohannon, PE

cc: Michelle Henrie

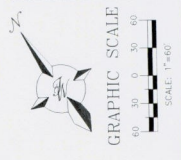
JN: 2011001

RRB/JN/djb



█	TOTAL LENGTH OF PEDESTRIAN SIDEWALKS	6,884 FT.
█	WALKING DISTANCE FROM EXISTING BUS STOP TO FRONT DOOR	1,144 FT.
█	WALKING DISTANCE FROM EXISTING BUS STOP TO FRONT DOOR	1,013 FT.
█	TOTAL LENGTH OF EXISTING BIKE LINES	5,830 FT.

ENGINEER'S SEAL	WALMART #5650	ISSUANCE BY	DATE
	ALBUQUERQUE, NEW MEXICO		1/17/12
	ALTERNATIVE TRANSPORTATION EXHIBIT		201004, ALTERNATIVE TRANSPORTATION EXHIBIT
	TERRA WEST, LLC	SHEET #	---
	5571 MICHAEL PARK PLACE, NE	JOB #	---
	ALBUQUERQUE, NM 87105		---
	(505) 254-3100		---
	www.terrawest.com		---
DESIGNED BY	PROJECT MANAGER		
RODOLFO B. BETHADIAN	DAVID J. BETHADIAN		
			2011001















January 17, 2012

Carmen Marrone, Current Planning Manager
Catalina Lehner, Senior Planner
Planning Department
600 2nd St. NW
Albuquerque, NM 87102

Re: North Andalucia at La Luz, Project #1003859 (Amendment to the North Andalucia at La Luz Site Development Plan for Subdivision and Site Development Plan for Building Permit- Large Retail Facility)

Dear Ms. Marrone and Ms. Lehner:

For the Record in the above-referenced matter, would you please include this letter, which responds to issues raised in the Staff Report for January 19, 2012. This firm represents the Applicant.

First, let me thank both of you for what has clearly been a big job. We appreciate your attention. This response addresses issues where we disagree with the Staff Report (much of which we agree with) or wish to add clarification. I numbered the cover pages of the Staff Report i-vii; when the page numbering in the upper right hand corner concluded at Page 68, I numbered the remainder of the Report sequentially (69-496) in the order of the hard copy report I received on Friday.

Two Important Legal Principles

1. Strictly Construed. As a preliminary matter, I note that there is a longstanding provision in New Mexico (and other) courts that words of a zoning ordinance or other document restricting an owner's common law private property rights, those words will be strictly construed. Thus, I think it is important to check the original language of the Zone Code or planning document or specific design standard. Courts are extremely hesitant to expand the express binding language in these types of documents.

2. Precedent Matters. A second important principle is that courts will give persuasive weight to prior agency interpretations (in this case, the EPC). These prior interpretations constitute de facto agency policies.

Comments on the Staff Report

A. Clarification Regarding Permissible O-1 (Office) Uses on Tract 3. The Staff Report states that: “The O-1 (Office & Institution) zone, Zoning Code §14-16-2-15, provides ‘sites suitable for office, service, institutional, and dwelling uses.’ A parking lot is a permissive use in the O-1 zone [Ref: §14-16-2-15(A)(12)] *provided it is associated with the ‘office, service, institutional, and dwelling uses’ listed therein.*” (page 5).

The limitation contained in the italicized portion of this statement might suggest that a parking lot in an O-1 may not be a free-standing (e.g., pay for) parking lot, may not serve spill-over parking from adjacent uses, and must be an incidental use to another O-1 use. Any such suggestion would be inconsistent with the plain language of the Zone Code (see pages ___ of the Staff Report) as well as the definition of “parking lot”: “An area or structure used for temporary parking of automobiles and pickup-size trucks, providing four or more parking spaces, not within the public right-of-way, none of which are required off-street parking.”

It would also be inconsistent with the Site Plan for Building Permit that was approved by the EPC for this same site on June 17, 2005 (pages 133-145). The approved 2005 Site Plan shows, within Tract 3 (the area zoned “SU-1 for O-1 Uses”) parking, loading docks, and service entrances to the rear of commercial buildings on the O-1 Tract which are not associated with the ‘office, service, institutional, and dwelling uses’ listed therein. The proposed use is similar and in compliance with that previously approved Site Plan.

Any contrary position also would be inconsistent with a determination made by the City’s Zoning Enforcement Official, Juanita Garcia (the person charged with making such determinations for the City) that parking associated with the commercial use is allowed on Tract 3 provided it is not required off-street parking (page 5).

Applicant’s proposed uses of the area zoned “SU-1 for O-1 Uses” (f/k/a Tract 3) are permissible.

B. Clarification Regarding “Village-Type Character.” The Staff Report raises the question of whether a Large Retail Facility (LRF) is fundamentally incompatible with the “village-type character” “goal” of the design standards contained on the existing (approved) Site Plan for Subdivision. A full set of the 2005 design standards are attached.

It is important to note that this site has been zoned to allow C-2 (Commercial) Uses since 1985 (page 3). The site is within a designated “Community Activity Center” per the West Side Strategic Plan (WSSP), which was first adopted in 1995 (see attached pages from the WSSP).

LRFs are clearly allowed both within C-2 zones and within Community Activity Centers because the LRF’s previously approved by the EPC are both within C-2 zones and Community Activity Centers (pages 213-214 and 257). The EPC did not require these other LRFs to locate in the more intense “Major Activity Centers.” Instead, it approved these LRFs—one comparable in size to the proposed store (98,901 sf proposed/ 97,942 approves) and two larger stores (113,348 sf and 125,601 sf)—within C-2 zones and Community Activity Centers.

Thus the only question is whether the 2005 design standards’ reference to a “village-type character” means that a LRF is somehow no longer allowable on a site has been zoned to for C-2 Uses situated within a Community Activity Centers. The answer is “no” for several reasons.

First, the design standards, which restrict an owner's common law private property rights, will be strictly construed by a Court. Courts are extremely hesitant to expand the express binding language. Yes, the design standards contain general reference to "village-type character." But they also contain very specific provisions. For example, the minimum lot sizes for homes is 3,500 sf; maximum height for non-residential buildings is 45'; the minimum amount of landscaping for commercial projects is 15%, the maximum height for some walls is 6' (see attached Exhibit 1). In other words, the design standards could have (but did not) set a maximum square footage for a commercial use. The design standards could have limited the lot size allowable for commercial use. The design standards could have done a variety of things to disallow a 98,901 sf LRF. They didn't. They prohibit "[g]eneric franchise building elevations and canopies." They limit illuminated plastic signs to "business logos." But the design standards do not prohibit the proposed store.

The West Side Strategic Plan is clear about the types of uses allowed in a Community Activity Center. Such uses include: "full service grocery, discount retail and drug store." Examples of commercial uses that are appropriate in a Neighborhood Activity Center are "convenience store/gas station, specialty grocery, video rental, small restaurant or fast food, hair salon/barber, fitness center, etc." (WSSP at page 90, attached as Exhibit 2) If the design standards' reference to "village-type character" intended to limit the nature or type of commercial uses allowed, they needed to do so expressly. They did not, and a court is not likely to read into these design standards what they elected to exclude.

Second, the "village-type character" language first appeared in a 2003 Site Plan for Subdivision (attached, in relevant part, as Exhibit 3). The 2003 Site Plan for Subdivision covers 228 acres—stretching from Montano Road all the way to the Northern boundary of the Alameda Town Grant. The planned area truly was mixed-use: including single-family homes, multi-family homes, open space, Bosque School, and a commercial area. Any suggestion that "village-type character" should be interpreted as "pedestrian oriented" to the exclusion of anything "auto oriented" is unrealistic in the context of 228 acres.

This idea is also unrealistic in the context of the West Side Strategic Plan, which indicates at page 40 that "Community centers shall be easily accessible by automobile..." whereas "Neighborhood Centers should be less auto-oriented..." (Letter page 281). Again, if the design standards intended to preclude auto-oriented types of commercial development from a Community Activity Center, they needed to expressly do so.

Finally, one must also consider the Site Plan for Building Permit that was approved by the EPC for this same site in 2005 (pages 133-145). While the approved 2005 Site Plan does not contain a LRF, it also fails to rise to the standard of strolling villagers. It is an auto-oriented site layout and scattered small boxes.

Because the design standards do not define "village-type character" in a way that precludes the proposed use, the design standards, together with the applicable plans and Zone Code requirements, as informed by the EPC's past precedent, all need to be construed together. This is precisely what Applicant has done in its proposal.

C. Clarification Regarding Interface with the Bosque. The proposed commercial uses are not in the Bosque. The commercial uses are all proposed for the westerly side of Mirandela Road. The Bosque lies to the east. On the east side of Mirandela Road—providing a buffer between it and the Bosque, are approximately 10 acres containing a City-Owned trailhead (Tract 6B), a recently approved Albuquerque Bernalillo County Water Authority's scalping plant (Tract 2-A) (Exhibit 4), and plans for a Bosque School expansion, including several acres of parking area (Tract 2-B). On the other side of this 10-acre buffer area is a second buffer—a 100' wide buffer strip required by the Coors Corridor Plan. ("Policy 8: Buffer Strip. A 100-foot-wide buffer strip shall be established west of the Corrales Riverside Drain throughout Segment 3. The buffer strip shall remain in a natural condition and shall not be used for development.") The Corrales Riverside Drain lies on the easterly side of the 100' wide buffer strip and separates any threat of development from encroaching into the Bosque / State Park area.

The proposed commercial uses are not situated in the Bosque. These commercial uses are not even adjacent to the Bosque, nor the buffer strip that the City put in place to protect the Bosque.

D. "Significantly Larger" Comparison Requires Apples-to-Apples. The Staff Report takes the position at page 11 that the proposed LRF does not comply with Policy II.B.7c. This policy states that "Structures whose height, mass or volume would be significantly larger than any others in their surroundings shall be located only in Major Activity Centers..." Staff's position is based on several interpretations, none of which Applicant believes to be supported by precedent or any other independent rationale.

The first interpretation is that "structures" means a "single-tenant" facility. Staff compares the proposed LRF building, 98,901 sf, with 70,000 sf grocery store north of Montano and concludes that the LRF would be "significantly larger." A more appropriate comparison, given that the reasoning behind the Policy is "visual variety and functional diversity in the metropolitan area while preserving pleasing vistas and solar access," is consideration of the structure or structures that impede visual variety and interfere with vistas and solar access. In the case of a strip-style shopping center such as Montano Plaza, where the referenced grocery store sits, this would be the entire shopping center which is clustered together into one mass—not just one store plucked free from its abutting buildings. At Montano Plaza, the strip center has a façade length (mass) of 1,075 feet, and the total square footage (volume) is 105,200 sf. The proposed LRF is 409 feet long (which includes the Garden Center area) and 98,901 sf. It is hard to say that the closest comparable commercial buildings are not similar.

The second interpretation hinges on the argument that something 29% larger than the second largest comparable (assuming that the comparables are in fact comparable) is "significantly larger." Applicant disagrees that 29% is, in fact, "significant".

E. Parking Lots Abutting Coors. Staff has raised concerns in several places because parking—not buildings—about Coors. This design concept is articulated in both the WSSP and the Coors Corridor Plan. However, a glance at the pattern of development along Coors indicates that no one has seriously enforced this planning vision. Along the entire Coors

corridor, the main body of the development faces Coors Boulevard and parking separates the building from the street.

It is interesting to note that the approved design standards for the 2005 Site Plan for Subdivision (Exhibit 1) do not even pretend that anyone follows this planning policy. Design standards include: "In cases where parking is adjacent to roadways, landscaping for screening purposes shall be required." Similarly, the parking area setbacks are "15 feet, except along Coors Boulevard where the setback shall be 35 feet." The EPC approved these design guidelines.

Moreover, at this particular site, the grade difference along Coors effectively screens the proposed parking for the site, even though it technically abuts Coors from a bird's-eye view. By contrast, abutting buildings against Coors would violate the Coors Corridor Plan's view plane requirements.

F. Transit Feasibility and Access Plan: Already Approved. Policy 1.2 of the West Side Strategic Plan states that a transit feasibility and access plan (also known as a "TDM" or "Transportation Demand Management" plan) shall be provided with each development plan located in a Community Center. The existing 2005 Site Plan for Subdivision includes a TDM at Sheet 3. This approved TDM plan is the following:

"Future employers that locate within the Andalucia Community Activity Center will be part of the TDM effort designed to help mitigate traffic impacts:

- Businesses with more than 50 employees shall provide designated carpool parking spaces to encourage carpooling by employees.
- Businesses should work with employees to encourage carpooling, bus ridership, and alternative modes of transportation.
- Businesses should post the City trail map and bus route information in employee break rooms or other locations easily accessible to employees.
- Businesses shall provide conveniently located bicycle racks and facilities to encourage bicycle commuting.
- The Owner/Developer will also be the contact person with City Transit and Environmental Health Departments for update, technical assistance, etc."

"As a part of the TDM Program, City Transit should:

- Work with the residential and non-residential projects to provide efficient routes and schedules to the Andalucia Community Activity Center that address their specific needs; and
- Work with the Owner/Developer to provide bus routes off of Coors Boulevard and Montano Road and into the Interior of the project when feasible."

In accordance with the approved TDM, in connection with the proposed Site Plan for Building Permit for a LRF, Applicant proposes the following as conditions of approval. The proposed retailer has agreed to the following requirements:

1. Provide designated carpool parking spaces for employees (which are shown on the north side of the building).
2. Work with employees to encourage carpooling, bus ridership, and alternative modes of transportation.
3. Post the City trail map and bus route information in employee break rooms or other locations easily accessible to employees.
4. Provide conveniently located bicycle racks and facilities.

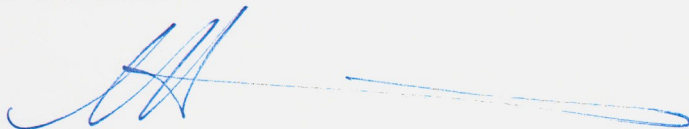
G. Clarification Regarding Blocks. The Staff Report discusses the requirement in the LRF that the site be planned or platted into "blocks." The Report states that the proposal, which contains an irregular block, does not meet the exception allowed in subsection (c).

However, the Report overlooks subsection (d). Subsection (d) allows the EPC discretion to approve irregular blocks that meet certain conditions, as did the irregular block at the LRF approved at Unser Crossing. Applicant's proposed irregular block also meets the requirements allowing it to be approved.

We appreciate this opportunity to provide additional information.

Yours sincerely,

MICHELLE HENRIE, LLC



Michelle Henrie, Attorney

cc. Ron Bohannon, Tierra West, LLC, Applicant's agent