



## **Environmental Planning Commission**

**Agenda Number: 10  
Project Number: 1001620  
Case #: 13EPC-40088  
March 14, 2013**

### **Staff Report**

<b>Agent</b>	Planning Department
<b>Applicant</b>	City of Albuquerque
<b>Request</b>	<b>Text Amendment to the Comprehensive Zoning Code</b>
<b>Legal Desc.</b>	City-wide
<b>Affected Zones:</b>	RA-1, RA-2 & RO-1

#### **Staff Recommendation**

***That a recommendation of APPROVAL of 13EPC 40088 be forwarded to the City Council, based on the Findings on page 11, and subject to the Conditions of Approval on page 14.***

***Maryellen Hennessy  
Staff Planner***

#### **Summary of Analysis**

*This is a request for text amendments to the zoning code related to Private Commons Developments. Two amendments to the definitions section of the Code, §14-16-1-5, would rename a Private Commons Area as Parceled Commons Area (PCA) and revise the definition of Private Commons Development to include Public Parceled Commons Areas. The amendment to §14-16-3-16 (Private Commons Developments) would allow for PCA's to be dedicated to the City, as the City determines to be appropriate, for use by the general public for recreation, agriculture, landscaping or open space. Staff is also recommending that the definition of Private Commons Developments be amended to reduce the required property size for such development to one acre.*

*Private Commons Developments allow for development of residences on lots that may be smaller than ordinarily allowed by their zoning, using a formula for density based on the gross area of the property. The remaining property is reserved as a commons area. Private Commons developments are permitted in a very limited number of residential zones. PCD's are permitted in zones RA-1, RA-2, RO-1 and any zone designated for this type of development in a sector or area plan (§14-16-3-16). Currently, only the Volcano Cliffs and the Los Duranes sector plans list PCD's as a permissive use.*

*There would be no obligation on the part of the City to accept commons areas. The Development Review Board would have to determine that a proposed Public Parceled Commons Area would be of considerable benefit to the public. It is reasonable to assume that the City would only accept such areas of land in exceptional circumstances where the offered property furthers the City's goals for recreation, agriculture, landscaping or open space.*

*There are a number of adopted goals and policies, in particular those related to open space, that support the proposed amendments to the Zoning Code and the amendments do not conflict with any other adopted goals or policies.*

City Departments and other interested agencies reviewed this application from 2/4/2013 to 2/20/2013.  
Agency comments used in the preparation of this report begin on Page 15.

## I. INTRODUCTION

### *Request*

This is a request for a text amendments to the zoning code related to Private Commons Developments. Two amendments to the definitions section of the Code, §14-16-1-5, would rename a Private Commons Area as Parceled Commons Area (PCA) and revise the definition of Private Commons Development to include Public Parceled Commons Areas. The amendment to §14-16-3-16 (Private Commons Developments) would allow for PCA's to be dedicated to the City, as the City determines to be appropriate, for use by the general public for recreation, agriculture, landscaping or open space. No substantive changes to other requirements of the Private Commons Development regulations are proposed.

### *Purpose/Intent*

The intent of the proposed amendments is to provide the opportunity for the City to accept dedication of a commons area for public use, while still allowing development to occur in accordance with the provisions of a Planned Commons Development.

### *Context*

Private Commons Developments allow for development of residences on lots that may be smaller than ordinarily allowed by their zoning, using a formula for density based on the gross area of the property. The remaining property is reserved as a commons area. PCD's are permitted in zones RA-1, RA-2, RO-1 (Residential Agricultural and Rural Open) and any zone designated for this type of development in a sector or area plan (§14-16-3-16). The referenced zones within the city are quite limited as shown on the attached map; the majority of RA-1 and RA-2 properties are located in the north valley. Currently, only the Duranes and Volcano Cliffs Sector Development Plans permit this type of "clustered" housing development.

### *Environmental Planning Commission (EPC) Role*

The EPC is a recommending body with review authority. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision. (§14-16-4-1(D)).

## II. PROPOSED TEXT AMENDMENTS

The Planning Department, in its role as agent for the City of Albuquerque, submitted text amendments and a memo dated 1/31/2103. The amendments are provided below and analyzed in the policy section of this staff report. Additions to the current text are underlined and deletions are indicated by strikethrough.

§ 14-16-1-5

PRIVATE-PARCELED COMMONS AREA (PCA). The area within a Private Commons Development set aside ~~through deed restrictions and a land use easement for the use and enjoyment of Private Commons Development~~

~~property owners~~ for the purposes of agriculture, landscaping, open space or recreation; this area can either be a Private PCA with deed restrictions and a land use easement for the use and enjoyment of the PCD property owners or a Public PCA, which is land dedicated to, and accepted by, the City.

PRIVATE COMMONS DEVELOPMENT (PCD). A residential development of at least two acres which meets the requirements of this article for such developments (see § 14-16-3-16); it may contain houses and townhouses on any sized lot; it must include a Private Parceled Commons Area or a Public Parceled Commons Area.

§ 14-16-3-16

- (A) A Private Commons Development (PCD) may be established on a tract of land containing two or more acres and zoned RA-1, RA-2 or RO-1, or any zone designated for this type of development in a sector or area plan in accordance with the Zoning Code.
- (B) The number of dwelling units permitted in a PCD is determined by dividing the site area by the minimum lot size permitted in the zone rounded to the nearest whole number. However, the number of dwellings in a PCD may not be more than 50. The minimum lot size to be used for determining the number of dwelling units in a PCD with RA-1 zoning shall be 21,780 square feet.
- (C) The dwelling units may be houses or townhouses or any combination thereof on any size lots.
- (D) The minimum setbacks are as follows:
  - (1) Front – 15 feet except driveways shall not be less than 20 feet long.
  - (2) Rear – 15 feet for houses and townhouses unless adjoining R-1, RA-1, RA-2, or RO-1 zoned land, in which case the setback for townhouses shall be 25 feet.
  - (3) Side – there shall be no required side yard setback except that there shall be a minimum setback of five feet for all side yards contiguous with the PCD boundary.
- (E) A minimum of 30% of the gross area of a PCD or 100% of the area gained through lot size reductions, whichever is greater, shall be set aside as a Private Parceled Commons Area (PCA).
- (F) The PCA may be used for agriculture, landscaping, recreation, open space or any combination thereof. It may be composed of separate tracts but each shall have a minimum length and width of 35 feet and shall be visible from a public right-of-way. Land used for streets, driveways, parking, sidewalks and private yards may not be counted as part of a PCA. No buildings or structures are permitted in a PCA except those necessary for the operation and maintenance of the PCA. A PCA may have underground easements. The PCA shall be set aside by the developer either as a Private or Public PCA. A Private PCA shall be created, subject to a finding of suitability by the DRB, through a land use easement and restrictive covenants acceptable to the Development Review Board (DRB). A Public PCA may be created by dedication of land to the City. The use of a PCA may be restricted to the residents of the PCD and may be fenced so long as the public's view is not significantly diminished.

~~(G1) The PCA shall be set aside by the developer through a land use easement and restrictive covenants acceptable to the Development Review Board (DRB). For the creation of a Private PCA:~~

~~(4a) The covenants shall be in the form of recorded deed restrictions and shall be referenced on the subdivision plat.~~

~~(2b) The covenants shall assure that the PCA will be protected from all forms of development except as shown on an approved site development plan.~~

~~(3c) The covenants shall require individual lot owners and the members of the homeowner's association, if applicable, to be jointly and severally liable for maintenance of the PCA.~~

~~(4d) The A land use easement, in favor of the city, shall state the proposed allowable use(s) of the Private PCA, and require that the Private PCA be maintained by parties who have ownership interest in the PCD. ~~(5)~~—The land use easement shall state that if the responsible parties fail or refuse to act on maintenance obligations as set forth in the easement, the City shall have the authority to perform such maintenance as necessary to protect public health and safety. The easement shall state that the city may, after written notice and failure to comply within 30 days, enter upon and maintain the Private PCA. The easement shall state that the cost of such maintenance plus any other penalties or costs allowed by law in connection therein, shall be assessed against the properties within the PCD and failure to pay assessed charges may result in a municipal lien against each of the individual lots in the PCD. This provision shall not be deemed to create an obligation to act on the part of the city. Under no circumstances will the city maintain recreational uses. Under no circumstances shall the city maintain the PCA for a period longer than one year.~~

~~(e) The use of a PCA may be restricted to the residents of the PCD and may be fenced so long as the public's view is not significantly diminished.~~

(2) For the creation of a Public PCA:

(a) An application for consideration of the Public PCA shall be submitted to the DRB in writing at the time the need or desire for a Public PCA becomes apparent, preferably at the sketch plat submittal stage. The application shall state fully the grounds justifying the Public PCA and all of the facts relied upon by the applicant. The application shall be processed concurrently with the related plat.

(b) In determining whether or not the property offered as a Public PCA is acceptable for that purpose, the DRB shall examine the quality of the property offered as to its proposed design, layout, improvements, location, size, cost of maintenance, and general suitability for City purposes.

(c) If after examining the above criteria the DRB determines that the creation of a Public PCA would create a net benefit to the public because the property offered is clearly more beneficial to the public welfare as a Public PCA as compared to the minor detriment resulting in additional burdens to the City, then the DRB shall approve the creation of a Public PCA.

(d) If approved by the DRB, the property offered as a Public PCA shall be dedicated to the City, in accordance with the Subdivision Ordinance.

(e) The use of a Public PCA shall be open to the public.

(GH) A PCD is created by DRB approval of a site development plan and a subdivision plat. Site plan and subdivision approval are contingent upon recorded deed restrictions and easements approved by the DRB.

(H) The recorded deed restrictions may not be amended or repealed without the City's prior written approval.

(I) Upon recording the plat and all required documents for a PCD, the area of the PCD shall be delineated and designated with the letters "PCD" on the official zone map.

(JK) In accordance with this article, the Planning Director, ~~at the request of the owner,~~ may void the site development plan and remove the PCD designation if ~~no development has occurred on the site, and~~ the property is replatted to conform to the requirements of the underlying zoning district.

### III. ANALYSIS OF APPLICABLE ORDINANCES, PLANS AND POLICIES

Note: Policy citations are in regular text; *Staff analysis is in bold italics.*

#### Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

##### Article I, Incorporation and Powers

"The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter." (emphasis added)

##### Article IX, Environmental Protection

"The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area."

***Adding language to the regulations governing Private Commons Development to allow for the City to accept the dedication of land for recreational, open space, agricultural or landscape purposes to***

*benefit the general public is an exercise in local self-government and falls within the City's powers under the City Charter.*

### **Albuquerque Comprehensive Zoning Code**

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City's general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Amendment Process (summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

*The proposed text amendments generally further the intent of the Zoning Code to promote the general welfare of the public because it would create a new mechanism by which the City could acquire land when it is determined to be in the public's best interest. As the zoning authority for the City of Albuquerque, the City Council will make the final determination on the proposed amendments.*

*The RA-1, RA-2 and RO-1 zones will be affected by the amendments. There are a very limited number of properties with RA-1 and RO-1 designations, the majority of affected property is zoned RA-2. The largest concentration of RA-2 zoning is in the north valley. These zones are rural/agricultural areas. Private commons developments that provide PCA's for a larger, consolidated open space area than would be available with larger individual lots helps to retain the rural flavor of the rural/agricultural zones. Whether the common areas are publicly owned or privately owned would not affect the intent of the rural/agricultural zones.*

*The Zoning Code stipulates that properties of two acres or more qualify for a PCD. The Los Duranes Sector Plan area, also affected by the amendments, has a lower threshold of one acre for a PCD. City Long Range Planning staff has suggested that the City consider lowering the two acre threshold for the RA-1, RA-2 and RO-1 zones as well to make this development option available for more properties. Clustered housing is a development option that complements rural/agricultural neighborhoods.*

### **Albuquerque/Bernalillo County Comprehensive Plan (Rank I)**

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan's goals and policies serve as a means to evaluate development proposals and requests for text amendments such as this. Applicable goals and policies include:

#### LAND USE, II.B

Open Space Network, II.B.1

II.B.1 Goal: to provide visual relief from urbanization and to offer opportunities for education, recreation, cultural activities, and conservation of natural resources by setting aside Major Public Opens Space, parks, trail corridors, and open areas throughout the Comprehensive Plan area.

Policy II.B.1.g: Planning and implementation of a system of neighborhood parks and community open areas shall be undertaken to meet a range of needs at different scales.

Policy II.B.1.h: Developing areas shall have neighborhood parks and open areas located to serve the population of the area.

Policy II.B.1.i: The design of parks and other open areas shall incorporate the following criteria: Multi-functional use of resources and compatible facilities; maintenance and landscaping appropriate to the location, function, public expectations and intensity of use; integration into residential design for easy accessibility and orientation to encourage use.

Policy II.B.1.j: Design of neighborhood open areas should tie into other open spaces, where appropriate to create an Open Space network.

***The proposed amendments would create a new opportunity or mechanism for the City to advance Open Space goals in accordance with the policies cited by accepting land that is determined to be appropriate for accomplishing the goal.***

Developing and Established Urban Area II.B.5

II.B.5 Goal: to create a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.

Policy II.B.5.d: The location, intensity, and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural and recreational concerns.

***As indicated on the attached map, the majority of property zoned for PCD's is RA-2. RA-2 property is concentrated in the Developing and Established Urban area. Private Commons Developments are consistent with the goal of maximum choice in housing and policy II.B.5.d. Clustered housing is noted in the Plan as a technique to achieve the stated goal and policies. Whether commons areas are held in private or public ownership does not affect established goals and policies.***

ENVIRONMENTAL PROTECTION AND HERITAGE CONSERVATION II.C

Developed Landscape II.C.8

II.C.8 Goal: to maintain and improve the natural and the developed landscapes' quality.

Policy II.C.8.a: The natural and visual environment, particularly features unique to Albuquerque, shall be respected as a significant determinant in development decisions.

*The zones in which PCD's are permitted are generally rural and/or agricultural in nature. As such, these are areas that have unique natural features that contribute positively to the visual quality of the City. Providing a new "tool" by which the City could acquire and manage land that is determined to be important to environmental protection and conservation furthers the goal and policy.*

### City of Albuquerque Major Public Open Space Facility Plan (Rank II)

Section Four of the Plan addresses West Side Open Space. *"Major Public Open Space on Albuquerque's west side defines the western edge of the existing urban area in the future; West Side Open Space will preserve open areas between planned communities and the urban area. Existing Major Public Open Space and lands proposed for acquisition provide a dramatic western horizon and contain some of the area's most valuable archaeological resources."* The Volcano Cliffs area is noted as an area with significant potential to contribute to the network of Major Public Open Space. Since the Plan's adoption in 1999, the City has acquired additional property on the west side to build an important network of open space that conserves and protects valuable environmental, natural and cultural assets for the community.

Section Four B: Planning Policies. Policy B.1 states that West Side Open Space lands shall be acquired and managed to promote the purposes of Major Public Open Space as stated in the Comprehensive Plan and the Facility Plan for Arroyos, with sub-goals (b) Provide opportunities for outdoor education and recreation including trails for a variety of uses and (c) Shape urban form by providing trails connecting neighborhoods and providing permanent open spaces in potential future development and (e) Provide trail corridors including east-west trails along the arroyos connecting the bosque and the northwest mesa escarpment.

*The Volcano Cliffs sector plan area, an area affected by the proposed changes, has the potential to contribute to the City's Open Space goals for the west side. The area is adjacent to Major Public Opens Space and contains unique geologic features. Land that might be less than desirable for development due to existing geologic features, such as arroyos, can be set aside as parceled commons areas where zoning permits. Whether such open space areas belong to the private sector or the public sector doesn't change the overall development scenario. There may be instances where such parceled commons areas would contribute to the goals of the Open Space Plan and thereby benefit the greater population as public areas.*

Section Five of the Plan addresses the Rio Grande Bosque. *"Rio Grande Valley State Park is located on land primarily owned by the Middle Rio Grande Conservancy District within Bernalillo County between riverside drains extending along both sides of the Rio Grande. This area is one of the few remaining extensive riparian habitats in the southwest. The state park and adjacent Major Public Open Space comprise a set of unique habitats in the Albuquerque metropolitan area. The river serves many functions: flood control, irrigation, aquifer recharge, wildlife habitat, education and recreation."* While the Plan does not state any specific goals for the Rio Grande Bosque Policy

Five.B.1 does state that “*planning for the Rio Grande Bosque should be conducted in coordination with community planning.*”

*Properties affected by the proposed amendments include properties zoned RA-1, RA-2, RO-1 (as shown on the attached map) and properties within the Los Duranes and Volcano Cliffs Sector Development Plans. These properties are near or adjacent to the Rio Grande Bosque. There may be a potential for unique public uses that are as yet not anticipated that would benefit the general public. The amendments would provide a mechanism, should such an opportunity arise, to accept land for unique educational, agricultural or open space purposes.*

### **North Valley Area Plan (Rank II)**

The RA-1, RA-2 and RO-1 zones will be affected by the amendments. There are a very limited number of properties with RA-1 and RO-1 designations, the majority of affected property is zoned RA-2 and the largest area of RA-2 zoning is in the north valley. The primary goal of the plan is to retain the rural “flavor” of the north valley area. The Plan notes that standard housing subdivisions and development patterns in both the City and County portions of valley areas tend to obliterate features associated with valley history. Rural character areas have a mixed pattern of lot sizes and shapes and housing types, sizes and styles reflecting older settlement patterns and agricultural activities, agricultural uses, less infrastructure than is associated with urban development, and/or low density or appearance of low density because of public and private open space, vacant land, and varied setbacks. These features are seldom replicated in new development. Cluster housing principles are encouraged throughout the plan area to mitigate the effects of new housing on the character of the north valley.

*These referenced zones are rural/agricultural areas. Private commons developments can be developed with the mixed pattern of lot sizes and shapes and house types that are contemplated in the Plan. PCA’s provide for a larger, consolidated open space area than would be available with standard housing subdivision patterns helps to retain the rural flavor of the rural/agricultural zones. Whether PCA are held publicly or privately would not affect the goal. Tracts of developable land in the plan area are much smaller than undeveloped tracts on the edges of the city and there are not as many opportunities for public ownership, however; opportunities may arise.*

### **The Volcano Cliffs Sector Development Plan (Rank III) Adopted May 2011**

Property zoned VCRR (Volcano Cliffs Rural Residential) would be affected by the proposed amendments. This zone allows PCD development as permitted in the referenced RA-1, RA-2 and RO-1 zones. The VCRR zone is, for the most part, undeveloped property that was platted decades ago. The VCRR zone provides for bigger homes on larger lots consistent with current platting. Clustered housing is encouraged in the plan for this zone to conserve the area’s natural terrain and beauty. The Rural Residential area is surrounded on three sides by Major Public Open Space. Development Standards for the zone were intended to reflect this distinctive character.

The goals of the plan are articulated in Chapter 1 and several goals are applicable to this request. Plan Goal A: Environment and Open Space (1) is to establish an interconnected open space network where possible that is comprised of parks, arroyos, the Petroglyph National Monument, Major Public Open Space, and other open spaces. Goal A.(3) is to conserve Volcano Cliff’s arroyos and encourage residents’ connections with nature.

Chapter 2 of the Plan articulates policies to support the stated Environmental and Open Space goals. The Environment and Open Space Policy 1 is to conserve arroyo corridors as natural drainages. Policy 1.5 is to provide trails and recreation opportunities within arroyo drainage easements. Policy 1.5.a states that Major Public Open Space trails may be located within the required arroyo corridor and should be located along at least 80% of any linear edge between an arroyo and private development. Policy 2 is to acquire land suitable for Major Public Open Space as funding becomes available. Policy 3 is to encourage shared, usable open space and park development to connect to adjacent Major Public Open Space or the Monument. Policy 5 is to encourage private open space through Conservation Development. Policy 5.f states that cluster development, which could include PCD's from the City Zoning Code, is a design technique that concentrates buildings on a portion of the site to allow the remaining land to be used for recreation, open space, or preservation of sensitive land areas. Cluster development provides a larger, more contiguous ecological buffer area, uninterrupted by structures or environmentally damaging activities.

*The proposed amendments that address ownership of common areas in association with clustered housing development clearly support the Environment and Open Space goals and policies of the Volcano Cliffs Sector Development Plan. The Plan encourages this type of development as provided under the Zoning Code to further the goals and policies. Without the proposed amendments to the Code, opens space that results from such development could only be held in private ownership. If such space could be held in public ownership, it would open an avenue for the City to acquire property to contribute to its Open Space program without having to purchase it. Money available for acquisition of new Open Space is quite limited, as budgetary constraints have affected all City departments. The overall development pattern will be the same whether the commons areas are held in private or public ownership. The opportunities for public ownership could encourage dedication of important areas to implement the goals and policies contained in the plan and create the possibility of a coordinated system of opens space that benefits the residents of the greater Volcano Cliffs area rather than just one development.*

**Los Duranes Sector Development Plan (Rank III) Adopted by the City and County March and April 2012**

Properties affected by the proposed amendments include properties zoned SU2-RA-1, SU2-RA-2, and SU2-LD-R-1 within the Los Duranes Sector Development Plan. The Plan reduces the minimum tract size for PUD's from 2 acres to 1 acre and refines PCD development to allow plazuela compounds which will permit compact and or clustered development and shared consolidated open space, without increasing density. The intent of this zoning is to support community goals of encouraging family compounds to support multi-generations of families living in the neighborhood and to support clustered housing and family compounds as a way of continuing historic land use patterns that maintain open space and accommodate diverse household incomes and lifestyles.

*Properties in the Sector Development Plan area that are near or adjacent to the Rio Grande Bosque are not within the City limits, but rather in Bernalillo County. There is an agricultural emphasis to the plan, but it would seem as though there is not as much potential for unique public uses to benefit the general public as there may be on the west side. The amendments are not in conflict with the SDP, and would provide a mechanism, should an opportunity arise, to accept land for unique educational, agricultural or open space purposes.*

#### ***IV. CONCERNS OF REVIEWING AGENCIES / PRE-HEARING DISCUSSION***

Refer to the agency comments at the end of the staff report. Zoning Enforcement has noted that there are no provisions to indicate how the responsibility for the maintenance of a public PCA will be addressed. The lack of any direction as to who will be responsible for the maintenance of a public PCA will cause problems for the Code Enforcement division in the future concerning enforcement of the regulations. Zoning Enforcement thinks that a change to the proposed amendment is necessary.

Hydrology encourages that parceled commons areas be utilized for water retention, such retention will be required if a proposed revision to the drainage ordinance is approved by the City Council. Consideration of storm water runoff can be addressed during the site plan for subdivision process. This issue will not be affected by whether or not the PCA is held publicly or privately.

Comments from Advanced Planning encourage consideration of lowering the two acre threshold for PCD's to provide more opportunity for properties to implement this variety of housing. Clustered housing with common areas would provide more opportunity for shared agricultural spaces and to accommodate on-site storm water retention.

Furthermore, the number and amount of RA-1, RA-2 and RO-1 zoned properties that are two acres or larger have decreased, thereby decreasing the opportunity for development of desired PCD's. A lower acreage threshold will expand the possibility that property owners and developers will take advantage of this strategy to cluster housing and preserve open areas.

#### ***V. NEIGHBORHOOD/PUBLIC CONCERNS***

There are no known neighborhood or public concerns.

#### ***VI. CONCLUSION***

The proposed amendments would allow commons areas associated with Private Commons developments to be dedicated to the City. Private Commons developments are permitted in a very limited number of residential zones. There would be no obligation on the part of the City to accept such property. The Development Review Board would have to determine that a proposed Public Parceled Commons Area would be of considerable benefit to the public. It is reasonable to assume that the City would only accept such areas of land in exceptional circumstances where the offered property furthers the City's goals.

As noted by Zoning Enforcement, it should be clear which department of the City supports the acceptance of a proposed Public Parceled Commons areas, and who will be responsible for its' planning and maintenance. This could be addressed at the Development Review Board by written acknowledgement to the DRB from the relevant City department and a notation required on the plan.

As discussed in the analysis, there are a number of adopted goals and policies that support the proposed amendments to the Zoning Code and the amendments do not conflict with any other goals or policies.

Additionally, staff concludes that amending the definition of a PCD to a threshold of one acre would allow for more rural property to be developed with shared open space for agricultural uses and for drainage needs associated with new development as noted in the agency comments.

***FINDINGS - (#1001620) (March 13, 2013) (Text amendments to the Zoning Code)***

1. This is a request for a text amendments to the zoning code related to Private Commons Developments. Two amendments to the definitions section of the Code, §14-16-1-5, would rename a Private Commons Area as Parceled Commons Area (PCA) and revise the definition of Private Commons Development to include Public Parceled Commons Areas. The amendment to §14-16-3-16 (Private Commons Developments) would allow for PCA's to be dedicated to the City, as the City determines to be appropriate, for use by the general public for recreation, agriculture, landscaping or open space.
2. The intent of the proposed amendments is to provide the opportunity for the City to accept dedication of a commons area for public use, while still allowing development to occur in accordance with the provisions of a Private Commons Development.
3. Private Commons Developments are permitted in zones RA-1, RA-2, RO-1 (Residential Agricultural and Rural Open) and as provided in a sector development plan.
4. The Charter of the City of Albuquerque, the Albuquerque Comprehensive Plan and the City of Albuquerque Zoning Code are incorporated herein by reference and made part of the record for all purposes.
5. The EPC is a recommending body with review authority and is therefore charged with evaluating the request and forwarding a recommendation to the City Council. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision (§14-16-4-1(D)).
6. Amending the Zoning Code is an act of self-governance and falls within the City's powers (Article 1). Adding language to the regulations governing Private Commons Development to allow for the City to accept the dedication of land for recreational, open space, agricultural or landscape purposes to benefit the general public is an exercise in local self-government and falls within the City's powers under the City Charter.
7. The proposed text amendments generally further the intent of the Zoning Code to promote the general welfare of the public because it would create a new mechanism by which the City could acquire land when it is determined to be in the public's best interest.
8. The proposed text amendments do not conflict with any of the goals or policies and generally furthers the intent of the Comprehensive Plan including the following:

- i. The proposed amendments would create a new opportunity, or mechanism, for the City to advance its Open Space goals in accordance with the cited policies by accepting land that is determined to be appropriate for accomplishing the goal of providing relief from urbanization and offering opportunities for education, recreation, cultural activities and conservation of natural resources. (II.B.1.g, h, i and j.)
  - ii. The majority of property zoned for PCD's outside of sector plan areas, is RA-2. RA-2 property is concentrated in the Developing and Established Urban area. Private Commons Developments are consistent with the Developing and Established Urban Area Goal of maximum choice in housing and life styles while creating a visually pleasing built environment. Clustered housing is noted in the Plan as a technique to achieve the stated goal and policies. Whether commons areas are held in private or public ownership does not affect established goals and policies. In individual instances, public ownership and public access of such commons areas may be advantageous to the greater community. (II.B.5.d)
  - iii. The zones in which PCD's are permitted are generally rural and/or agricultural in nature. As such, these are areas that have unique natural features that contribute positively to the visual quality of the City. Providing a new "tool" by which the City could acquire and manage land that is determined to be important for environmental protection and conservation furthers the Developed Landscape goal of maintaining and improving the natural and the developed landscapes quality and the policy of respecting those features as determinants in development decisions. (II.C.8.a)
9. The proposed text amendments do not conflict with any of the goals or policies and generally furthers the intent of the Major Public Open Space Facility Plan including the following:
- i. The Volcano Cliffs sector plan area, an area affected by the proposed changes, has the potential to contribute to the City's Open Space goals for the west side. The area is adjacent to Major Public Opens Space and contains unique geologic features. Land that might be less than desirable for development due to existing geologic features, such as arroyos, can be set aside as parceled commons areas where zoning permits. Whether such open space areas belong to the private sector or the public sector doesn't change the overall development scenario. There may be instances where such City ownership of parceled commons areas would contribute to the goals of the Open Space Plan and thereby benefit the greater population as public areas. (Section Four B: Planning Policies. Policy B.1.b,c and e.)
  - ii. Properties affected by the proposed amendments include properties zoned RA-1, RA-2, RO-1 and properties within the Los Duranes Sector Development Plan. These properties are near or adjacent to the Rio Grande Bosque. There may be a potential for unique public uses that are as yet not anticipated that would benefit the general public. The amendments would

provide a mechanism, should such an opportunity arise, to accept land for unique educational, agricultural or open space purposes (Rio Grande Bosque Policy Five.B.1).

10. The RA1, RA-2 and RO-1 zones will be affected by the amendments. There are a very limited number of properties with RA-1 and RO-1 designations, the majority of affected property is zoned RA-2 and the largest area of RA-2 zoning is in the north valley. The North Valley Area Plan emphasizes retention of a rural atmosphere. Private Commons Developments that provide Parceled Commons Areas for a larger, consolidated open space area than would be available with larger individual lots supports the goals of the plan. Whether a PCA is held privately or publicly does not affect the goal.
11. Property zoned VCRR (Volcano Cliffs Rural Residential) within the Volcano Cliffs Sector Development Plan would be affected by the proposed amendments. This zone allows PCD development. The VCRR zone is, for the most part, undeveloped property that was platted decades ago. The VCRR zone provides for bigger homes on larger lots consistent with current platting. Clustered housing is encouraged in the plan for this zone to conserve the area's natural terrain and beauty. The Rural Residential area is surrounded on three sides by Major Public Open Space. Without the proposed amendments to the Code, opens space that results from clustered development could only be held in private ownership. The opportunities for public ownership could encourage dedication of important areas to implement the goals and policies contained in the plan and create the possibility of a coordinated system of opens space that benefits the residents of the greater Volcano Cliffs area rather than just one development. The overall density and development pattern will be the same whether the commons areas are held in private or public ownership. The proposed amendments that address ownership of common areas in association with clustered housing development support the Environment and Open Space goals and policies of the Volcano Cliffs Sector Development Plan (Goal A: Environment and Open Space (1), (3) and Policy 1, 1.5 and 1.5.a.), and Policies 2, 3, 5 and 5.f).
12. Properties affected by the proposed amendments include properties zoned SU2-RA-1, SU2-RA-2, and SU2-LD-R-1 within the Los Duranes Sector Development Plan. The Plan reduces the minimum tract size for PUD's from 2 acres to 1 acre and refines PCD development to allow plazuela compounds which will permit compact and or clustered development and shared consolidated open space, without increasing density. The amendments are not in conflict with the SDP goals and policies, and the amendments would provide a mechanism, should an opportunity arise, for the City to accept land for unique educational, agricultural or open space purposes.
13. Advanced Planning staff of the Urban Design and Development Division have suggested that the Code be amended to lower the requisite two acre property size for a PCD. A lower threshold would offer greater opportunity for the development of PCD's in zones which

permit this type of clustered housing. Overall density on a property is not affected by clustering the housing on smaller lots. A Condition of Recommendation for approval is included below to respond to the suggestion.

14. Notification of the proposed amendments was provided in the February/March Neighborhood newsletter and staff has had no communication from parties that either support or oppose this amendment.

***RECOMMENDATION - (#1001620) (MARCH 13, 2013)***

***That a Recommendation of APPROVAL of case #1001620, to amend the text of the Zoning Code, be forwarded to the City Council, based on the preceding Findings and subject to the following Conditions of Approval.***

***CONDITIONS OF APPROVAL - (CASE NO.) (DATE) (REQUEST)***

1. Written acknowledgement to the DRB from the relevant City department desiring to accept a Public PCA shall be provided and a notation as to maintenance responsibility required on the approved plat.
  2. The definition of Private Commons Development shall be amended to reduce the required acreage from a minimum of two acres to a minimum of one acre.
- 

***Maryellen Hennessy  
Senior Planner***

***Notice of Decision CC list:***

This is a city-wide amendment and therefore, the Notice of Decision will be presented in the Neighborhood Newsletter.

***Attachments:***

Map of RA-1, RA-2, and RO-1 zones located with the City (does not include Sector Plan zones).

## ***CITY OF ALBUQUERQUE AGENCY COMMENTS***

### ***PLANNING DEPARTMENT***

#### ***Zoning Enforcement***

The proposed text amendment does not include any language that indicates how the responsibility for the maintenance of a public PCA will be dealt with. The existing regulations are very clear on how the maintenance of a private PCA is accomplished and who is responsible for such maintenance- including what happens if the homeowners fail to maintain the PCA. The lack of any direction as to who will be responsible for the maintenance of a public PCA will without a doubt cause problems for the Code Enforcement division in the future concerning enforcement of the regulations. A change to the proposed amendment is necessary.

#### ***Office of Neighborhood Coordination***

Article to be in the Feb/Mar 2013 “Neighborhood News” newsletter.

#### ***Long Range Planning***

The proposed changes will allow the City to accept new land for parks and open space where appropriate, but will not commit the City to take these if they are not wanted. The changes seem to provide a benefit to the City.

The City has made amendments to the zoning code and has adopted regulations in recent sector plans that allow for more flexibility in housing types and more density. The PCD zone allows for the same density on a site, but gives greater flexibility to the site layout.

The Los Duranes Sector Development Plan established 1 acre as the threshold for the PCD. The plan states that the intent of this is to encourage family compound developments, support a historic patten of development, support clustered housing as a way to maintain open space and accommodate diverse household incomes and lifestyles.

Other zones eligible for the PCD are in the North Valley and may have things in common with the Los Duranes area. Lowering the minimum acreage requirement would allow this type of design flexibility for more parcels and would go further to preserve open space and create more opportunities for drainage to be handled on-site.

### ***CITY ENGINEER***

#### ***Transportation Development Services***

Reviewed, no comment.

#### ***Hydrology Development***

Hydrology requests staff to consider using the Private Community Area (PCA) for water harvesting; depth not to exceed 1 foot in the 100 yr.- 6hr storm. Allowing water harvesting in the

PCA will help developers mitigate increases in stormwater runoff due to development. The revised drainage ordinance should be presented to City Council this year and will require sites to retain/treat the first 0.44 inches of a rain storm. The PCA would be beneficial in obtaining this goal.

***DEPARTMENT OF MUNICIPAL DEVELOPMENT***

***Transportation Planning***

Reviewed, and no comments regarding on-street bikeways or roadway system facilities.

***Traffic Engineering Operations***

No comments received.

***Street Maintenance (Department of Municipal Development):***

No comments received.

***NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT):***

No comments received.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT  
and NMDOT:**

Conditions of approval for the proposed Amendment to the Zoning Code shall include: none.

***WATER UTILITY AUTHORITY***

***Utility Services***

***ENVIRONMENTAL HEALTH DEPARTMENT***

***Air Quality Division***

***Environmental Services Division***

***PARKS AND RECREATION***

***Planning and Design***

***Open Space Division***

***City Forester***

***POLICE DEPARTMENT/PLANNING***

***SOLID WASTE MANAGEMENT DEPARTMENT***

***Refuse Division***

Approved so long as it complies with SWMD Ordinance.

***FIRE DEPARTMENT/PLANNING***

***TRANSIT DEPARTMENT***

## ***COMMENTS FROM OTHER AGENCIES***

***BERNALILLO COUNTY***

***ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY***

***ALBUQUERQUE PUBLIC SCHOOLS***

APS does not oppose this amendment.

***MID-REGION COUNCIL OF GOVERNMENTS***

***MIDDLE RIO GRANDE CONSERVANCY DISTRICT***

***PUBLIC SERVICE COMPANY OF NEW MEXICO***

PNM has no comments based on information provided to date.