



**Environmental  
Planning  
Commission**

*Agenda Number: 5  
Project Number: 1000897  
Case #s: 14EPC-40025 & 14EPC-40027  
June 12, 2014*

**Staff Report**

<b>Agent</b>	Joshua Skarsgard
<b>Applicant</b>	Red Shamrock Investments LLC <b>Zone Map Amendment (Zone Change)</b>
<b>Requests</b>	<b>Deviations from the Regulations of the East Gateway Sector Development Plan (EGSDP)</b> <b>Site Development Plan for Building Permit</b>
<b>Legal Description</b>	Tract B1-A Plat for Video Addition Tracts B1-A & B1-B
<b>Location</b>	On Eubank Blvd. SE, between Central Ave. and Southern Blvd.
<b>Size</b>	Approx. 11.5 acres (larger, existing site) Approx. 1.0 acre (smaller, proposed site)
<b>Zoning</b>	SU-2/EG-C (East Gateway Corridor Zone)

**Staff Recommendation**

**WITHDRAWAL** of the zone map amendment (zone change), at the applicant's request and based on the Findings on Page 18.

**That the EPC GRANT, IN PART, 14EPC-40025, deviations from the regulations of the EGSDP, based on the Findings beginning on Page 18.**

**DEFERRAL** of 14EPC-40027, based on the Findings on Page 22, for 30 days.

**Staff Planner  
Catalina Lehner, AICP- Senior Planner**

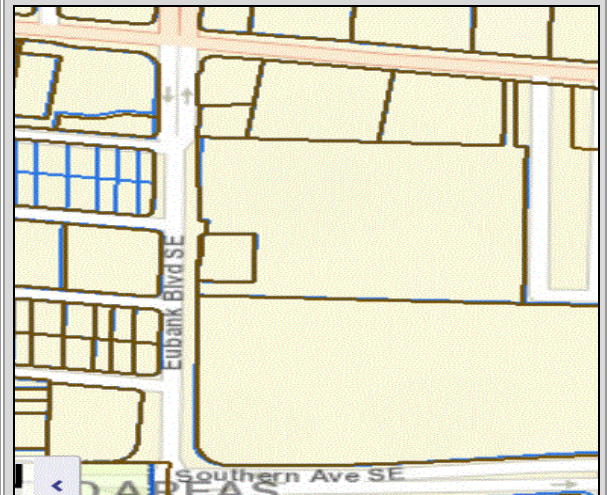
**Summary of Analysis**

The request is for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) and an associated site development plan for building permit for an approx. 1 acre portion of a larger site. The EGSDP establishes a deviation process; deviations must be justified pursuant to EGSDP criteria.

The applicant proposes five major deviations to applicable regulations in order to develop a fast-food restaurant with the desired site layout. The EPC has approval authority for deviations >25% (major) and Staff for deviations <25% (minor). Compliant site plans go directly to building permit.

Staff recommends that the EPC grant the requested deviations *in part*. Two meet the criteria as required; the others do now. However, the site could still be developed without them and in a Plan-compliant manner.

The East Gateway Coalition submitted a letter of general support. Staff recommends deferral of the site plan for 30 days to re-design based upon deviations the EPC decides to grant.



**I. AREA CHARACTERISTICS AND ZONING HISTORY**

*Surrounding zoning, plan designations, and land uses:*

	<b>Zoning</b>	<b>Comprehensive Plan Area; Applicable Rank II &amp; III Plans</b>	<b>Land Use</b>
<b>Site</b>	SU-2/EG-C	Established Urban East Gateway Sector Development Plan	Parking lot and large retail facility (LRF)
<b>North</b>	SU-2/C-1 R-T Residential	Established Urban East Gateway Sector Development Plan	Adult video, parking lot, single-family residential
<b>South</b>	R-T Residential	Established Urban East Gateway Sector Development Plan	Gas station, LRF parking lot
<b>East</b>	R-1 Residential	Established Urban East Gateway Sector Development Plan	Single-family residential (mobile home court)
<b>West</b>	R-T Residential SU-2/C-1	Established Urban East Gateway Sector Development Plan	Storage facility, manufacturing or auto repair (vacant?).

**II. INTRODUCTION**

**Request**

The request is for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) and a site development plan for building permit for an approximately 1 acre lot, the subdivision of which is not yet finalized through the Development Review Board (DRB) process. The proposed lot (the “subject site”) is a portion of a larger, existing, approximately 11.5 acre site located on the east side of Eubank Blvd., between Central and Southern Avenues.

Originally, a zone map amendment (zone change) was included with the request. The subject site is within the boundaries of the EGSDP and therefore is subject to its regulations. The subject site is zoned SU-2/EG-C (East Gateway Commercial) pursuant to the EGSDP; a fast-food restaurant is a permissive use. Because the use is allowed, changing the subject site’s zoning was not needed.

Furthermore, the EGSDP, adopted in October 2010, recognizes that there will be instances when a proposed project does not (or cannot) comply with the regulations. The EGSDP established a deviation process to offer relief of requirements provided that the project still meets the intent of the Plan and will result in a project with “comparable quality and design”. Staff determined that a zone change is not the proper way to address variation from Plan regulations when the EGSDP establishes a deviation process specifically for that purpose.

Pursuant to the EGSDP (p. 5-8), designing a compliant site is the simplest solution and would allow the request to go straight to building permit- quicker and easier than the EPC process. Also, the EGSDP allows for deviations of < 25% of a given standard to be approved administratively by Staff. Deviations of 25% and up to 50% go to the EPC.

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

The EPC is hearing this case because this is the process specified by the East Gateway Sector Development Plan (EGSDP) for deviations to Plan regulations that are between 25% and 50% of a given regulation (see Development Approval Process table, p. 5-8).

The EPC is the final decision-making body unless the EPC decision is appealed [Ref: §14-16-2-22(A)(1)]. If so, an appeal would go to the Land Use Hearing Officer (LUHO), who would make a recommendation to the City Council. As the City's zoning authority, the City Council would make the final determination. The request is a quasi-judicial matter.

### ***Context***

The subject site is located in the Established Urban Area of the Comprehensive Plan and within the boundaries of the East Gateway Sector Development Plan (EGSDP). The subject site is not in a designated Activity Center or Metropolitan Redevelopment Area (MRA), though it is within the boundaries of the Central Avenue Neon Design Overlay Zone (CANDOZ).

There is a variety of land uses in the subject site's vicinity. The larger subject site and the sites to the north and south contain commercial uses, including big-box retail, fast-food, a convenience store and an adult-oriented store. Commercial service and industrial uses, such as a retail pharmacy and self-storage, are to the west across Eubank Blvd. The single-family homes of the Ponderosa Mobile Home court, owned by the State, are to the northeast and east.

### ***Transportation System***

The Long Range Roadway System (LRRS) map, produced by the Mid-Region Council of Governments (MRCOG), identifies the functional classifications of roadways. Eubank Blvd. and Central Ave. are urban principal arterials. Southern Blvd. is urban collector.

The subject site is accessible by Transit. Route #66- Central, runs along Central Ave., north of the subject site, and makes frequent stops. Route #777, the Rapid Ride Green Line, also runs along Central Avenue, but has fewer stops. Route #2-Eubank Blvd., runs just west of the subject site. Service is available on weekdays into evening hours and on weekends. The nearest bus stops, about 1/4 mile away, are located just east of the Central Ave./Eubank Blvd. intersection.

### ***Public Facilities/Community Services***

Several public facilities, including City parks, a senior center, a fire station and a museum, are within a mile of the subject site.

⇒ Please refer to the Public Facilities Map for details (see attachment).

### ***III. HISTORY***

A site development plan for a larger, approximately 16 acre site comprising the southeastern corner of the intersection of Central Ave. and Eubank Blvd. was approved in 1994 (Z-94-45, see attachment). The site was zoned "SU-1 for C-2 Uses" (not straight C-2) and contained the Home Depot, convenience store, and adult store that exist today. An administrative amendment (AA) for a fence was approved in 1998. Another AA to this original SU-1 site plan, approved in May 2013 (Project #1008537/13AA-10189), was to allow for the subdivision of the approximately 1 acre lot where the fast-food restaurant would be located.

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The applicant submitted the subdivision action to create the smaller subject site (the ≈1 acre lot) to the Development Review Board (DRB) prior to the EPC process (instead of after it as is typically done). As of this writing, final sign-off of the subdivision action has not occurred and the lot does not yet exist. Delegation was given to hydrology Staff due to the site's proposed location in a drainage pond for the larger, approximately 16 acre site (see also Section VII of this report).

#### IV. ZONING

##### *Definitions (§14-16-1-5)*

**DRIVE-UP SERVICE WINDOW.** A building opening, including windows, doors, or mechanical devices, through which occupants of a motor vehicle receive or obtain a product or service.

**SETBACK.** The shortest distance between a structure and a lot line or future street line.

**YARD, FRONT.** That part of a lot between the front lot line and the front facades of the principal building on the lot, and extended to both side lot lines.

##### *Zoning & Regulations*

The larger, existing subject site (approx. 11.5 acres) is zoned SU-2/EG-C (East Gateway Corridor Zone) pursuant to the East Gateway Sector Development Plan (EGSDP). Adoption of the EGSDP in October 2010, by the City Council, established this zoning. The prior zoning (SU-1 for C-2 Uses) was superseded.

The SU-2/EG-C Corridor Zone enables the future development of a mixture of non-residential and residential uses intended to support a multi-modal environment and encourage legitimate activity along the street between community and neighborhood activity centers (p. 5-18). In addition to a wide variety of commercial uses, the EGSDP expanded the uses allowed by including residential and manufacturing uses not allowed in these locations prior to EGSDP adoption. The only prohibited uses are adult store and adult amusement, new off-premise signs and parking lots as an individual use (p. 5-17).

For commercial uses, the SU-2/EG-C zone corresponds to the C-2 Community Commercial Zone (Zoning Code §14-16-2-17) with two exceptions: on-premise signs are as regulated as in the O-1 zone and the General Sign Regulations (§14-16-3-5), and wireless telecommunication facilities (WTFs) are allowed only if attached to a building. A restaurant with a drive-up service window is a permissive use.

All properties zoned pursuant to Section 5.4 of the EGSDP (the SU-2 zoning districts) are required to comply with the General Regulations of the EGSDP as part of their zoning designation (p. 5-10). Therefore, development on the subject site- like development on all other properties in the Plan's boundaries- is required to meet the regulations of the EGSDP.

Properties developed prior to EGSDP adoption in October 2010 were not required to comply with the General Regulations. For instance, several restaurants with drive-up service windows, including those near the Central Avenue/Eubank Blvd. intersection and the fast-food restaurant just south of the subject site, were developed before the General Regulations were in effect.

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## V. ANALYSIS- APPLICABLE PLANS, POLICIES & REGULATIONS

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

Policy Citations are in Regular Text; Staff Analysis is in ***Bold Italics***. Please refer to Section VI of this report regarding R270-1980 and the applicant's policy analysis.

The subject site is located in an area that the Albuquerque/Bernalillo County Comprehensive Plan has designated as Established Urban. The goal of the Developing and Established Urban Area is "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." Applicable Goals and policies include:

#### *B. Land Use-Developing & Established Urban Areas*

Policy II.B.5a: The Established and Developing Urban areas as shown by the plan map shall allow a full range of urban land uses, resulting in an overall gross density up to 5 dwelling units per acre.

***Though the request would contribute to a full range of urban land uses, there is already a variety of fast-food options in the area. The request partially furthers Policy II.B.5a- full range of urban land uses.***

Policy II.B.5d: 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, or recreational concern.

***The proposed fast-food restaurant would be located generally away from residential areas. Scenic and resources of other concerns are not large factors in this case. The environmental condition that drainage flows toward the smaller, subject site (a drainage pond for the larger site) is generally not respected. The request partially furthers Policy II.B.5d-neighborhood/environment/ resources.***

Policy II.B.5i: Employment and service uses shall be located to complement residential areas and shall be sited to minimize adverse effects of noise, lighting, pollution, and traffic on residential environments.

***The proposed fast-food restaurant would be located away from residential environments in a large commercial area, and therefore would generally not adversely affect them in terms of noise, lighting, pollution and traffic. A TIS was not required. The request generally furthers Policy II.B.5i- employment and service use location/adverse effects.***

Policy II.B.5j: Where new commercial development occurs, it should generally be located in existing commercially zoned areas as follows:

- In small neighborhood-oriented centers provided with pedestrian and bicycle access within reasonable distance of residential areas for walking or bicycling.

- In larger area-wide shopping centers located at intersections of arterial streets and provided with access via mass transit; more than one shopping center should be allowed at an intersection only when transportation problems do not result.
- In freestanding retailing and contiguous storefronts along streets in older neighborhoods.

*The proposed fast-food restaurant would be located in a larger, area-wide shopping center located at the intersection of arterial streets with access to mass transit. The request generally furthers Policy II.B.5j- new commercial development/location.*

Policy II.B.5l: Quality and innovation in design shall be encouraged in all new development; design shall be encouraged which is appropriate to the plan area.

*The subject site is in the Established Urban Area, in the East Gateway Area. The proposed fast-food restaurant is a standard design used nationally and is therefore not innovative or particular to the SW. The materials are moderate quality and the area doesn't have a particular design theme, however. The request partially furthers Policy II.B.5l-quality design/new development.*

#### **B) East Gateway Sector Development Plan (Rank 3)- Goals & Policies**

Policy Citations are in Regular Text; Staff Analysis is in ***Bold Italics***.

The East Gateway Sector Development Plan (EGSDP, "the Plan") was adopted in October 2010 (Bill No. R-10-73). The Plan generally encompasses the area south of Interstate 40, east of Wyoming Blvd. and Kirtland Air Force Base (KSFB), and west and north of the City's municipal boundaries. Specific boundaries are shown on page 1-1 of the Plan. There is a separate Metropolitan Redevelopment (MR) Plan for the area.

The EGSDP recommends public improvements throughout the area, but emphasizes policies, regulations and projects to improve area function and appearance along Central Avenue, and Wyoming, Eubank and Juan Tabo Boulevards. The Plan emphasizes land use and transportation coordination and introduces four new mixed-use zoning districts, regulations and multi-modal street redesign. Some rezoning, mostly of properties along or near Central Avenue, is included (p. 5-2). General Design Regulations and an approval process particular to the Plan were established.

The EGSDP contains eight overarching Community Goals (p. 2-1) and a plan of action for implementing these Goals (p. 2-11 to 2-13). The following applies to the request:

Goal 2/Plan of Action 2.3.2. Enable the continued existence and new development of thriving businesses to provide jobs and local services.

*The proposed fast-food restaurant would be a new development that would provide some jobs and local services. The Plan expanded uses allowed in the areas formerly zoned C-2 to include light manufacturing and flex spaces to encourage development of businesses that would contribute to the area's variety of services. Many fast-food choices are already available in the area. The request partially furthers Goal 2/ Plan of Action 2.3.2.*

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**Conclusion:** Staff concludes that the request generally furthers and partially furthers applicable Goals and policies in the Comprehensive Plan, and partially furthers an applicable Goal of the EGSDP. Please refer to Section VI of this report for analysis of compliance with EGSDP regulations.

## VI. ANALYSIS OF DEVIATION REQUESTS

### Section 5.5- Building Types & Section 5.6- General Design Regulations

#### Overview, Process & Parameters

The EGSDP's regulatory requirements are found in Section 5.5- Building Types (p. 5-25) & Section 5.6- General Design Regulations (p. 5-46). The building and lot standards and the General Design Regulations are specific and prescriptive to provide certainty for applicants, neighborhoods, and City development reviewers.

The EGSDP Development Approval Process is described on p. 5-8. ***If a proposed site development plan complies with the regulations, it can proceed directly to building permit without a public hearing and without neighborhood notification.*** If not compliant with all applicable regulations and/or the regulations cannot be met, the EGSDP has also established a process for requests to deviate from the regulations: The administrative approval (AA) process is required for minor deviations and the EPC process is required for major deviations (see below).

A deviation means a departure from a regulatory standard; deviations are usually numerical but can also be non-numerical. The EGSDP allows the following two levels of modifications to the regulations:

- A. Minor: The Planning Director or his/her designee may approve, or choose to refer to the EPC, deviations from non-dimensional standards or of 25% or less from any dimensional standard.
- B. Major: Any deviation over 25% and up to 50% from any dimensional standard and deviations to non-dimensional standards deemed to require review shall be reviewed by the EPC via the site development plan approval process. Deviations greater than 50% shall not be approved.

Council Bill R-13-222 (Enactment R-2013-126), effective December 2013, included several revisions to the EGSDP. Among them was further definition of the approval process for deviations to the EGSDP's regulatory requirements. The Bill included language that deviations greater than 50% of a given standard ***shall not be approved*** for any given project. If a deviation of more than 50% to a given standard is desired, an amendment to the text of the EGSDP would be needed. Such text amendment would have to go through the EPC process and, ultimately, would be decided by the City Council. At this time, the Council chose not to delegate its approval authority for deviations exceeding 50%.

#### Requirements

Similar to how Resolution 270-1980 outlines requirements for deciding zone map change applications pursuant to the City Zoning Code, the EGSDP establishes criteria for deciding applications for deviations from the Plan's requirements. The applicant must provide sound

justification for the deviation and demonstrate that at least one of four tests has been met. The burden is on the applicant to show why the deviation should be granted.

The EGSDP criteria and process for deviations is as follows (see p. 5-8 and 5-9):

1. In order for the Planning Director or the EPC to grant a Deviation, the applicant must demonstrate that the applicable intent, goals and policies of the East Gateway Sector Development Plan are still met and that the project is of a comparable quality and design, as otherwise required by the EGSDP, and will enhance the area. In addition, the applicant must also demonstrate at least one of the following:
  - a. The site is unique in terms of physical characteristics and requires the deviation in order to be developed. This may include, but is not limited to slope, drainage, safety issues or site constraints.
  - b. The site/project will serve as a catalyst to redevelopment or further development in the EGSDP area.
  - c. The site/project provides a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source.
  - d. The project will preserve a historic building or structure or an archeological site.
2. Applicants must provide written statement detailing how the deviations meet the intent of the plan. Applicants may refer to sections 2.1 and 2.3 of the Plan (p. 5-9).
3. All applicants seeking deviations shall attend a Pre-Application Meeting with the Pre- Application Review Team (PRT) or Design Review Team (DRT) before submitting the request for deviation (p. 5-9).

Deviations Requested

The following two tables are Staff’s summary of the applicant’s requested deviations to EGSDP regulations. The applicant’s table, on the first two sheets of the site development plan, is somewhat difficult to follow organizationally, contains calculation errors and doesn’t show the math. Also, Staff believes that 6 (not 5) deviations are being requested (see #6, second table).

- Table 1: Commercial Building & Lot Standards -

#	Page	Requirement		Proposed	Difference between Required & Proposed	Deviation & Classification
		Name	Amount			
1	5-36	Building Front Façade Lot Width Coverage	50% minimum	142.5 feet is 50%. 56 feet is proposed and is 20%	Lot is 285 feet wide. $142.5 - 56 = 86.5$ feet difference, or 30%	30%- Major
2	5-36	Front Yard Setback	10 feet maximum	24.75 feet from building	14.75 feet, 147.5% of the standard.	50% deviation is 15 feet. The EPC cannot grant deviations >50%*



\* The applicant’s proposed solutions, presented in a June 2 memo (see attachment) and not shown on the site development plan, are discussed in the analysis section herein.

**- Table 2: General Design Regulations -**

#	Page	Requirement		Proposed	Difference between Required & Proposed	Deviation Classification
		Name	Amount			
3	5-46	Building Façade at Least 50% of Street Frontage	50% minimum	142.5 feet is 50%. 56 feet is proposed and is 20%	Lot is 285 feet wide. 142.5-56=86.5 feet difference, or 30%	30%- Major
4	5-48	Maximum Parking Allowed	ZC min plus 10% (33 spaces)	44 spaces.	11 extra spaces, a third of the standard	33%- Major
5	5-55	Drive-up windows and Ordering Panels at Rear of Building	--	1 window at rear, 1 window at side, ordering panel at side	The 1 window and ordering panel should be at the rear of the building	non-dimensional standard requiring review
6	5-56	No portion of queuing lane within 40 feet of street-facing façades	--			non-dimensional standard requiring review

**Analysis of Applicant’s Justification**

The May 28, 2014 deviation justification letter is analyzed here (see attachment). A supplement to this letter was received on June 2, 2014 (see attachment). The following is Staff’s analysis and discussion of the applicant’s justification for each deviation requested.

**Note:** Requirements (deviation tests) are in regular text; *Applicant’s justification is in italics*; **Staff analysis follows in bold italics.**

1. In order for the Planning Director or the EPC to grant a Deviation, the applicant must demonstrate that the applicable intent, goals and policies of the East Gateway Sector Development Plan are still met and that the project is of a comparable quality and design, as otherwise required by the EGSDP, and will enhance the area. In addition, the applicant must also demonstrate at least one of the following:
  - a. The site is unique in terms of physical characteristics and requires the deviation in order to be developed. This may include, but is not limited to slope, drainage, safety issues or site constraints.
  - b. The site/project will serve as a catalyst to redevelopment or further development in the EGSDP area.
  - c. The site/project provides a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source.
  - d. The project will preserve a historic building or structure or an archeological site.

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*Applicant (summarized): The EGSDP's Commercial Building & Lot Standards do not allow for the "classic" and "contemporary" restaurant building orientation. The applicant is seeking five deviations, all apparently major. The major deviation applications are allowed pursuant to Section 5.3.3 of the EGSDP.*

*The subject property is unique. The grade change makes it very difficult to orient the restaurant parallel to Eubank Blvd.(a). If the orientation was parallel, existing trees would have to be removed. The property is a "carve out" of an existing parking lot (c). Furthermore, the parallel orientation would make the restaurant inconsistent with five other restaurants in the trade area.*

*This retrofit of an under-utilized parking lot is urban infill and has created unique challenges such as grading and drainage, existing landscaping and signage, and curb-cut and sidewalk location (b).*

*Staff: The applicant claims 1.a - that the site is unique in terms of physical characteristics and requires the deviation in order to be developed as the justification for all requested deviations. The proposed restaurant would not serve as a catalyst to redevelopment (b) since the immediate area is already developed and it is one, small use. Nor would it provide a needed service as specified in the EGSDP, CIP proposals, or community survey (c). A historic building or archaeological site is not a factor here (d). Therefore, the applicant's only viable option is to use reason (a).*

*While applications for major deviations are allowed pursuant to EGSDP Section 5.3.3, the EPC has the authority to grant them or to not grant them. Similar to justifying a zone change pursuant to R270-1980, the burden is on the applicant to demonstrate that the intent, goals and policies of the EGSDP are still met and that the project is of a comparable quality and design as if it had developed under the EGSDP regulations. Just because the EGSDP's regulations do not allow a "classic" and "contemporary" franchise design as the applicant claims, does not mean that the regulations should be overlooked or that the site is somehow unique.*

*Furthermore, Staff disagrees with the applicant's claim. It is common for franchise restaurants to adapt to local requirements to be approved and become part of a community (ex. McDonald's in Santa Fe). In this case, the EGSDP doesn't prohibit the generic franchise design proposed. This is "classic" and "contemporary" and is allowed. The conflict with the regulations is with respect to the desired building orientation.*

*The applicant claims that topographical challenges require that the building be oriented perpendicular to Eubank Blvd. and only on the southern end of the proposed subject site. This statement is incorrect. Actually, a building orientation parallel to Eubank Blvd. would function better from a grading and drainage standpoint AND would meet the intent of the EGSDP. The existing, mature trees would not have to be removed. A deviation to the 10 foot maximum front yard setback could still be requested if the building is rotated.*

*Furthermore, topography is a consideration but it does not make the proposed subject site unique. The neighboring site to the south, also along the western edge of the larger subject site,*

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*is in the same situation regarding topography. The larger, approx. 11.5 acre subject site was designed so drainage ponds on its western edges. The applicant's decisions to "carve out" (subdivision action not yet finalized) this portion of the larger site, with the particular dimensions shown on the proposed site development plan, are factors the applicant created. Any alleged site constraints, especially those due to size, are not a natural physical characteristic. Even if the EPC decides that topography makes the smaller, proposed site unique, the site's physical characteristics do not preclude its development pursuant to the EGSDP regulations.*

*The applicant provides photos of four restaurants with building orientation perpendicular to a major arterial (Central Ave.) as evidence that the proposed restaurant should be allowed to be perpendicular to Eubank Blvd. Staff points out that these four restaurants were ALL built prior to the adoption of the EGSDP regulations and were not subject to them. Inconsistency with other fast-food restaurants is not a criterion for deviation.*

2. Applicants must provide written statement detailing how the deviations meet the intent of the plan. Applicants may refer to sections 2.1 and 2.3 of the Plan.

*Applicant (summarized): The five design standards cannot be met without substantial hardship. The neighborhood supports the proposed restaurant. The five deviations will leave a site plan that "still meets" the policies of the Comp Plan and the EGSDP.*

*Staff: The applicant's May 28, 2014 letter explains the deviations requested and offers justification for them (see attachment). Part of the justification, however, are items not included in the EGSDP criteria for granting a deviation, as noted herein:*

*Though neighborhood support is desirable, the EGSDP criteria for granting a deviation do not include neighborhood support. Therefore, neighborhood support cannot properly be considered as justification for the requested deviations. Staff also points out that neighbors can like or not like a use, but Staff is tasked with analyzing the details of the deviation requests.*

*The applicant's letter states that the five design regulations cannot be met without "substantial hardship". The EGSDP criteria for granting a deviation do not include hardship. Therefore, hardship (substantial or not) cannot properly be considered as justification for the requested deviations. However, if the EPC wishes to consider hardship anyway, Staff points out the following in response to the applicant's claims (numbered to match applicant's numbering):*

1. *Meeting the EGSDP parking requirement provides sufficient parking. There is plenty of additional parking on the adjacent big-box lot. If the big-box store does not want a shared parking agreement, that is a private matter and is not a criterion for deviation.*
2. *The site layout proposed is unsafe because pedestrians would have to cross the queuing lane to access the building from the west or east. Safety and functionality improvements, and compliance with most regulations, could be achieved with a re-design.*
3. *The mature street trees would not have to be removed. A deviation to the setback could still be requested.*

4. *The grading and drainage situation would improve if the building were parallel to Eubank Blvd. because the ponding area would not have to be filled (less cut-and-fill).*
5. *The site layout could be such that safe pedestrian connectivity to Eubank Blvd. could be provided.*

*The applicant cites Comprehensive Plan Land Use policies II.B.5d, 5e, 5i, 5j, and 5k and offers generally acceptable explanations. However, these policies are very general in nature. Staff points out that the applicant's statement that the request would result in redevelopment in concentrated nodes is incorrect. Designated Activity Center zones in the EGSDP are located at the intersections of Juan Tabo Blvd/Central Ave. and Tramway Blvd./Central Ave.*

*Regarding the EGSDP, the applicant states that converting a parking lot into a "flourishing national restaurant" is "exactly what the drafters of the EGSDP called for." Staff disagrees. The quantity and scope of the five deviations proposed, in combination, would result in a site that is in conflict with the intent, goals and policies of the EGSDP.*

*The commercial building examples in the EGSDP (p. 5-37) show buildings a maximum of 10 feet from the public right-of-way. This is intended to encourage legitimate activity on the street, provide a pleasant and safe pedestrian experience and support a multi-modal environment (p. 5-18, intent of the SU-2/EG-C zone). The proposed building, in contrast, would be 24.75 feet from the public ROW and therefore would not meet these intents.*

*The "comparable quality and design, as otherwise required by the EGSDP" would not be achieved either. The maximum front yard setback of 10 feet is intended to bring buildings closer to the street, and the requirement that queuing lanes not be within 40 feet of the street-facing façade reinforces this- along with the ordering panels and drive-up window in the back and the parking quantity and parking location on the building's side.*

*The point is that regulations work together to create and support the intent, Goals and policies of the EGSDP. Though each development proposal is considered on a case-by-case basis, Staff believes that, generally, careful and minimal deviation from a few regulations would not create conflict with the Plan. However, in this case, the number of deviations proposed and their scope (all major, one possibly not grant-able) would result in a site layout that is in direct conflict with the EGSDP.*

*Furthermore, the applicant's proposed solution to reduce the setback deviation (see attachment and previous discussion herein) from 148% to <50% shows two ways to get around the regulations: measuring front yard setback on the side, which is contrary to established Zoning practice, and installing a covered structure over the drive-thru lane and counting it as the place where the setback measurement starts, rather than move the building.*

3. All applicants seeking deviations shall attend a Pre-Application Meeting with the Pre- Application Review Team (PRT) or Design Review Team (DRT) before submitting the request for deviation.

*In this case, the applicant did not attend a PRT or DRT meeting. Though the original application was for a zone map amendment, a PRT and/or DRT meeting still would have been*

*valuable to have a better understanding of the EGSDP process and requirements up-front. Often the fact that a site is in a sector development plan area is a “heads-up” that the application process could be more involved than in areas without sector development plans. Even if not required, a PRT or DRT meeting with Staff can be an important part of an applicant’s “due diligence” process prior to application submittal.*

Staff Recommendation & Conclusion

*The proposed deviations are not absolutely necessary to develop the site; they are being requested to allow the applicant’s preferred building orientation. The site could still develop if some deviations are granted and others are not; Staff does not believe that this is an “all or nothing” scenario.*

*The City Council adopted the deviation process in the EGSDP and specified therein and criteria that must be met for a deviation to be approved. They recognized extenuating circumstances and did not prohibit deviations to regulatory requirements, but such deviations are not to be taken lightly and must be justified. Neither the EPC nor Staff has the authority to change the existing regulations; this is the purview of the City Council only.*

*Deviations are allowed provided that the goals and policies of the EGSDP are still met and if the project is of “a comparable quality and design, as otherwise required by the EGSDP”. Staff finds that the deviation to the Commercial & Building Lot standard regarding Building Front Façade Lot Width Coverage and the deviation to the General Design Regulation regarding Building Façade at Least 50% of Street Frontage are needed to make the site function. Even with the setback met and the queuing lane removed from the front yard setback, and re-orienting the building parallel to Eubank Blvd., the building would still not meet the requirement for 50% coverage. This is a legitimate deviation that would not compromise the intent of the Plan and would result in “comparable quality and design.” Staff recommends that the EPC grant these deviations (#1 and #3 of Table 1).*

*Staff finds that the requested deviations to:*

- *the Commercial & Building Lot standard regarding maximum front yard setback,*
- *the General Design Regulation regarding maximum parking allowed,*
- *the General Design Regulation regarding drive-up windows and ordering panels at rear of Building, and*
- *the General Design Regulation regarding no portion of queuing lane within 40 feet of street-facing façades*

*would, in combination and due to their scope and number, result in a site layout that is in direct conflict with the EGSDP as explained previously herein. Staff recommends that the EPC not grant these deviations (#2 of Table 1 and #4, #5 and #6 of Table 2).*

*In conclusion, Staff suggests, if it is determined over time and through multiple instances, that certain EGSDP regulations make it impossible for development to occur, these regulations be changed through text amendments to the EGSDP. However, Staff believes that text amendments are not necessarily warranted for a single case or for instances when an applicant*

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*could comply with the regulations. As the City's zoning authority, the City Council would make the determination.*

## **VII. SITE DEVELOPMENT PLAN FOR BUILDING PERMIT**

The proposed deviations to the East Gateway Sector Development Plan (EGSDP) are accompanied by a request for a site development plan for building permit that would allow the construction of a 4,500 square foot fast-food restaurant with a drive-up service window. The requested deviations are discussed in detail in Section VI of this report.

**Section 14-16-3-11 of the Zoning Code states, "...Site Development Plans are expected to meet the requirements of adopted city policies and procedures."** As such, Staff has reviewed the proposed site development plan. Please see Section VI of this report for analysis of the extent to which the proposed site development plan meets, and does not meet, the requirements of the EGSDP.

### ***Site Plan Layout / Configuration***

The smaller subject site is part of a larger shopping center site and is used as parking for the big-box home improvement store to the east. The site runs parallel to Eubank Blvd. The applicant proposes a main entrance facing north, toward the parking area, and a pedestrian entrance and patio area facing Eubank Blvd.

The trash enclosure will be located in the northwest corner of the site, away from the patio area. Verification that the location is acceptable to Solid Waste Staff is needed.

### ***Vehicular Access & Circulation***

Access will be provided from Eubank Blvd. via two existing approximately 24-foot wide drive aisles. The applicant proposes a 12 foot wide drive-thru lane around the building. Access is also provided from the existing parking lot area east of the subject site.

### ***Setback & Proposed Drive-thru Lane (see also Section VI)***

The EGSDP allows maximum 10 foot front or side setback for commercial buildings, Commercial Building and Lot Standards, 5-36. The applicant proposes a 24 foot setback from Eubank Blvd .to accommodate this drive through lane. This setback would not meet the requirements of the EGSDP. The applicant is asking for a deviation to this standard; the EPC can grant deviations of up to 50% to dimensional standards in the EGSDP. The proposed setback would require a deviation of 148%. This is not within the power of the EPC to grant.

Having been made aware of this, the applicant submitted a letter (dated June 2, 2014 letter- see attachment) that seeks to reclassify the requested 148% deviation to within an approvable amount (<50% of the required maximum 10%). The applicant's solution shows two ways to get around the regulatory requirement:

- 1) measure the front yard setback on the side of the lot at its narrowest point, instead of the front of the lot. However, this is contrary to established Zoning practice. Staff verified this with Zoning Staff, and

- 2) install a covered structure over the drive-thru lane and count it as the place where the setback measurement starts, rather than the building. The intent of the Plan, as indicated by several mutually-reinforcing regulations, is to bring buildings up to the street.

Staff does not find either solution acceptable. Instead, Staff suggests that the applicant re-design the site layout so that either no deviation, or a minor deviation, is needed.

Additionally, the EGSDP (5.16.14.4) requires the drive-up service windows be located to the rear of the building. If this is not possible, then the window may be located on the side provided that A) it is screened by a wall or landscaping and B) “no portion of the queuing lanes, access lanes or driveways shall be located within 40 feet of the street facing façades of a building or between the building and the street, excepting an alley.” The proposed drive-through lane does not meet either of these requirements. The applicant is asking for deviations to these regulations as well.

### ***Parking***

According to §14-16-3-1, General Parking Regulations, 30 parking spaces are required. The EGSDP 5.6.2.A.2, requires that maximum parking is the minimum required by the Zoning Code plus 10%. For this site, that would be a total of 33 spaces. The applicant is proposing 44 spaces and is asking for a deviation.

The EGSDP, 5.6.2 A.1, also requires parking to be distributed on the site to minimize the visual impact of large parking fields; the proposed parking is all in one area and does not meet this regulation.

The EGSDP, 5.6.2 A.4, requires screening of parking lots by providing low walls, landscaping or a combination. The proposed landscaping on the north, south and east sides of the site meets this requirement. The existing landscaping along Eubank Blvd. consists of street trees and turf and will provide some screening. A 3 foot high CMU screen wall is also proposed.

Four bicycle spaces are proposed near the main entrance. Two motorcycle spaces are proposed. These comply with §14-16-3-1, General Parking Regulations.

### ***Pedestrian and Bicycle Access and Circulation, Transit Access***

There is an existing 6 foot wide sidewalk along Eubank Blvd. and an existing 6 foot sidewalk along the southern edge of the site. The applicant proposes a pedestrian connection from the Eubank sidewalk to the restaurant. This connection crosses the queuing lane for the drive-up service window, as does the pedestrian connection on the site’s eastern side. The EGSDP 5.6.1.C.4.a, requires that pedestrian pathways be “physically separated from driveways by landscaping, berms barriers, grade separations or other means to protect pedestrians from vehicle traffic.” The pedestrian pathways (3 total) across the queuing lane do not comply with this requirement.

The EGSDP 5.6.1.C.4.b, requires pedestrian connections “between buildings and adjacent parcels, and to existing public bicycle trails, lanes and routes and pedestrian trails and sidewalks. Pedestrian connections shall occur at a minimum distance of 500 feet.” The applicant proposes a connection from the sidewalk in front of the restaurant into a portion of the parking lot, but does not show connections throughout the parking lot or from this site to adjacent sites.

The southbound Transit Route 2 stops across Eubank Blvd. about 200 feet from the subject site. The northbound route stops about 800 feet to the south. There is a Rapid Ride stop and a Transit Route #66 stop about 500 feet from the site on Central Ave.

#### ***Walls/Fences***

A 3 foot high wall is proposed to screen the drive-up area as required pursuant to the EGSDP. The wall should match the proposed building. A wall detail is needed indicating color(s) and dimensions.

#### ***Lighting and Security***

Site lighting consists of small, building-mounted lights on the restaurant. The EGSDP requires that building mounted light not exceed 15 feet in height. However, the lights are shown at 16 feet and will need to be lowered.

Six light poles are proposed. The light poles must contain full cut off fixtures and be no more than 20 feet in height pursuant to the Zoning Code and the EGSDP. A light pole detail is needed to indicate height, color and fixturing.

#### ***Landscaping***

There are existing, mature street trees (Ash trees) and turf along Eubank Blvd. and on the north and south edges of the site. A well-rounded palette of native and low water plants is proposed. Staff suggests replacing Columbine with a more heat-tolerant flower. Staff also suggests indicating curb notches on the landscaping plan and providing a curb-notch detail. Bio-retention areas are labeled, but such areas will not work unless curb notches are provided and the landscaping is planted slightly below grade.

The applicant proposes relocating the existing parking lot trees; if the trees do not survive this process they will have to be replaced with new, healthy trees. The landscaping plan meets the requirements of §14-16-3-10, General Landscaping Regulations and the EGSDP.

#### ***Outdoor Space***

The proposed outdoor patio, on the western side of the building, was reduced in size from the prior version of the site development plan. Four tables were proposed, now three are. Shading is needed to make the patio usable. Also, pursuant to the Zoning Code, major facades over 100 feet in length shall provide a bench. The building length is 101 feet, so this is required.

#### ***Grading & Drainage Plan***

The subject site is relatively flat, with a grade change of approximately 2 feet from west to east. The subject site was used as a ponding area for the existing development. The grading and drainage plan shows that stormwater will be accommodated through a private storm line along the east side of the site, an inlet on the adjacent property, two inlets on the southwest corner of the site, landscaped retention areas and an existing inlet on Eubank Blvd. There will be short-term ponding on the site during heavy storm events.

Hydrology Staff has reviewed the grading and drainage plan and finds it acceptable as long as two conditions are met: the applicant must provide the calculations used to determine the water surface elevations and flow discharge and provide written approval for the construction of the connection to the inlet on the adjacent site.



### ***Utility Plans***

The applicant proposes relocating the existing PNM line, which will require coordination with PNM. The landscaping along the north side of the side is composed of smaller shrubs and plants in order to avoid conflict with existing underground utilities.

### ***Architecture***

The proposed building will have stacked stone accents and varying shades of tan stucco. All facades contain articulation, changes in color and materials, and therefore meet the EGSDP design regulations regarding Building Materials (5.6.11) and Building Articulation (5.6.13).

Building height varies from 21'10" to 23' 10" and includes decorative tower elements. The EGSDP refers to the O-1 zone for height. The O-1 zone allows 26 feet at any location. The height complies with the Zoning Code and EGSDP.

The EGSDP requires that buildings cover at least 50% of the lot frontage. The applicant proposes building coverage of 20% of the lot frontage: 56 feet out of 275 feet. The applicant is asking for a deviation to the EGSDP standards to allow this.

### ***Signage***

Four building-mounted signs of approximately 65 square feet are proposed, one on each façade. The EGSDP refers to the O-1 zone for signage and allows building mounted sign to be up to 15% of the façade area. The building facades range from approximately 1,200 sf to approximately 2,200 sf. The proposed building-mounted signs comply.

The signage is not clearly dimensioned and colors, material and lighting type are not stated. These items must be clarified before final sign-off at DRB. Any notes regarding a "separate sign package" need to be removed. Also, if a monument sign is desired, a monument sign detail specifying height, materials, colors, dimensions and lighting is needed.

### ***Traffic Impact Study (TIS)***

The applicant submitted a queuing analysis and trip generation report as required by Transportation Staff. The dated May 5<sup>th</sup>, 2014 report finds that the peak hour volumes for the proposed project can most likely be contained on the subject site and that the volume will not exceed the capacity of the existing center turn lane on Eubank in front of the subject site (see attachment).

## ***VIII. AGENCY & NEIGHBORHOOD CONCERNS***

### ***Reviewing Agencies/Pre-Hearing Discussion***

City Departments and other agencies reviewed this application from 3/31/'14 to 4/11/'14. At the time of submittal and agency distribution, the application was incomplete. The required site development plan was not included. Therefore, the applicant had to distribute the site development plan (v.2), with a cover memo of explanation, to the following key agencies: Zoning Enforcement, Transportation Development, Hydrology, Utilities, DMD Transportation Planning, and SWMD.

Zoning Staff note that an 8 foot sidewalk is required along the main façade, and that pedestrian walkways need to be a minimum of 6 feet wide. Long-Range Planning Staff questioned the need for the original zone change application. Solid Waste staff commented that the refuse enclosure location

was disapproved. PNM commented that coordination with them is needed regarding tree species and notes that there are easements along Eubank Blvd.

Hydrology Staff requested drainage narrative and calculations. Transportation Staff commented regarding ADA requirements, DPM requirements and clear-sight triangle issues. Agency comments begin on p. 24.

### ***Neighborhood/Public***

The affected neighborhood organization, as cited by the Office of Neighborhood Coordination (ONC), is the East Gateway Coalition of Neighborhoods, which the applicant notified as required (see attachments). Property owners within 100 feet of the subject site were also notified as required. A facilitated meeting was neither recommended nor held.

The East Gateway Coalition provided a letter of general support for the fast-food use (see attachment). There is no known opposition as of this writing.

## **IX. CONCLUSION**

The request is for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) and a site development plan for building permit for an approximately 1 acre lot (not yet finalized) that is part of a larger, approximately 11.5 acre site located on the east side of Eubank Blvd., between Central and Southern Avenues. The applicant proposes 5 major deviations, though 6 major deviations are needed for the site development plan as proposed.

The subject site, zoned SU-2/EG-C (East Gateway Commercial), is within the boundaries of the EGSDP. Therefore, the regulatory requirements of the EGSDP apply. The subject site is zoned SU-2/EG-C (East Gateway Commercial) pursuant to the EGSDP; the proposed fast-food restaurant is a permissive use.

The EGSDP established a deviation process to offer relief of requirements for projects that still meet the intent of the Plan and are of “comparable quality and design”. The EPC is hearing this case because the EGSDP specifies the EPC process for deviations between 25% and 50% of a given regulation. Deviations < 25% can be approved administratively by Staff. Projects that comply with applicable regulations proceed directly to building permit.

Staff finds that requested deviations #1 and #3 of Table 1, regarding building façade at least 50% of lot width/street frontage, would not compromise the intent of the Plan and would result in “comparable quality and design.” Staff recommends that the EPC grant these. Regarding the other deviations (#2 of Table 1 and #4, #5 and #6 of Table 2), Staff finds that they would, in combination and due to their scope and number, result in a site layout that is in direct conflict with the EGSDP. Staff recommends that the EPC not grant these.

Staff recommends a 30-day deferral of the proposed site development plan to accomplish a re-design based on the EPC’s decision, address certain Zoning Code requirements and provide clarification.

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***FINDINGS – 14EPC-40025, June 12, 2014, Sector Development Plan Map Amendment (Zone Change)***

1. This request is for a sector development plan map amendment (zone change) for an approximately 1 acre portion (not yet subdivided, the “smaller subject site”) of a larger, approximately 11.5 acre site that is Tract B1-A Plat for Video Addition Tracts B1-A & B1-B of Block A-1-A1 (the “larger subject site”), located on the east side of Eubank Blvd. SE, between Central Ave. and Southern Blvd.
2. The subject sites are located in the Established Urban Area of the Comprehensive Plan. The East Gateway Sector Development Plan (EGSDP) applies. The subject sites are not located in a designated Activity Center.
3. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code and the EGSDP are incorporated herein by reference and made part of the record for all purposes.
4. The subject site is zoned SU-2/EG-C (East Gateway Corridor Zone) pursuant to the EGSDP. Permissive uses in the SU-2/EG-C zone are uses permissive in the C-2 zone (with 2 exceptions), townhouses and apartments, live-work spaces, retail businesses, manufacturing and religious institution. Three uses are prohibited. Conditional uses are not allowed.
5. The applicant proposes to develop a fast-food restaurant with a drive-up service window. The use is permissive in the SU-2/EG-C zone.
6. The Commercial Building & Lot Standards and the General Design Regulations of the EGSDP, applicable to all SU-2 zoned properties, apply. The applicant was seeking a zone change because the associated, proposed site development plan for building permit (14EPC-40027) could not comply with the applicable regulations.
7. Adopted in October 2010 and subsequently amended, the EGSDP established a process for approval of deviations to regulatory requirements (p. 5-8 & 5-9). A zone change is not the proper process for addressing variation from EGSDP regulations when the Plan establishes a deviation process specifically for that purpose.
8. Staff recommends withdrawal of the sector development plan map amendment (zone change) request.

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***FINDINGS – 14EPC-40025, June 12, 2014, Deviations from Certain Regulatory Requirements of the East Gateway Sector Development Plan (EGSDP)***

1. The request is for certain deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) for an approximately 1 acre portion (not yet subdivided, the “smaller

subject site”) of a larger, existing, approximately 11.5-acre site that is Tract B1-A Plat for Video Addition Tracts B1-A & B1-B of Block A-1-A1 (the “larger subject site”), located on the east side of Eubank Blvd., between Central and Southern Avenues, zoned SU-2/EG-C (East Gateway Corridor Zone).

2. The subject sites are located in the Established Urban Area of the Comprehensive Plan. The East Gateway Sector Development Plan (EGSDP) applies. The subject sites are not located in a designated Activity Center.
3. The applicant proposes to develop a 4,526 square foot fast-food restaurant with a drive-up service window, on an approximately 1 acre portion of the parking lot of an existing big-box store. The subdivision of the smaller subject site has been heard at the Development Review Board (DRB), but has not been finalized as of this writing.
4. A proposed site development plan for building permit (14EPC-40027) is associated with this request for deviation from certain regulatory requirements of the EGSDP.
5. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code and the EGSDP are incorporated herein by reference and made part of the record for all purposes.
6. The EGSDP established a deviation process to offer relief of requirements for projects that still meet the intent of the Plan and are of “comparable quality and design”. The EPC is hearing this case because the EGSDP specifies the EPC process for deviations between 25% and 50% of a given regulation. Deviations < 25% can be approved administratively by Staff. Projects that comply with applicable regulations can proceed directly to building permit.
7. The EGSDP gives the EPC authority to grant, or not grant, deviations to the Plan’s regulatory requirements. Similar to justifying a zone change, the burden is on the applicant to demonstrate that the intent, goals and policies of the EGSDP are still met and that the project is of a comparable quality and design as if it had developed under the EGSDP regulations.
8. The EGSDP criteria for granting a deviation are as follows (p. 5-9):

“In order for the Planning Director or the EPC to grant a Deviation, the applicant must demonstrate that the applicable intent, goals and policies of the East Gateway Sector Development Plan are still met and that the project is of a comparable quality and design, as otherwise required by the EGSDP, and will enhance the area. In addition, the applicant must also demonstrate at least one of the following:

  - a. The site is unique in terms of physical characteristics and requires the deviation in order to be developed. This may include, but is not limited to slope, drainage, safety issues or site constraints.
  - b. The site/project will serve as a catalyst to redevelopment or further development in the EGSDP area.

- c. The site/project provides a needed service for the community, as identified in the EGSDP, CIP proposals, community survey or other similar source.
- d. The project will preserve a historic building or structure or an archeological site.”

The applicant claims (a), that the smaller subject site is unique in terms of physical characteristics.

9. The EPC finds that the proposed subject site is not unique in terms of physical characteristics, including topography. The site to the south is in the same situation regarding topography because the larger, approx. 11.5 acre subject site was designed so drainage ponds on its western edges. Furthermore, any alleged site constraints, especially those due to size, are not a natural physical characteristic but are a result of the applicant’s decision to “carve out” (subdivision action not yet finalized) the proposed subject site with certain dimensions.

10. It is common for franchise restaurants to adapt to local requirements such as those in the EGSDP. The EGSDP doesn’t prohibit the generic franchise design proposed. The conflict with the regulations is with respect to the desired building orientation.

11. Requested deviations #1 and #3 of Table 1, regarding building façade at least 50% of lot width/street frontage, would not compromise the intent, Goals and Policies of the EGSDP and would result in “comparable quality and design.” Even with a site design that meets the intent of the Plan and the setback (and other) requirements, the building would still not cover 50% of lot frontage whether the building is oriented parallel to the street or not. These deviations are granted, as follows:

Table 1, #1: Commercial & Building Lot standard regarding Building Front Façade Lot Width Coverage 50% required. Building parallel to Eubank Blvd.- 15% deviation, OR  
Building perpendicular to Eubank Blvd.- 30% deviation.

Table 1, #3: General Design Regulation regarding Building Façade at Least 50% of Street Frontage.  
Building parallel to Eubank Blvd.- 15% deviation, OR  
Building perpendicular to Eubank Blvd.- 30% deviation.

12. The remaining requested deviations (#2 of Table 1 and #4, #5 and#6 of Table 2), would, in combination and due to their scope and number, result in a site layout that is in direct conflict with the intent, Goals and Policies of the EGSDP and would result in a site layout that is not comparable in quality and design to what would be approved pursuant to the EGSDP regulations. The following deviations are not granted:

- A. Commercial & Building Lot standard regarding maximum front yard setback of 10 feet
- B. General Design Regulation regarding maximum parking allowed (Zoning Code required plus 10%)
- C. General Design Regulation regarding drive-up windows and ordering panels at located at the rear of a building, and

D. General Design Regulation regarding no portion of a queuing lane allowed within 40 feet of street-facing façades

13. The deviations referred to in Finding #12 (#2 of Table 1 and #4, #5 and #6 of Table 2), in combination and due to their scope and number, would result in a site layout that is in direct conflict with the intent, Goals and Policies of the EGSDP.

The SU-2/EG-C (East Gateway Corridor Zone) intends to enable development of a mixture of uses that support a multi-modal environment and encourage legitimate activity along the street. The combination of not meeting the setback requirement and locating a queuing lane between the building and the street would effectively discourage interaction between the building and the street and would create three pedestrian-vehicle conflict points on the site that are potentially unsafe and that would discourage non-vehicle modes of transportation. This conflicts with EGSDP Goals 1 and 3, which generally seek to provide safety and support non-vehicular transportation choices.

14. The applicant provides photos of four restaurants with building orientation perpendicular to a major arterial (Central Ave.) as evidence that the proposed restaurant should be allowed to be perpendicular to Eubank Blvd. These restaurants were built prior to the adoption of the EGSDP regulations and were not subject to them. Inconsistency with other fast-food restaurants is not a criterion for deviation.
15. Though neighborhood support is desirable, the EGSDP criteria for granting a deviation do not include neighborhood support. Therefore, neighborhood support cannot properly be considered as justification for the requested deviations.
16. The applicant's letter states that the five design regulations cannot be met without "substantial hardship". The EGSDP criteria for granting a deviation do not include hardship. Therefore, alleged hardship (substantial or not) cannot properly be considered as justification for the requested deviations.
17. The neighborhood organization required to be notified is the East Gateway Coalition of Neighborhoods, which the applicant notified as required. A facilitated meeting was neither recommended nor held. The East Gateway Coalition provided a letter of general support. There is no known opposition as of this writing.

***RECOMMENDATION - 14EPC-40025, June 12, 2014***

**That the EPC GRANT, IN PART, 14EPC-40027, a request for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP), for an approximately 1 acre portion (to be subdivided) of a larger, approximately 11.5 acre site, based on the preceding Findings.**

***FINDINGS – 14EPC-40027, June 12, 2014- Site Development Plan for Building Permit***

1. This request is for a site development plan for building permit for an approximately 1 acre portion (not yet subdivided, the “smaller subject site”) of a larger, approximately 11.5-acre site that is Tract B1-A Plat for Video Addition Tracts B1-A & B1-B of Block A-1-A1 (the “larger subject site”), located on the east side of Eubank Blvd. SE, between Central Ave. and Southern Blvd., zoned SU-2/EG-C (East Gateway Corridor Zone).
2. The subject sites are located in the Established Urban Area of the Comprehensive Plan. The East Gateway Sector Development Plan (EGSDP) applies. The subject sites are not located in a designated Activity Center.
3. The applicant proposes to develop a 4,526 square foot fast-food restaurant with a drive-up service window, on an approximately 1 acre portion of the parking lot of a big-box store. The subdivision of the smaller subject site has been heard at the Development Review Board (DRB), but has not been finalized as of this writing.
4. The proposed site development plan for building permit is associated with a request for deviation from certain regulatory requirements of the EGSDP (14EPC-40025).
5. The Albuquerque/Bernalillo County Comprehensive Plan, the City of Albuquerque Zoning Code and the EGSDP are incorporated herein by reference and made part of the record for all purposes.
6. A Traffic Impact Study (TIS) was not required, but a queuing analysis was. The queuing analysis finds that queuing for the proposed fast-food restaurant could be adequately handled on site.
7. The neighborhood organization required to be notified is the East Gateway Coalition of Neighborhoods, which the applicant notified as required. A facilitated meeting was neither recommended nor held. The East Gateway Coalition provided a letter of general support. There is no known opposition as of this writing.
8. Staff recommends deferral of this request for 30 days. Because the site development plan is tied to a request for certain deviations from the regulatory requirements of the EGSDP, it is dependent upon which deviations are granted and which are not. The site layout will need to be revised to incorporate the EPC’s decision regarding the proposed deviations. Until this is known, the site development plan is in a state of flux and cannot be adequately reviewed.
9. Several conditions of approval would be needed to provide clarification, ensure compliance with applicable regulations, including the Zoning Code, and bring the submittal in line with local standards.

***RECOMMENDATION - 14EPC-40027- June 12, 2014- Site Development Plan for Building Permit***

**DEFERRAL of 14EPC-40027, a request for a Site Development Plan for Building Permit associated with the request for deviations to the regulatory requirements of the East Gateway Sector Development Plan (EGSDP) (14EPC-40025), for an approximately 1 acre portion (to be subdivided) of a larger, approximately 11.5 acre site, based on the preceding Findings, for 30 days.**

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***Catalina Lehner, AICP  
Senior Planner***

***Notice of Decision cc list:***

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Geneva Meeker, East Gateway Coalition, 1423 Wagontrain Dr. SE, Albuquerque, NM 87123



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## CITY OF ALBUQUERQUE AGENCY COMMENTS

**Note from Staff Planner:** *At the time of submittal and agency distribution, the application was incomplete. The required site development plan was not included. When this happens, the applicant needs to distribute the site development plan (v.2), with a cover memo of explanation, to key agencies\*: Zoning Enforcement, Transportation Development, Hydrology, Utilities, DMD Transportation Planning, and SWMD.*

*Staff recommends that agencies receive the site development plan by Friday, April 18<sup>th</sup> and that they submit updated comments to Staff by Friday April 25<sup>th</sup>.*

### PLANNING DEPARTMENT

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

*Original comment:* Off-Street parking per 14-16-2-22(C)

*Comment 4-21-14:* 8' minimum sidewalk along main façade where parking abuts walk way. 14-16-3-1(H)(4) Pedestrian walkways throughout new site minimum of 6' in width 14-16-3-1(H)(1)

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

No Neighborhood and/or Homeowner Associations  
East Gateway Coalition

#### **Long Range Planning**

No site development plan was included, and the request is for a C-2 use, so it is unclear why the request is for "SU-1 for C-1 with drive through provision." Was this the zoning designation recommended in a PRT or by Code Enforcement?

The intent of the current SU-2/EG-C Zone is "to enable development of non-residential and residential uses that support a multi-modal environment and encourage legitimate activity along the street between community and neighborhood activity centers." (R-2010-129) Without a site development plan, it is not possible to evaluate the R-270-1980 justification and policy analysis.

The justification letter's discussion about the use being permissive under the zoning prior to adoption of the EGSDP seems to be a compelling argument against the zone change. It is a recently adopted Plan (2010) with the intent to develop a "cohesive vision for Central Avenue and major connecting streets, coupled with changes in market trends and the national economic downturn all combined to create a public environment unreceptive to local residents and employees" (R-2010-129). Perhaps a Sector Plan text amendment is the correct remedy.

#### **Metropolitan Redevelopment**

No comments received.

### CITY ENGINEER

#### **\*Transportation Development Services:**

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**Transportation Development (City Engineer/Planning Department):**

- Traffic Impact Study will be required prior to submittal of any site plan. This request is for a Zone Change only.
- The submitted *Preliminary Site Plan* is considered “illustrative” and will not be review by Transportation Development for comments until a Site Plan for Building Permit is submitted.

Updated Comments:

- Traffic Impact Study will be required prior to approval of SDBP by DRB.
- Zone change to allow drive-thru must be approved by EPC prior to approval of SDBP.
- Sheet 1, General Notes numbering begins w/ 9, please clarify.
- Lot numbers referenced in General Notes do not reflect Lot numbers recorded in AGIS. Please provide recorded documents of access easements/agreements that validate statements.
- Railing provided at pedestrian steps from Eubank ROW to site?
- Railing provided around patio seating?
- Provide details/dimensions of proposed “Chick-Fil-A” pole sign.
- Include existing signs on site plan, at NE and SE corners of site.
- Storage layout/access abutting trash enclosure on sheet 1 inconsistent with detail sheet 9.
- Existing Street Trees to remain?
- All required handicap parking must be located as close as possible to entrance.
- Handicap parking signs, pavement markings and stall & access aisle dimensions must meet current ADA criteria.
- Label all end-of-aisle island radii, a minimum of 15 ft require for vehicular circulation per DPM, figure 23.7.2.
- Label interior radii of drive-thru aisle, minimum of 25 ft radii required with 12 ft wide drive lane. A 14 ft lane width can reduce curve radii to 15 ft.
- Vehicles exiting drive-thru that attempt to turn right do not have adequate maneuvering length to position vehicle perpendicular to sidewalk and on-coming traffic. This presents a visibility issue. Please increase the turning radius or restrict right turns with physical curb barrier, allowing left turn out only. Or provide additional options.
- Provide stop bar at egress point of drive-thru lane.
- Proposed Ingress/Egress points to site do not appear to meet DPM criteria for drive placement: Per the DPM Ch 23, Section 6.B.6 “Where drives are to be constructed on opposite sides of the street (interior parking lot drive aisles) , unless they are offset 50 ft or more, the centerlines need to be within 15 ft of each other”. Please provide dimensions to demonstrate compliance.
- Please show delivery truck route. Based on location of Service Door, it is assumed the delivery truck will idle east of service door, in parking lot drive aisle, outside of site boundaries. Please clarify.
- Sheet 2, Plan Notes #4 references “Chapter 8.” Please clarify.
- Demonstrate that the signs and landscaping do not interfere with the sight distance of the entrances. Please add the following note to the Landscaping Plan: “Landscaping and signing will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in this area.”
- Site address in title block incorrect on sheets: 2A, 2, 3 & 4.
- Sheet 8, door schedule info missing: PT-7 detail? Single access door not labeled.

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- Sheet 9, Outdoor Refuse for restaurants requires drains and grease trap. Please clarify.
  - Sheet 4, Indicates work on Eubank to connect water utilities. All proposed infrastructure within City of Albuquerque ROW (COA) will require a separate Work Order through the DRC and associated Infrastructure List.
  - Provide/label/detail all dimensions, classifications and proposed infrastructure for Site.

**\*Hydrology Development (City Engineer/Planning Department):**

- Hydrology has no adverse comment on a change to the zoning, however, earlier plans for this site located the building along Eubank Blvd due to the existing drainage pond in this location which extends from the Home Depot west to 70 feet east of the curb on Eubank Blvd (middle of proposed bldg).
- It is not evident with the drainage plan provided if the building may have to be relocated on the site.

**\*Transportation Planning (Department of Municipal Development):**

- Per the Long Range Roadway System map Eubank Blvd. is a Principal Arterial.
- Per the Long Range Bikeway Systems map Eubank Blvd. is planned to contain bicycle lanes, which are missing where this property fronts onto Eubank Blvd.
- The Transportation Section of DMD should be receiving the future traffic impact study in connection with submittal of the Site Development Plan for Building Permit, when it occurs.

**Traffic Engineering Operations (Department of Municipal Development):**

- No comments received.

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

- No comments received.

**New Mexico Department of Transportation (NMDOT):**

- The NMDOT has no objections to the site development.

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

Updated: Conditions of approval for the proposed Site Development Plan for Building Permit shall include:

1. The Developer is responsible for permanent improvements to the transportation facilities adjacent to the proposed site development plan, as required by the Development Review Board (DRB).
2. Site plan shall comply and be in accordance with all applicable City of Albuquerque requirements, including the *Development Process Manual* and current ADA criteria.
3. Traffic Impact Study will be required prior to approval of SDBP by DRB.
4. Zone change to allow drive-thru must be approved by EPC prior to approval of SDBP.
5. Add the following note to the Landscaping Plan: "Landscaping and signing will not interfere with clear sight requirements. Therefore, signs, walls, trees, and shrubbery between 3 and 8 feet tall (as measured from the gutter pan) will not be acceptable in this area."

- 6. All proposed infrastructure within City of Albuquerque ROW (COA) will require a separate Work Order through the DRC and associated Infrastructure List.
- 7. Provide/label/detail all dimensions, classifications and proposed infrastructure for Site.

*\*see note from Staff Planner at the beginning of this memo.*

**WATER UTILITY AUTHORITY**

**Utility Services**

No objection or comment.

**ENVIRONMENTAL HEALTH DEPARTMENT**

**Air Quality Division**

No comments received.

**Environmental Services Division**

No comments received.

**PARKS AND RECREATION**

**Planning and Design**

No comments.

**Open Space Division**

No comments received.

**POLICE DEPARTMENT/Planning**

This project is in the Foothills Area Command. No Crime Prevention or CPTED comments concerning the proposed Amendment to Zone Map - Zone Change request at this time.

**\*SOLID WASTE MANAGEMENT DEPARTMENT**

**Refuse Division**

Disapproved. Need more detail on refuse location. Call 681-2766.

**FIRE DEPARTMENT/Planning**

No comments received.

**TRANSIT DEPARTMENT**

<p><b>Project #1009949, 14EPC-40000 AMEND SITE DEVELOPMENT PLAN -BUILDING PERMIT</b></p> <p><b>14EPC-40001 AMNDT TO ZONE MAP (ESTB ZONING/ZONE CHG)</b></p>	Adjacent and nearby routes	None.
	Adjacent bus stops	None
	Site plan requirements	None
	Large site TDM suggestions	None.

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LOT(S) 65 BLOCK(S) MR33, ZONED R-T TO SU-1/R-T AND C-1 PERMISSIVE LOCATED ON CANDELARIA AND HEADINGLY CONTAINING APPROX. 0.73 ACRE. (G-14)	Other information	None.
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## ***COMMENTS FROM OTHER AGENCIES***

### ***BERNALILLO COUNTY***

No comments received.

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

Reviewed, no comment.

### ***ALBUQUERQUE PUBLIC SCHOOLS (APS)***

Video Addition, Tract B-1-A-2, is located on Eubank Blvd SE between Southern Blvd SE and Central Av SE. The owner of the above property requests a zone change from SU-2 EG-C to SU-1 for C-1 Uses Restaurant with Drive UP Service Window to allow for the development of a Chick Fil A Restaurant. This will have no adverse impacts to the APS district.

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

No comments received.

### ***MIDDLE RIO GRANDE CONSERVANCY DISTRICT***

No comments received.

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

1. There is an existing overhead electric distribution located along the east side of Eubank Boulevard NE at the project site. The applicant is responsible to abide by any conditions or terms of those easements.

2. On Sheet 2A, General Notes, item 13, include the following:

Coordination with PNM is necessary for this project regarding proposed tree species, the height at maturity and tree placement, sign location and height, and lighting height in order to ensure sufficient safety clearances to avoid interference with the existing electric overhead and underground distribution lines along the east side of Eubank Boulevard NE at the project site boundary.

The following tree species, Greenspire Littleleaf Linden, indicated on the Landscape Plan, Sheet 2, is not a compatible height with the existing overhead electric distribution utilities on the western boundary of the property. A shorter tree selection is recommended at this location. PNM's landscaping preference is for trees and shrubs to be planted outside the PNM easement; however, if within the easement, trees and shrubs should be planted to minimize effects on electric facility maintenance and repair. New trees

planted near PNM facilities should be no taller than 25 feet in height at maturity to avoid conflicts with existing electric infrastructure. Contact:

Mike Moyers, PNM Service Center  
4201 Edith Boulevard NE  
Albuquerque, NM 87107  
Phone: (505) 241-3697 3

3. Add the following under General Notes:

Design ground-mounted equipment screening to allow for access to utility facilities. All screening and vegetation surrounding ground-mounted transformers and utility pads are to allow 10 feet of clearance in front of the equipment door and 5-6 feet of clearance on the remaining three sides for safe operation, maintenance and repair purposes. Refer to the PNM Electric Service Guide at [www.pnm.com](http://www.pnm.com) for specifications.