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# Appendix A

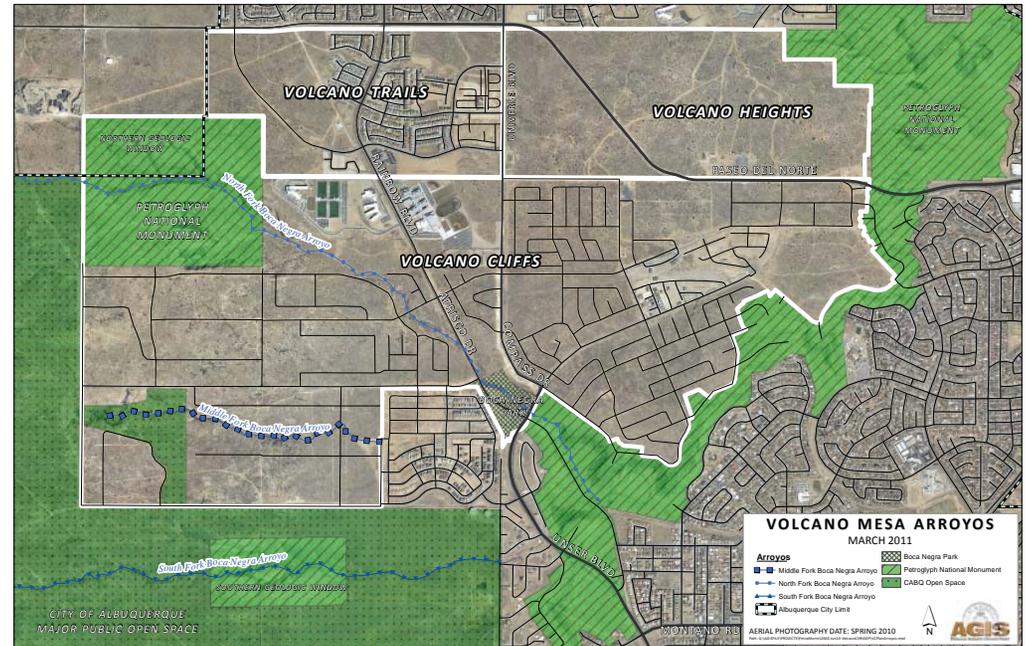
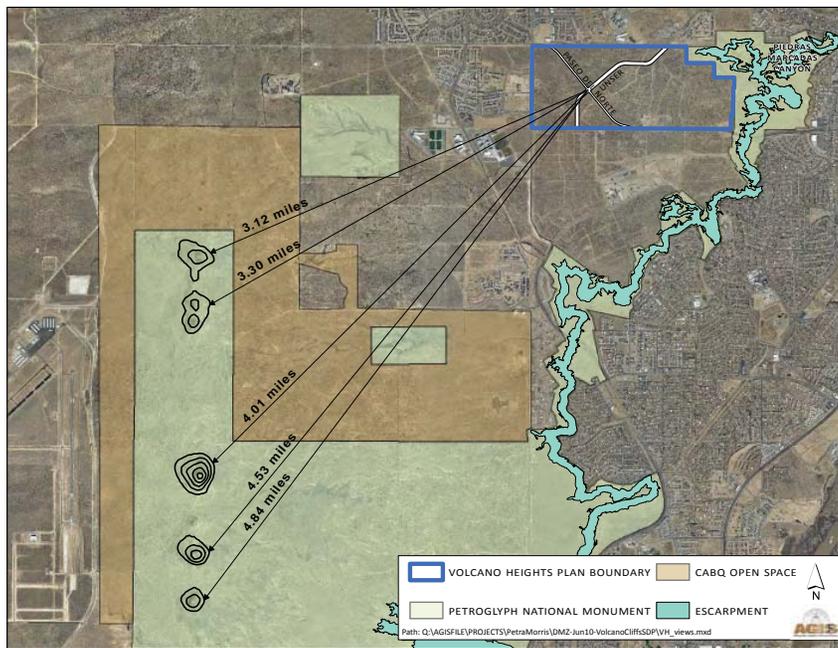
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## Pre-existing Conditions

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# APPENDIX

## Appendix A. Pre-existing Conditions



### A. Environment and Open Space

Volcano Heights lies between publicly owned lands preserving the volcanic Escarpment to the east and lands protecting the volcanoes and geologic windows to the west. Arroyos generally run west to east between these features.

Volcano Heights provides a unique portal into New Mexico's rich interplay of cultures. Most Albuquerque residents recognize the Monument as an important asset and associate it with the five volcanic cones and the 17-mile Escarpment containing petroglyphs.

There are more than 20,000 petroglyphs dating between 700 to 3,000 years ago carved here and in other places within the Petroglyph National Monument. A 2002

National Park Service ethnographic study — “That Place People Talk About: The Petroglyph National Monument, Ethnographic Landscape Report,” by Anschuetz, et al. (hereinafter referred to as “Ethnographic Landscape Report”) — illuminates the still active religious and cultural value these sacred places hold for many Native Americans.

This rich document explores the meaning of the West Mesa volcanic area for Pueblo and other Native American and Hispanic people. Because of space limitations, the present document approaches the meaning of the West Mesa area from the Rio Grande Pueblos’ perspective; for other perspectives, the reader is encouraged to read the entire Ethnographic Landscape Report.

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The legal boundaries of the Petroglyph National Monument were constrained by the financial resources available at the time for land acquisition. For the Pueblos, the important areas include the entire lava bed, the volcanoes' caves and shafts, the petroglyphs, and additional features of comparable importance in meaning and use. The Ethnographic Landscape Report states, "Land-use planning in the face of development, to be successful, needs to consider how to sustain extant landscape traditions within an ongoing historical process" (Anschuetz 2002: 3.31, 9.9).

### 1. Petroglyphs

According to the Ethnographic Landscape Report, the petroglyphs focus Pueblo people's concentration and prayer. Not just representations of specific animals or people, the images are used to transmit thought, energy, and learning across space and time into other dimensions within a defined and bounded world.

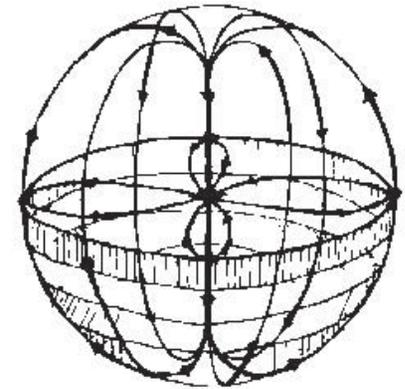
As Celestino Gachupin of Zia Pueblo said, "The petroglyphs... belong to all of us now, not only the native people....The individual family that has a home that abuts the Monument... you are our eyes and ears now, as far as ensuring that nothing bad happens to the place."

### 2. Shrines, Caves, Lava Tubes in Volcanoes, Recesses in the Escarpment Face, and Elsewhere

Various other West Mesa sites function with the petroglyphs as in interlocking system of spiritual communication. The lava tubes and caves near two northernmost Volcanoes west of the Plan area contained shell beads, pendants, turquoise, hematite, selenite, mica, colored pebbles, prayer sticks, and feathers. These are places "where the world breathes" and prayers are directed. Arrangements of stones,

boulders with pecked ground facets, stone piles, prominent boulders, recesses in the Escarpment, or rock spires are similarly meaningful (Anschuetz 2002: 3.24-25).

The Pueblo World is often depicted as a bowl in the landscape with the community's plaza at its center, extending to distant mountains, with upper and lower realms as the places of the gods, the deceased, water, breath, transformation, and more. The periphery of the traditional Pueblo world was defined by the Rio Grande, the West Mesa's Volcanic cones, the Escarpment, the Sandia Mountains, and more distant mountains (Anschuetz 2002: 3.3, 3.8, 3.14).



### 3. Plazas

Plazas physically express the Pueblos' center and open the villages to the landscape. Pueblo people channel blessings across the landscape through shrines and special places, and the blessings intersect with the upper and lower worlds, where they are transformed and gain increased power. As they return to the people, these strengthened blessings renew the cycle of life from the plaza center (Anschuetz 2002: 3.8-3.12).

### 4. The Sandia Mountains

On the edge of the bowl that forms the Pueblo World, the Sandias are the home for important shrines and the highest earth spirits, who protect the communities below and visit the West Mesa lava bed (Anschuetz 2002: 3.21-22).

### 5. Pathways

Trails connecting former villages along the Rio Grande with each other ran up the valley slopes and Escarpment, past the petroglyphs and shrines,

## Appendix A. Pre-existing Conditions

to the volcanoes and mountains beyond. The trails were used for hunting, gathering, agricultural, and traditional and cultural activities. Because in Pueblo life, there is little separation of the functional from the spiritual, the paths form an interrelated flow of energy and movement along the trails that can be considered a ritual pilgrimage (Anschuetz 2010: 3.31, 3.33-34). There are concentrations of petroglyphs on Escarpment paths along the Boca Negra and Piedras Marcadas arroyos that lead to the volcanic cones.

### 6. Pueblo World View

Together, the elements described above constitute a world view that symbolizes a transformative healing process emanating from the West Mesa. In Pueblo terms, this is a significant place for reestablishing harmony with the environment, one another, and the spiritual dimensions of life. At the hearing to designate the Petroglyph National Monument, Pueblo members said, “We pray for peace, good health, harmony among all people, and a long and happy life” (Anschuetz 2002: 3.45-46).

### 7. Rock Outcroppings

The Plan area includes many outcroppings of basalt rock. Significant rock outcrops as defined in **Section 3.5** are mapped in **Exhibit 10.1**. [Language pending]

### 8. Soils and Geologic Conditions

Flows of basalt at varying depths and widths run through the Plan Area. These flows issued from volcanic fissures related to the subsidence of the Albuquerque basin approximately 190,000 years ago.

According to a June 1987 Albuquerque West Mesa Petroglyph Study by the National Park Service, “Soil has formed on West Mesa as the rocks have slowly

weathered. The common parent materials are basalt and fine alluvial silt and sand. Sand is common in this environment and, if not part of the parent rock, is soon added by the wind. On the mesa top, soil varies in depth from 0 feet on the Escarpment rim and volcanic cones to more than 5 feet in broad areas of little slope.”

According to the Northwest Mesa Escarpment Plan (NWMEP), soils in Volcano Heights are Alameda sandy loam at 0-5% slopes. Moderately deep and well drained, runoff is medium and water erosion is slight.

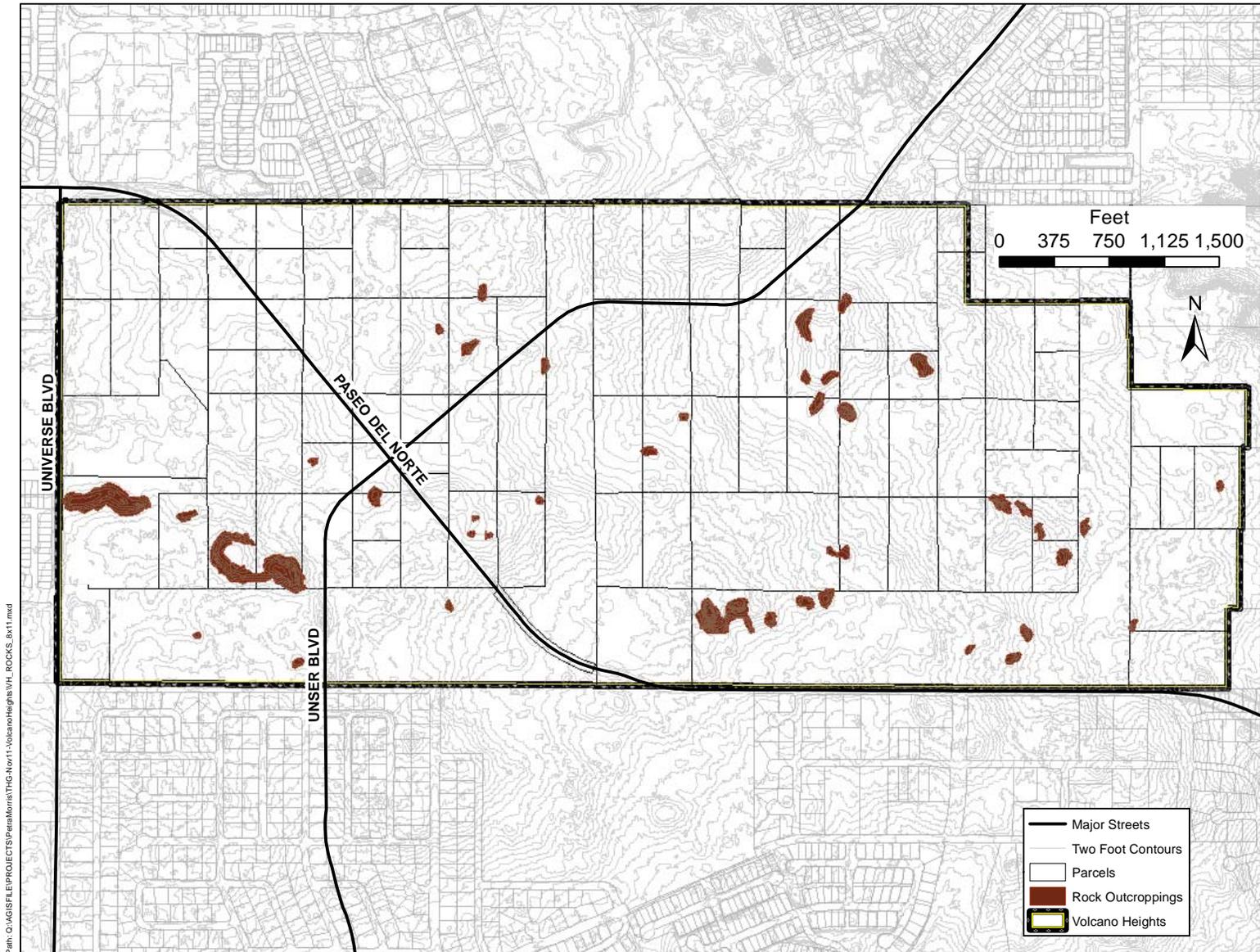
### 9. Drainage Channels

No named arroyos managed by the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA) lie within the Plan area. Water does flow to the northeast in the Plan area near Piedras Marcadas Canyon. See **Section X.X** [xref pending] for more information about drainage infrastructure.

Drainage channels have played an important cultural role for prehistoric communities, connecting ceremonial sites on the volcanic mesa through the Escarpment to former Pueblo villages along the Rio Grande. Arroyos and drainage channels maintain rich habitat for plant and animal species along wildlife corridors that ecologically link the largest expanses of open space to each other.

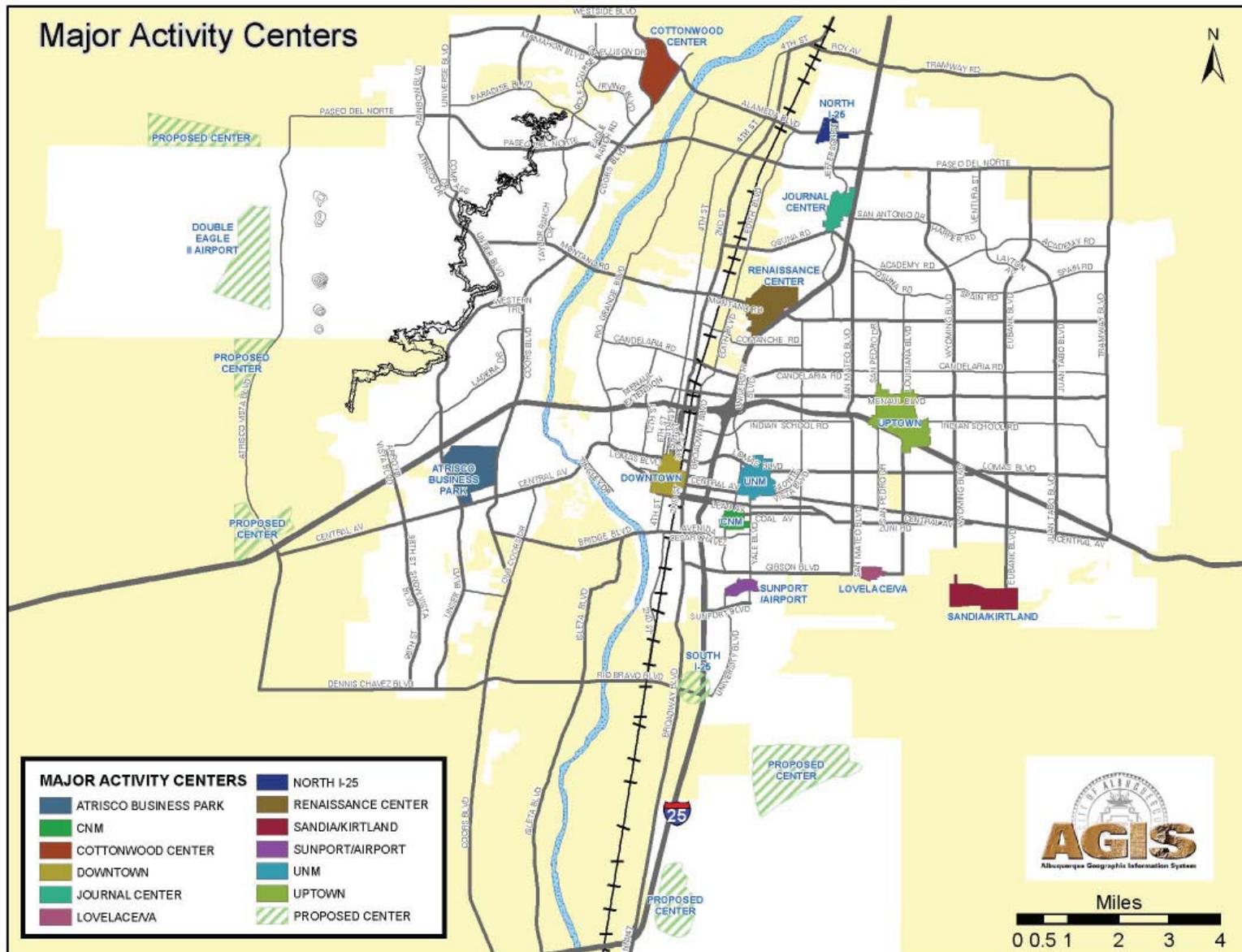
Existing Open Space adjacent to the Plan does not have a fully developed formal trail system to link open space into a consolidated network. Drainage channels can be important corridors for walking and biking trails that could link natural open areas.

Appendix A. Pre-existing Conditions



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## Appendix A. Pre-existing Conditions



## Appendix A. Pre-existing Conditions

**B. Economic Development**

[Pending]

**C. Transportation**

In its 2035 Metropolitan Transportation Plan, MRCOG forecast that the four county Mid-Region Metropolitan Planning Organization (MRMPO) area (Bernalillo, Sandoval, Valencia and Tarrant counties) would grow by 668,000 people, 310,000 new homes, and 210,000 new jobs. If the area continues to develop with its current land use pattern of generally low density, auto-oriented growth on the fringe of the urbanized area, the growing gap between homes and jobs will increase congestion on the region's transportation corridors and, particularly, the region's river crossings.

**1. Regional Roads**

MRCOG is the designated Metropolitan Planning Organization (MPO) for the Albuquerque Metropolitan Planning Area (AMPA). MRCOG convenes meetings for decision-makers from jurisdictions within the AMPA to come together to plan for transportation and other decisions affecting the region.

**Relevant Documents:**

- Future Albuquerque Area Bikeways and Streets (FAABS)
- Metropolitan Roadway Access Policies for the Albuquerque Metropolitan Planning Area (2010 Appendix to FAABS)
- Long-range Roadway System Map (2004)
- 2035 Metropolitan Transportation Plan (5-year plan)

**Relevant Agencies, Boards, & Committees:**

- Mid-region Council of Governments (MRCOG)
- New Mexico Department of Transportation (NMDOT)
- City of Albuquerque Department of Municipal Development (DMD)
- Metropolitan Transportation Board (MTB)
- Transportation Coordinating Committee (TCC)
- Roadway Access Committee (RAC)
- TPTG (Transportation Program Task Group)

(Membership rosters attached.) [Pending]

The Metropolitan Transportation Board (MTB) is made up of elected officials from the jurisdictions within the AMPA and sets policy for transportation issues in the urban area. The MTB coordinates local government transportation planning and project development, identifies federal funding for transportation projects, including roadway widenings and extensions, sets policy for roadway access, identifies corridors and alignments for new roadways, identifies bicycle facilities and federal funding for them, and makes decisions about long-range issues such as Bus Rapid Transit proposals.

Limited Access Roadways are identified and the Access Control Policies are stated in the Future Albuquerque Area Bikeways and Streets (FAABS) in Appendix D – III, Access Limitations. The components of the FAABS, including the Limited Access Roadways and the Access Control Policies, are integrated into the 2035 Metropolitan Transportation Plan (MTP) and all future MTP updates.

## Appendix A. Pre-existing Conditions

### a. Road Classification

As of 2011, the functional classifications for Paseo del Norte and Unser Boulevard are Urban Principal Arterials on the Long Range Roadway System Map. Paseo del Norte and Unser Boulevard are identified in FAABS as limited-access roadways. Full intersections are limited to half-mile (1/2 mile) intervals, with right-in/right-out (RI/RO) intersections allowed at quarter-mile intervals (1/4 mile). Access points on the books are described in section d. Intersection below. All additional access points on these roadways must be sponsored by the City and gain approval by the MTB via a process described in subsection d. iii. **Access Modification** below.

### b. Ownership and Construction

In this area, the City owns, controls, and is responsible for the planning and maintenance of both Paseo del Norte and Unser Boulevard. Paseo del Norte is a state facility east of Eagle Ranch Road. A 1989 working agreement between the City and State sets out the intention that once Paseo del Norte is constructed to four (4) lanes, it will revert to a State facility to Universe Boulevard.

The City's Department of Municipal Development (DMD) developed plans in 2007 for the extension of Paseo del Norte, the cross sections for which show the two-lane construction as of 2011 and the future construction configurations of six (6) lanes with separate or shared bus rapid transit lanes. [Pending] Future construction will be the responsibility of private developers as abutting land is developed.

As of 2011, the City has constructed Unser to 2 lanes with 36-foot median between Boca Negra Dam and Paradise Boulevard. Small portions north of Volcano Heights were constructed privately in conjunction

with abutting development. The road widens and median narrows to provide turn lanes near major intersections. The city-owned 156-foot right-of-way from Boca Negra Dam to Paseo del Norte will allow the expansion of Unser to four (4) lanes in the future, to be constructed by developers as abutting projects warrant.

Assessments paid by Volcano Cliffs property owners for Special Assessment District (SAD) 228 will pay for the construction of the full cross section of the first third (1/3) of Unser north of Boca Negra Dam. A new SAD (229) is proposed for the area north of SAD 228, where Unser would straddle the boundary between Volcano Cliffs and Volcano Heights, to pay for the build out of Unser to Paseo del Norte.

Roadway segments and intersections connecting Unser to Rainbow and Universe Boulevard on the southern edge of the Volcano Cliffs SDP are expected to complete construction by August 2011, which would open Unser to Paseo del Norte. DMD plans to construct a temporary road connecting Unser north of Paseo del Norte to the northern boundary of Heights by Fall 2012. A segment of Unser north of the Plan area was constructed as Sundance Estates developed, and a new segment of Unser north of the Grant line to that segment will be constructed as the new subdivision, Boulders, develops. DMD is currently doing some ground work and plans to complete the final segment of Unser connecting to Paradise Boulevard by Spring 2012.

Permanent improvements to Unser will be the responsibility of developers as abutting property develops.

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**c. Right-of-Way (ROW)**

As of 2011, right-of-way (ROW) on Paseo del Norte varies between 50-200 feet. Through the Escarpment, ROW is around 200 feet and quickly narrows to a temporary cross section at the top of the Escarpment to the existing Avenida de Jaimito, where ROW is only 50 feet. ROW is 50 feet for about 3,000 feet west along the Town of Alameda Grant line. Paseo del Norte then heads north and west within a 70-foot ROW (to be widened to 156 feet as abutting property owners dedicate land and construct the road to 4 lanes) all the way to Universe. From Universe Boulevard to Rainbow Boulevard, the City owns 156 feet of ROW. [Map pending]

The City owns 156 feet of ROW for Unser Boulevard between the Escarpment to Paseo del Norte. As of 2011, the City has obtained right-of-entry and is in the process of acquiring ownership of the center 78 feet of the ultimate 156-foot ROW north of Paseo del Norte to Paradise Boulevard. The remaining 78 feet of ROW will require dedication as land on either side of the road develops (i.e. 39 feet per side). Some blading and permanent fill has taken place as easements allow.

[FAABS ROWs?]

**d. Intersections***i. Paseo del Norte*

The FAABS Access Control Policy lists the following full intersections for Paseo del Norte in this area:

- Woodmont Avenue - Ventana Parkway R-06-01 TCC
- Rainbow Boulevard
- Universe Boulevard
- Unser Boulevard
- Kimmick Drive

The 2010 Access Control Policy does not list any limited intersections in the Volcano Mesa area.

DMD's 2007 plans for Paseo del Norte between the top of the Escarpment and Universe Boulevard call for right-in-right-out intersections (for as-yet unplatted streets) at two locations approximately halfway between Kimmick and Unser and Unser and Universe as Paseo travels diagonally across the Volcano Heights Plan area.

*ii. Unser*

The FAABS Access Control Policy lists the following full access intersections in this area:

- Compass Drive (in Volcano Cliffs to the South)
- Rosa Parks (previously Squaw Road in Volcano Cliffs to the South)
- Paseo del Norte
- A point approximately halfway between Paseo del Norte and Lilienthal Ave.
- Lilienthal Ave. (north of Heights plan boundary)
- Paradise Boulevard (north of Heights plan boundary)

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The FAABS Access Control Policy lists the following partial access intersections (RI/RO) in this area:

- Buglo Ave (just North of Lilienthal, north of Heights boundary)

DMD's September 2010 construction plan set for Unser from Universe/Compass to Paseo del Norte, which is being used for construction as of 2011, includes quite a few more intersections in the Volcano Mesa area than the FAABS Access Control Policy:

- Heading north from the intersection of Compass/Universe, Unser will intersect with Kimmick (full intersection, but Kimmick comes from the east and doesn't continue west past Unser. Unser currently uses some of Kimmick's existing ROW, so Kimmick will be redirected to end in a T-intersection at Unser, and some of the Kimmick that exists today will be vacated.)
- North of there, it intersects again with Rosa Parks (formerly Squaw, full intersection)
- Next intersection to the north is Avenida de Jaimito. (full?)
- Between Avenida de Jaimito and Paseo del Norte, Unser does not show any more intersections. Woodmont is not shown.

### *iii. Access Modifications*

Additional access to either Paseo del Norte or Unser Boulevard must be sponsored by the City and approved by the MTB. The Access Modification process as of 2011 is described below. The MRCOG website ([www.mrcog-nm.gov](http://www.mrcog-nm.gov)) should be consulted for the most current information.

To initiate an access modification, the City must send MRCOG a written Notice of Intent as the Sponsor of the request, including any required Traffic Impact Assessment (TIA) or Traffic Impact Study (TIS) as well as any other necessary information to analyze the request. (All requests to modify roadway access on Limited Access Roadways must be sponsored by a member agency of the MPO.)

- **Transportation Coordinating Committee (TCC).** Modifications to Limited Access Roadways must be requested through the Transportation Coordinating Committee (TCC), which provides technical advice to the MTB. The TCC reviews items that are scheduled to come before the MTB and provides recommendations from a technical viewpoint. MRCOG reviews modification requests on a monthly basis.

The TCC is composed of staff-level representatives from each of the local member agencies and the New Mexico Department of Transportation. The TCC has two standing committees and the Intelligent Transportation System Subcommittee.

- **The Transportation Program Task Group (TPTG)** includes technical staff from various local agencies and the New Mexico Department of Transportation (NMDOT) that meet to provide advice to the TCC regarding the long range system maps for the urban area and the Transportation Improvement Program (TIP). The TPTG

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reviews and comments on proposals to amend the long range transportation system maps when the maps are updated. The TPTG also develops the draft Transportation Improvement Program using a set of evaluation criteria prior to its release for public review and comment.

- **Intelligent Transportation Systems (ITS) Subcommittee** includes federal, state, and local stakeholders. The Intelligent Transportation System Subcommittee makes recommendations to the TCC involving technology to enhance and coordinate travel management through traffic modeling, advanced communications, synchronized traffic lights, and dynamic message signs.
- **Roadway Access Committee (RAC)** composed of traffic engineers from the NMDOT, the City of Albuquerque, the City of Rio Rancho, Bernalillo County, and staff traffic engineers from any other MPO member agency wishing to participate will review the Notice of Intent and supporting documentation in order to determine a scope for the access justification analysis. Once the scope is determined, the RAC will send a letter detailing the scope of work through the MPO to the Sponsor. The scope will, at a minimum, inform the Sponsor as to the geographic area to be analyzed to determine the influence the access modification has on the transportation system. The RAC can require additional analyses on a case-by-case basis (e.g. weaving analysis and queuing analysis).

Once the access justification analysis is completed, the Sponsor submits a completed Roadway Access Modification Request Form along with the analysis and all other supporting documentation to the MPO. The RAC reviews the Roadway Access Modification Request and supporting documentation and make a written recommendation to approve or deny the access modification to the TCC.

The MPO staff must receive the written recommendation of the RAC no less than two weeks prior to the regularly-scheduled meeting of the TCC in order for the Roadway Access Modification Request to be placed on the TCC agenda. Once the recommendation is received, the MPO staff will send the Sponsor written notice of the meeting. The TCC shall approve or deny the Roadway Access Modification at the meeting and shall state its decision in a written notice of decision which shall be sent to the Sponsor. If denied, a Sponsor may appeal a TCC decision directly to the MTB.

### e. Population Projections

Discussions about accommodating anticipated growth in our region in terms of transportation planning and decision-making are based on projected growth for the region. The source for the county level population projections is the Bureau of Business and Economic Research at the University of New Mexico (BBER). A final small area 2035 forecast will be available in the Spring of 2011.

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TABLE A.1 -TRAFFIC COUNTS

	Daily Trips	AM Peak Hour	PM Peak Hour
Paseo del Norte	50-60,000	2,200-2,800 East / 1,000-1,700 West	1,800-2,300 East / 2,300-3,000 West
Unser Boulevard	15,000 – 25,000	600-1,200 South / 600-1,000 North	800-1,200 South / 900-1,500 North

### f. Traffic Counts

MRCOG has provided traffic counts anticipated for 2035 using the regional traffic model based on County-level population projections and current land-use trends. Because the model assumes a continuation of current trends, not land-use changes such as those proposed by the Volcano Heights Plan, these traffic counts should be seen as baseline numbers, which would change as land develops and transportation patterns shift.

In the Volcano Heights area, Paseo del Norte generally shows daily volumes in the range of 25,000-30,000 trips per day in each direction. Peak hour traffic in the morning ranges from 2,200-2,800 heading east and 1,000-1,700 trips heading west. Peak hour traffic in the evening ranges from 2,300-3,000 trips heading west and 1,800-2,300 trips heading east.

In the same area, Unser Boulevard generally shows daily volumes in the range of 7,300-13,000 trips per day in each direction. Peak hour traffic in the morning ranges from 600-1,200 trips heading south and 600-1,000 heading north. Peak hour traffic in the evening ranges from 800-1,200 heading south and 900-1,500 heading north.

These numbers support the general perception that residents leave the area via Paseo del Norte in the morning to head east across the river and return home after work in the evenings. Traffic counts for Unser Boulevard seem to indicate that the roadway is used equally for travel north and south, with slightly higher traffic in the evenings than in the mornings, regardless of the direction of travel.

(Pending: Classifications & traffic counts)

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**g. Truck Access**

Truck traffic over 5 tons is prohibited on Paseo del Norte between 2nd Street and Coors Boulevard due to thin pavement and low bridges at 2nd Street and 4th Street. A lawsuit filed by Los Ranchos included a settlement condition that an overpass must be provided at Jefferson Boulevard prior to the lifting of truck restrictions on Paseo del Norte. This overpass is one of the improvements planned for the I-25/ Paseo del Norte interchange construction.

Truck traffic over 5 tons is also prohibited on Unser Boulevard between Ladera Boulevard and the Escarpment, as well as north of Volcano Heights to the Albuquerque City Limits.

Paseo and Unser are major arterials constructed in part with federal funds and eligible for future Federal funding. Truck limitations on this type of road are not permitted unless there is a physical constraint such a bridge loading or roadway/bridge height restriction. In order to be eligible for future funding, truck limitations will need to be removed on these roads. [Confirmation pending]

The preferred route for truck access to Volcano Heights is I-40 to Atrisco Vista, which turns into Paseo del Norte just west of the Heights boundary. This and other alternative access routes are included in the map below. [map pending]

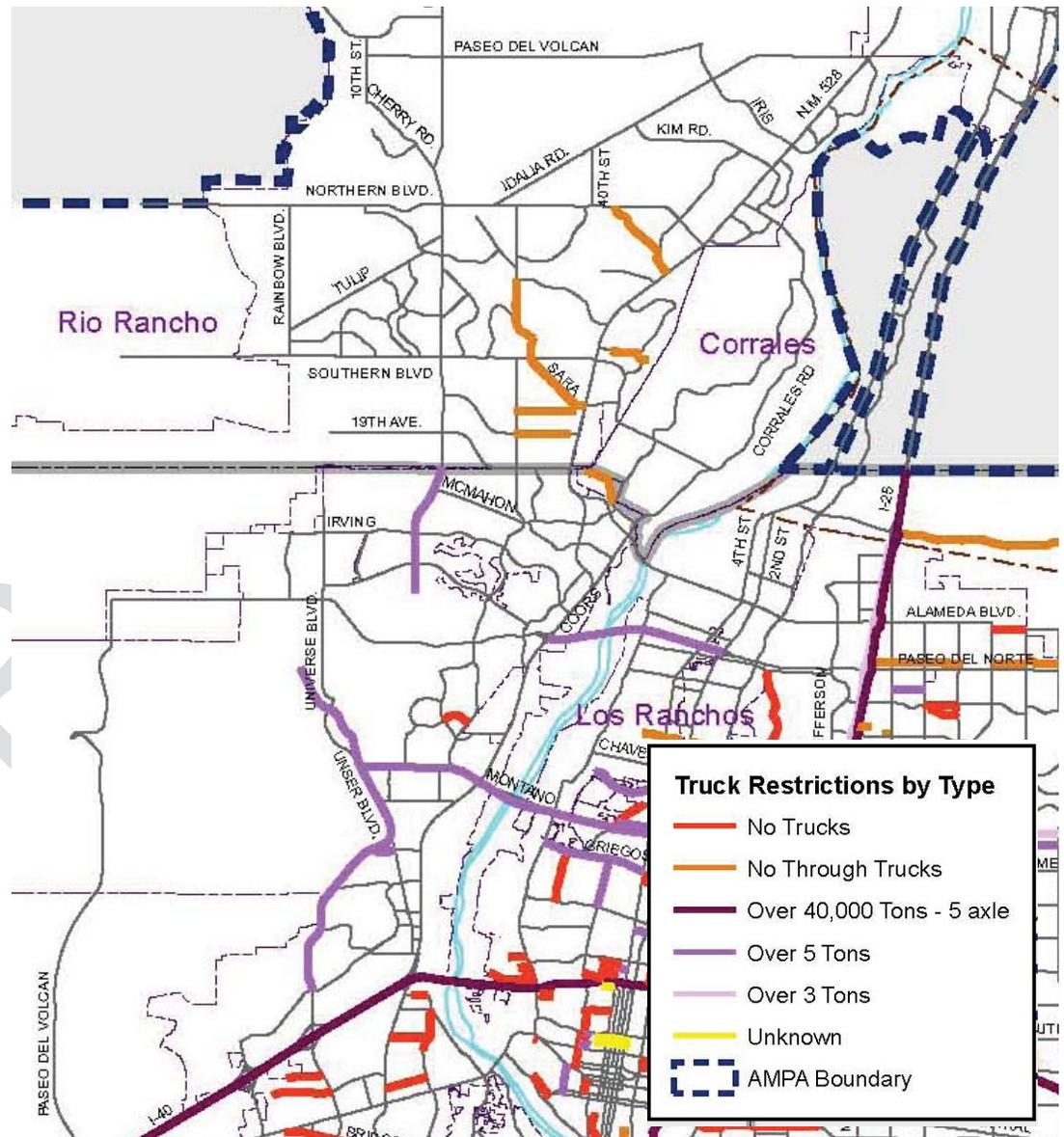


Exhibit A.1 – Truck Restrictions Map

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TABLE A.2 – CONGESTION MANAGEMENT STRATEGIES

Congestion Management Strategies	PdN	Unser
<b>Active Roadway Management</b>		
Traffic signal timing and coordination	High	High
Traffic signal equipment modernization	High	High
Ramp meters	Medium	Low
Access management	High	High
Traveler information devices	High	High
Roadway signage improvements (wayfinding)	Medium	Medium
Communications networks and roadway surveillance coverage	High	High
<b>Travel Demand Management/Alternative Travel Modes</b>		
New fixed guideway transit travelways and dedicated transit lanes	High	High
Transit service expansion	High	High
Transit vehicle information	High	Medium
Transit intersection queue-jump lanes and signal priority	High	High
Electronic fare collection	Medium	Medium
Park & Ride facilities	High	High
Telework and flexible schedules	Medium	Medium
Ridesharing travel services	Medium	Medium
Alternative travel mode events and assistance	Medium	Medium
Off-street multi-use trails	High	High
On-street bicycle treatments	Low	High
<b>Incident</b>		
Incident management plans (regional and site-specific)	High	Low
Incident response and Courtesy Patrol	High	Low
<b>Physical Roadway Capacity</b>		
Intersection turn lanes	Medium	High
Deceleration lanes	Medium	Medium
Hill-climbing lanes	Low	Medium
Grade-separated railroad crossings	Medium	Low
HOV bypass lanes at ramp meters	Medium	Low
Roundabout intersections	Medium	Medium
New grade-separated intersections	High	Medium
New (or converted) HOV/HOT/Truck lanes	Medium	Low
New travel lanes (general purpose)	High	High
New roadways	Low	Medium

### h. Congestion Management Process

MRCOG prioritizes strategies to reduce congestion through a Congestion Management Process (CMPs) for corridors ranked by congestion level. Paseo del Norte (Paseo del Norte) was ranked 9th most congested corridor in 2008 and 3rd in 2010. Unser Boulevard was ranked 17th in 2008 and 13th in 2010.

The strategies in **Table A.2** are described in the CMP Toolkit, available on the MRCOG website. (<http://www.mrcog-nm.gov>)

### 2. Local Roads

As of 2011, there are no local roads constructed in Volcano Heights. (See **Section 4.5** for non-mandatory road criteria and **Exhibit 4.1** for Mandatory Roads proposed by this Plan.)

There are very few opportunities to connect to local roads abutting the Plan area. These include Oakridge Street, Treeline Avenue, and Woodmont Avenue to the west, Urraca Street to the south, and Adina Lane to the north.

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3. Transit

[Pending: transit routes, transit plans, transit center]

As of 2011, MRCOG is conducting a feasibility study for a High-Capacity Transit Service corridor from Paseo del Norte to the Journal Center Major Activity Center near the Jefferson/I-25 intersection. Alternatives for corridor alignments are expected by Spring 2013.

As of 2012, City RapidRide services the transit corridors and stops shown in **Exhibit A.2**. The Northwest Transit Center is approximately X miles from the Paseo del Norte / Unser Boulevard intersection.

4. Bike Paths / Trails

MRCOG’s Bike and Trails Map designates bike facilities as either bike routes, bike lanes, or trails. Bike lanes are designated exclusively for bicycle travel, with bike lanes on the street separated from vehicle travel lanes with striping. Bike lanes are typically found on arterial and collector streets, where higher traffic volumes and speeds warrant more separation for the safety of bicyclists. Bike routes are designed to accommodate autos and bikes in a shared travel lane. Typically, bike routes work best on streets with speed limits of 25 miles per hour or less and traffic volumes of 3,000 average daily trips or less. (Reference: Albuquerque Bikeways and Trails Master Plan, May 2011) Trails are separated from travel lanes and are exclusively for use by pedestrians, bicyclists, and sometimes equestrians. Where these trails cross roadways, intersections can either be at-grade or grade separated.

Unser Boulevard and Paseo del Norte incorporate both on-street bike lanes and an off-street, multi-use trail. See **Exhibits 4.15** and **4.16**, respectively.

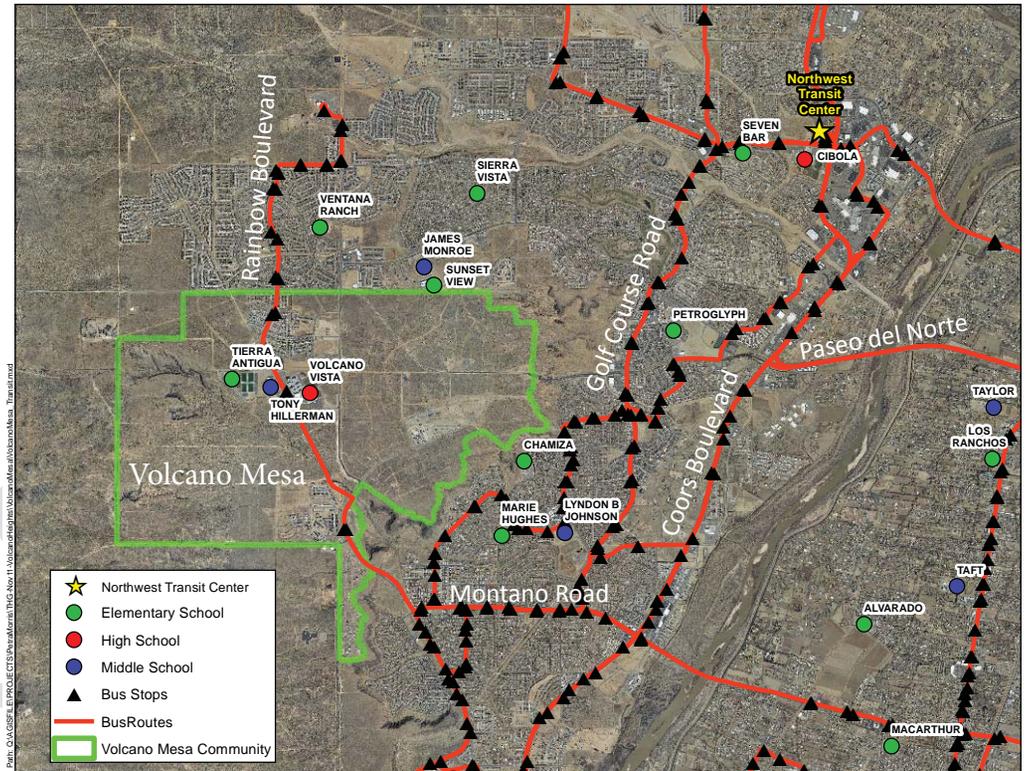


Exhibit A.2 – Pre-existing Transit Routes and Schools near Volcano Mesa

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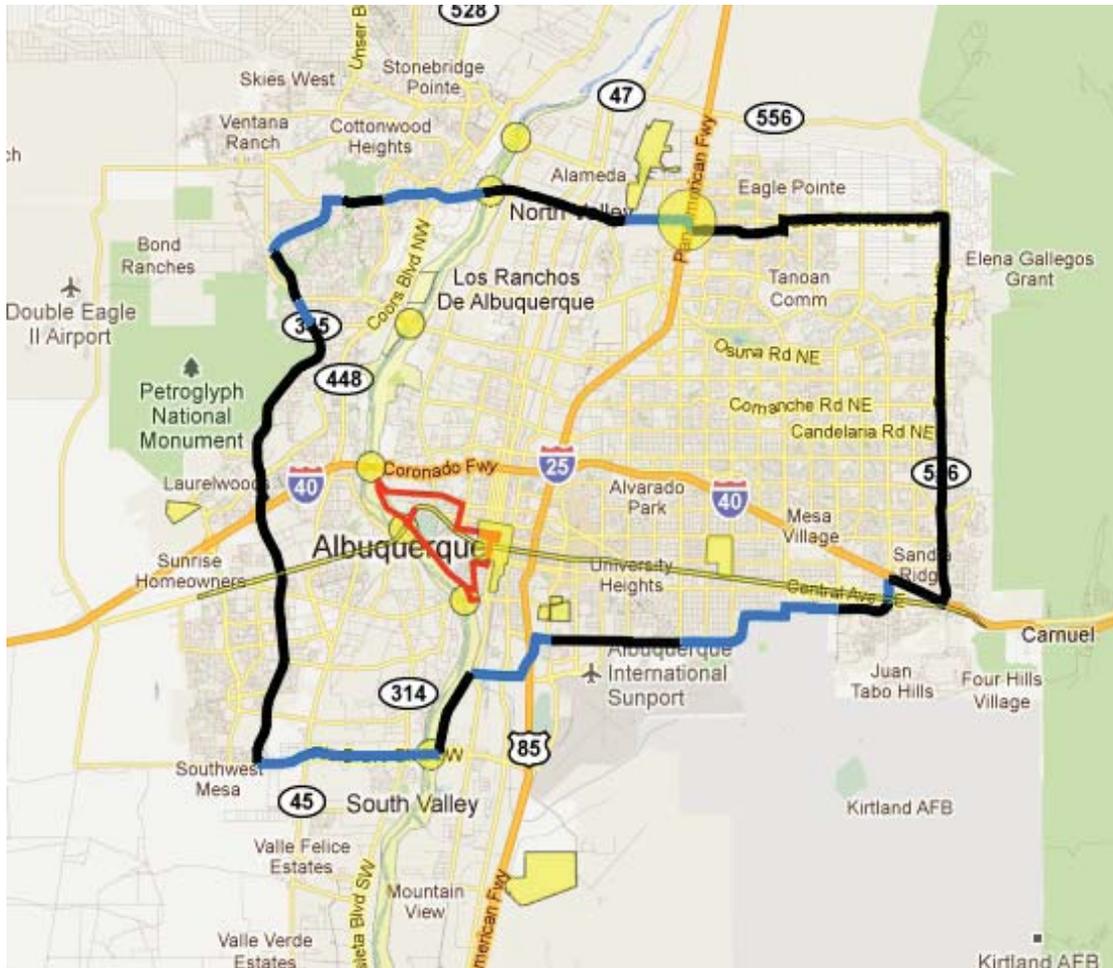


Exhibit A.3 –Mayor Berry's Proposed 50-mile Bike Loop

Mayor Berry's "Albuquerque: The Plan" proposes to construct links to connect existing bicycle trails that would create a 50-mile bike loop around Albuquerque, a portion of which would link Paseo del Norte to existing bike trails on the East Side. See **Exhibit A.3**.

MRCOG's Long Range Bikeways Plan indicates a proposed bike route from Taylor Ranch Road south and west of the Plan area to Paseo del Norte, where it meets with an existing pedestrian bridge over Paseo del Norte providing access to the Petroglyph National Monument. This route offers an opportunity to extend the bike route north along the Mandatory Park Edge Road and/or along a multi-use trail from the pedestrian bridge north within the Petroglyph National Monument boundary. See **Exhibit A.4**.

MRCOG's Long Range Bikeways Plan also shows a proposed bicycle route from Universe Boulevard west to Rainbow Boulevard along Woodmont Avenue within Volcano Trails. The Mandatory Road network for Heights extends Woodmont Avenue into Volcano Heights. A bicycle route along this corridor would link to the eventual bike lanes and multi-use trails on Unser Boulevard and Paseo del Norte, as well as continuing east to connect to the Park Edge Road and potential north/south multi-use trail on the Monument edge. See **Exhibit A.4**.

Finally, on the north boundary of the Plan area, MRCOG's Long Range Bikeways Plan shows a proposed bike lane extending north from the Unser Boulevard / Paseo del Norte intersection toward Paradise Boulevard. Because the configuration of the subdivision and roads north of the Plan boundary, the best opportunity for connection with minimal impact to existing residents might be across a property owned by the Ventana Ranch Community Association to the existing Adina Lane, which leads to Vivaldi Trail that connects to Paradise Boulevard. See **Exhibit A.4**.

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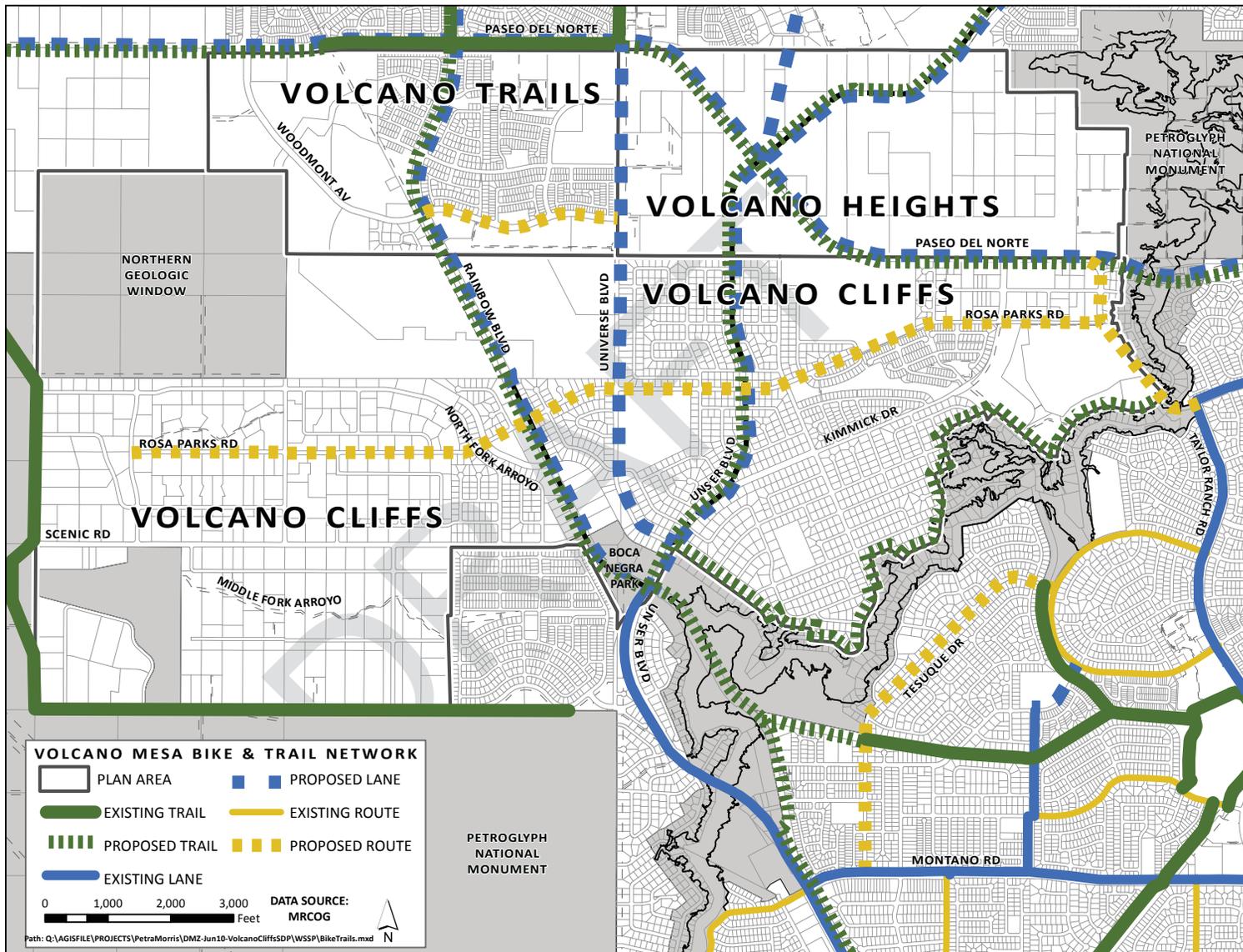


Exhibit A.4 – Volcano Mesa Bike and Trail Network Map

# APPENDIX

## Appendix A. Pre-existing Conditions

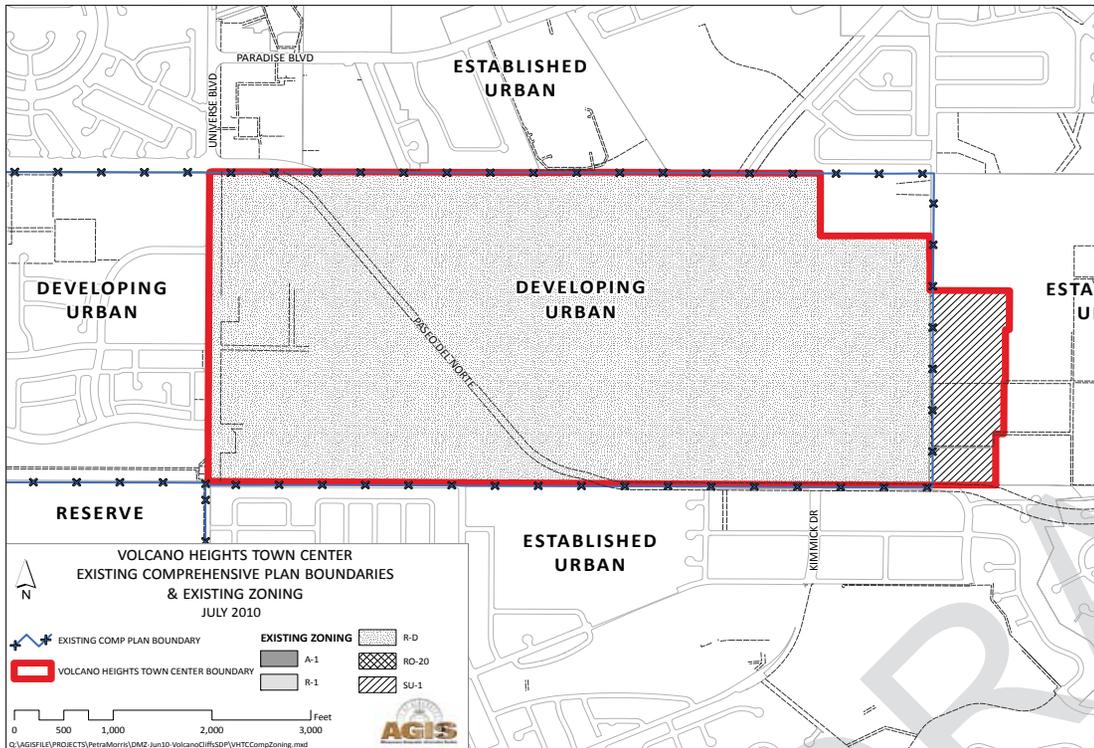


Exhibit A.5 – Pre-existing Zoning and Comprehensive Plan Designation

### D. Land Use and Urban Design

#### 1. Pre-Existing Zoning

Prior to this Plan, the Volcano Heights Plan area was zoned R-D, a zone category typically applied to newly annexed, developing areas of Albuquerque and meant as a kind of holding zone until a Sector Development Plan can be completed to provide more detailed guidance. The R-D zone, in conjunction with an approved Sector Development Plan, allows single-family dwellings, multiple family dwelling, mobile homes, and incidental commercial

development to service the area based on a suburban model of development. Commercial uses are limited to 15% of the total development. See **Exhibit A.5**.

Zoning north of the Plan area includes SU-1 for C-1 with limited uses at the northeast corner of Paseo del Norte and Universe Boulevard. Between that zoning and the APS property with James Monroe Middle School and Sunset Elementary, there are three tracts of land with different zones. From west to east, these include:

- R-2 on the west with lots just over 1/10 acre (an average of .12 acre),
- SU-1 for Planned Residential Development (PRD) with floor-area ratio (FAR) of .5 and lots sized like R-2, and
- R-LT to the east, although the 1-acre lots have been subdivided in a way more typical of large-lot, single-family zones.

East of the schools, one large tract of land is zoned R-LT. East of Unser Boulevard, the first tract of land is zoned R-LT. East of Lyon, land is zoned SU-1 for C-1. See **Exhibit A.5**.

West of the Plan area, zoning is R-LT on the northwest corner of Universe Boulevard and Paseo del Norte. The southwest corner is zoned SU-2 Volcano Trails Village Center (VTVC). Moving south, the remaining zones abutting the Volcano Heights Plan boundary are residential:

- a medium-density SU-2 Volcano Trails Urban Residential (VTUR),
- a slightly lower-density SU-2 Volcano Trails Small Lot, and
- a low-density SU-2 Volcano Trails Residential Developing (VTRD) zone.



## Appendix A. Pre-existing Conditions

South of the Plan area, the zones are predominantly residential, with one mixed-use zone (SU-2 Volcano Cliffs Mixed Use - VCMX) south of Paseo del Norte near Kimmick Drive. The residential zones from west to east include the following:

- SU-2 Volcano Cliffs Large Lot (VCLL) with average lot size of 1/4 acre (.25).
- SU-2 Volcano Cliffs Urban Residential (VCUR), which is a large tract of land being master-planned as La Cuentista II, and
- SU-2 Volcano Cliffs Large Lot (VCLL) on the eastern edge of the Volcano Cliffs Plan area.

### 2. Pre-Existing Land Use

In general, the West Side remains predominantly single-family subdivisions served by few major arterials, leading to almost exclusive vehicle and congestion at peak hours. In the last 10 years, more commercial and retail has filled in along corridors, particularly at major intersections. The development pattern, limited river crossings, and imbalance of jobs on the east side of the river and housing on the West Side concentrates traffic onto few arterials. The Major Activity Center proposed for Volcano Heights is intended to provide the opportunity for major employment on the West Side to counteract the commuting pattern, mitigate congestion at peak hours, and diversify land uses on the West Side.

Land use surrounding Volcano Heights is largely residential. The Petroglyph National Monument provides an open space and culturally rich amenity. The northeast and southwest corner of Universe Boulevard and Paseo del Norte are reserved for commercial development. Land farther north of the Plan area near Paradise and Unser Boulevards is also reserved for commercial development.

Volcano Trails and Volcano Cliffs Sector Development Plans changed zoning to encourage higher-density residential development near mixed-use and Village Center areas for neighborhood-serving commercial and retail services. This movement toward mixed use development offers support and additional opportunities for higher-density residential and more intense non-residential activity in Volcano Heights, which can support regional retail and office uses in addition to neighborhood-serving commercial land uses.

### 3. Property Ownership

As of 2012, there are just over 30 property owners within the Plan area, which is made up of 99 unplatted properties predominantly 5 acres in size (very few are 2.5 acres, none less than 2 acres, and very few 10+ acres). See **Exhibit A.8**.

Six property owners own approximately 20 or more acres, with 1 property owner holding 45% of the land area, mostly east of Paseo del Norte. Together, these six property owners own over 75% of the Plan area. See **Exhibit A.7** and **Table A.3**.

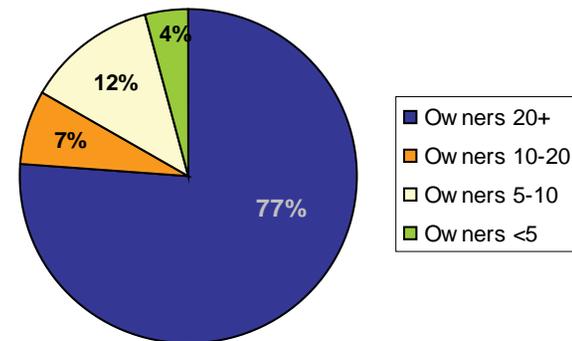


Exhibit A.7 – Property Ownership by Acreage Chart



# APPENDIX

## Appendix A. Pre-existing Conditions

**TABLE A.3 – PROPERTY OWNERSHIP BY ACREAGE**

Acres Owned	# of Owners	% of Owners	Total Acreage	% of Acreage
~20+ Acres	6	19%	432	76%
~10-20 Acres	4	13%	42	7%
~5-10 Acres	13	41%	70	12%
~ < 5 Acres	9	28%	24	4%
Total	32	100%	568	100%

### E. Infrastructure

#### 1. Volcano Heights Water & Wastewater Overview

Volcano Heights is located in the 4W & 3WR Pressure Zones within the Volcano and Corrales Service Trunks. Currently no water or sewer infrastructure exists within the majority of the Volcano Heights study area. Any water service to this area must come from developer funded line extensions from the surrounding areas.

Volcano Heights is outside the existing service areas of the Albuquerque Bernalillo County Water Utility Authority (ABCWUA). As such, any development in the study area will require the execution of a development agreement between the property owners and the ABCWUA.

##### a. Pre-existing Conditions – Corrales Trunk Water System

- The area north of the study area has been designated as the Corrales Trunk service area.

The Corrales Trunk corresponds to the former New Mexico Utility service area.

- Water sources within the Corrales Trunk all require arsenic treatment before the water can be used in the public water system.

##### b. Pre-existing Conditions – Volcano Trunk Water System

- The Volcano Trunk represents the northernmost water distribution system in the ABCWUA service area prior to the acquisition of New Mexico Utilities.
- Water sources within the Volcano Trunk require arsenic treatment before the water can be used in the public water system.
- Treated San Juan Chama water is used to supplement the water sources within the Volcano Trunk.

##### c. Pre-existing Conditions – Wastewater

- Wastewater generated within the old New Mexico Utilities (now Corrales Trunk) service area is metered and enters the existing ABCWUA system at several metering manholes located along the Paseo del Norte corridor.
- For planning purposes, all of the wastewater generated within the Volcano Heights study area will be contributory to the existing sewer line in Paseo del Norte.

Appendix A. Pre-existing Conditions

**2. Public Service Company of New Mexico**

Please see Exhibit A.7. **[More Pending]**

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# APPENDIX

## Appendix A. Pre-existing Conditions

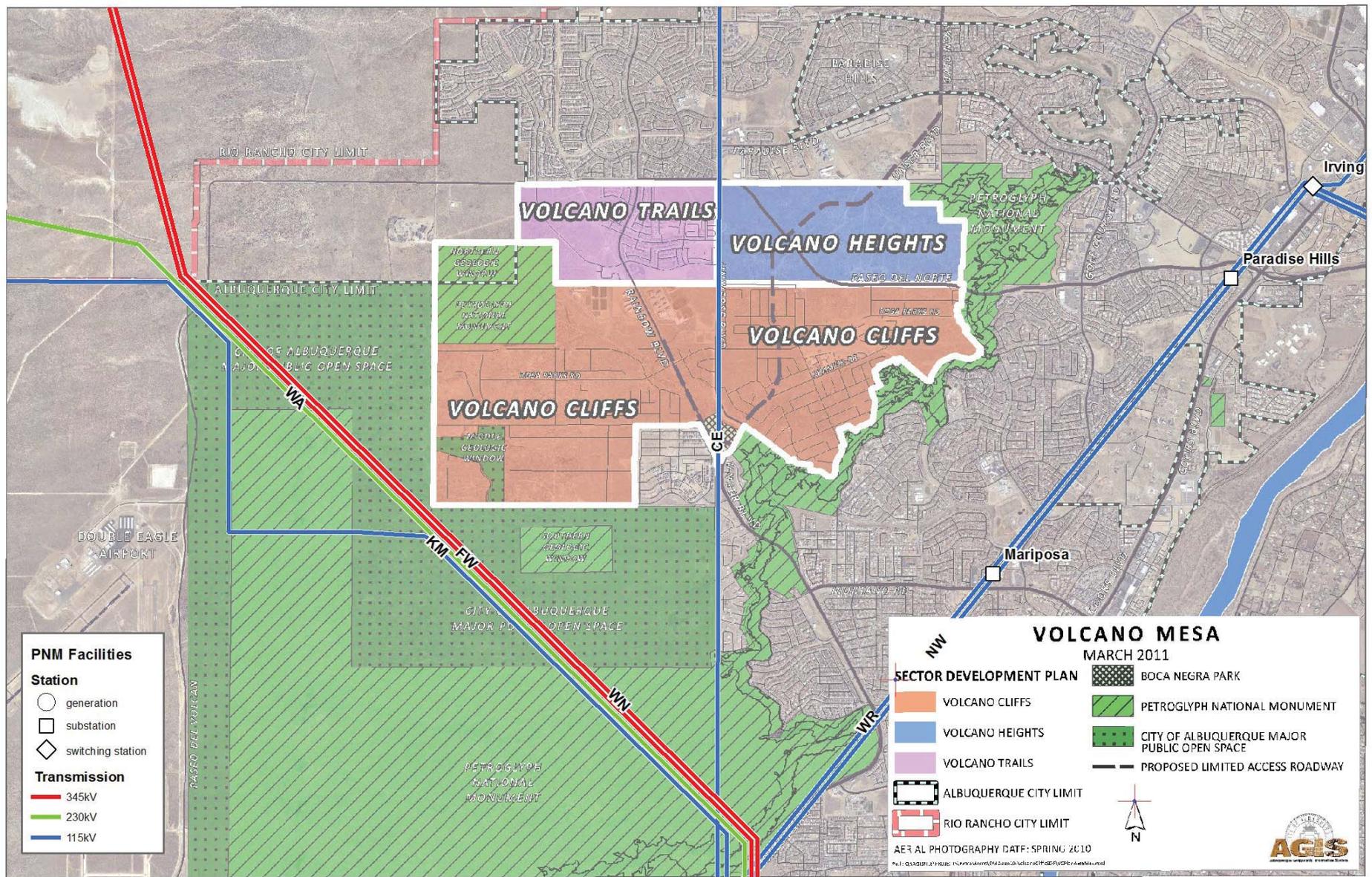


Exhibit A.9 – Volcano Mesa Area Electrical Facilities Map

## **B. Sector Planning Process**

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## Appendix B. Sector Planning Process

In 2004, the City Council called for a planning study of Volcano Mesa, an area west of the volcanic Escarpment of the City's Northwest Mesa that includes three Sector Development Plan areas: Volcano Cliffs, Volcano Trails, and Volcano Heights.

The City Council expressed concerns over development trends with subdivisions being approved piecemeal without the guidance of an overall plan for the area, which "has long been considered a unique landscape that requires special protection." The Council recognized the need for a plan that would bring development in line with the West Side Strategic Plan (WSSP), the Northwest Mesa Escarpment Plan (NWMEP), the Albuquerque / Bernalillo County Comprehensive Plan, and other previously established policies and regulations. Issues to be addressed included transportation, drainage, water and wastewater, land uses, view corridors, building height, massing and orientation, walls, parks, trails and open space, and phasing and timing of growth.

The planning study originally forecast over 100,000 additional residents at final build-out in the Volcano Mesa plan area and adjoining areas on the Northwest Mesa and identified how the build out of exclusively single-family residential subdivisions would increase the imbalance of jobs and housing, adding to traffic demands and increasing the burden on West Side and east-west transportation systems. The study identified an overall need for transit-supportive densities and design; additional mixed-use centers; a large-scale, regional, mixed-use employment center; consolidation and connection of open space and trails along drainage channels; and retained access to exceptional views.

The City sought input from stakeholders and property owners in a renewed planning process and used that input to guide the development of the three plans that were based on the original planning effort, but more specifically tailored to the goals and visions of affected stakeholders and property owners of each area.

The planning study led to the original Volcano Heights Sector Plan, which was adopted in 2006 but appealed to district court by the Volcano Cliff Property Owners Association. Upon remand from court, the Plan was divided into three separate, but related, Rank III Sector Development Plans in order to address the diverse needs of and issues within each planning area.

In 2010, at the direction of City Councilor Dan Lewis and Planning Director Deborah Stover, in consultation with area property owners, the Planning Department and Council Services initiated a new approach to developing long-range plans for this special area of Albuquerque. Language related to the overall development of the plan area, including analysis of existing conditions and consideration and general goals and policies for land use, transportation and open space were separated into the companion "Volcano Mesa" amendment to the WSSP, the Rank II Area Plan that governs Albuquerque's West Side.

- The Volcano Cliffs Sector Development Plan (VCSDP), which includes the areas where small lots are individually owned and lower-density residential development will predominate, was adopted in May 2011.
- The Volcano Trails Sector Development Plan (VTSDP), primarily designated for medium-density, single-family residential development held in consolidated ownership, with larger tracts being developed by a master developer, Longford Homes, was adopted in August 2011.
- The Volcano Heights Sector Development Plan (VHSDP) which includes unplatted land in tracts larger than 2 acres, was designated a Major Activity Center by the WSSP Volcano Mesa Amendment. It is intended to include a mix of employment, commercial, and high- and medium-density residential development opportunities.

## Appendix B. Sector Planning Process

The Volcano Heights Sector Development Plan was initially submitted to the Environmental Planning Commission in July 2010, after being developed largely by consultant Strata Design, with input from multiple property owners and stakeholders. Initial feedback indicated that some property owners had concerns that certain requirements in the Plan intended to create a dense, urban built environment were unrealistic given market conditions. Other stakeholders had concerns that the Plan would result in development that was too dense, too high, and too intense to coexist with existing residential neighborhoods to the north and south of the Plan area and protect sensitive lands near the Petroglyph National Monument in a unique volcanic, cultural, and historical landscape.

As a result of this feedback, Council Services hired Gateway Planning Group to conduct a market study for office and retail uses to confirm the assumptions underlying the Plan's regulations and an analysis of the Plan regulations to ensure that they were flexible enough to meet market conditions in the short- and long-term.

Despite certain flaws in the market study, the results seemed to indicate that the original Planning study done in 2004 no longer accurately represented the reduced market potential for retail and office in this area. Gateway confirmed that certain regulations from the July 2010 Draft Plan – such as required parking structures and a minimum 2-story building height – would not provide flexibility for property owners to meet market conditions in the short- and long-term.

The planning team withdrew the July 2010 Draft Plan from the adoption process in October 2011 and worked with Gateway Planning Group, property owners, and stakeholders to rework the Plan based on the following zoning and regulation strategy:

- all mixed-use zones to allow maximum flexibility of land use to match market conditions and opportunities;
- new transition zones to ensure low-density, predominantly residential development adjacent to existing residential neighborhoods and sensitive lands;
- a smaller Town Center zone to concentrate density and create gravity for more urban development;
- a new Regional Center zone lining Paseo del Norte and Unser Boulevard to capitalize on the potential for auto-oriented development along these high-traffic volume, regional roads;
- a network of mandatory roads with frontage standards as well as mandatory building design standards for each character zone to ensure predictability of high-quality development across property lines, along corridors, and over time; and
- a bonus height strategy to balance height and density with additional protections and incentives for preserving sensitive lands.

# APPENDIX

## Appendix B. Sector Planning Process

The latest sector planning process included public meetings, focus groups, and workshops with property owners and stakeholders, including the following opportunities for public involvement.

<b>Date</b>	<b>Meeting Type</b>	<b>Meeting Focus</b>
April 14	Interviews	Several large property owners
May 23	Focus Groups	Results of the market study, analysis of 2010 Draft Plan, and potential zoning strategy changes
June 2	Public Meetings	Confirming the direction of the zoning strategy
August 23	Focus Groups	Character Zone Map and Mandatory Roads
September 14	Focus Groups	Cross Sections and Site Development and Building Design Standards
December 8	Mini-workshop	Plan Implementation with panel discussions on Economic Development and Infrastructure
March 27	Public Meeting	Open Space, Trails, Parks and Private Preservation of Sensitive Lands
[Pending]	Focus Groups	Implementation, Goals, and Policies

## **C. Traffic Study**

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## D. Private Preservation Options

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Appendix D. Private Preservation Options

**ALTERNATIVE STRATEGIES FOR PRESERVING ROCK  
OUTCROPPINGS  
IN VOLCANO HILLS**

**Anita P. Miller**  
**Assistant City Attorney**

**October 5, 2011**

**I. Transfer of Development Rights**

A Transfer of Development Rights (“TDR”) strategy was considered in the 1990s in Albuquerque as a means of preserving significant natural and/or archaeological features on subdivided private land on the West Side of Albuquerque. One of the catalysts for the study was the petroglyphs which are located adjacent to already subdivided land. The Petroglyphs National Monument was becoming a reality, and the City did not want to see subdivision sprawl engulf private land near the Monument.

*A Feasibility and Planning Analysis* of TDRs in this context was prepared by Eric Damian Kelly, then a land use attorney and planner on contract with the City. At the time that the study was prepared, there was neither a state statute nor an Albuquerque ordinance governing TDRs. In 2003, NMSA 1978, §5-8-43 was adopted by the Legislature to provide guidance to counties and municipalities in regulating transfer of development rights.

- A. The purpose of this section is to
  - (1) clarify an application of existing authority;
  - (2) provide guidelines for counties and municipalities to regulate transfer of development rights consistent with comprehensive plans;
  - (3) encourage the conservation of ecological, agricultural and historical land; and
  - (4) require public notification of transfers of development rights.
- B. A municipality or county may, by ordinance, provide for voluntary transfer of all, or partial development rights from one parcel of land to another parcel of land.
- C. The ordinance shall identify on a zoning map areas from which development rights may be transferred and areas to which development rights may be transferred.
- D. The ordinance shall provide for:
  - (1) the voluntary transfer of a development right from one parcel of land to increase the intensity of development of another parcel of land;
  - (2) joint powers agreements, if applicable, for administration of transfers of development rights across jurisdictional boundaries;
  - (3) the method of transfer of development rights, including methods of determining the accounting for the rights transferred;

## Appendix D. Private Preservation Options

- (4) the reasonable rules to effect and control transfers and ensure compliance with the provisions of the ordinance; and
  - (5) public notification to the areas to which development rights may be transferred.
- E. Transference of a development right shall be in writing and executed by the owner of the parcel from which the development right is being transferred and acknowledged by the transferor. A development right shall not be subject to condemnation.
- F. As used in the section, “development right” means the rights permitted on a lot, parcel or area of land under a zoning ordinance or local law respecting permissible use, area, density or height of improvements executed thereon, and development rights may be calculated and allocated in accordance with density or height limitations or any criteria that will effectively quantify a development right in a reasonable and uniform manner.
- G. Nothing in this section shall be construed to authorize a municipality or a county to impair existing property rights.

“Transferable development rights” are rights to develop property that are valued based on existing zoning, or based on market potential of the property as developed. The TDR process is usually used to preserve historic property, archaeological sites, and open space; to preserve agricultural land from development; or to create incentives for high-density development in another area of a municipality.

Kelly sees “cluster zoning” as a simple example of TDR. In cluster zoning, a landowner may develop a part of his property at a high density, leaving the rest of the property as undeveloped open space. Since only one property is involved, cluster zoning doesn’t usually create controversy, although neighboring property owners adjacent to a receiving area which will be more dense than their properties may object based on the impact that this development might have on their neighboring property values.

Likewise, when a TDR process is applied to an undeveloped property currently in agriculture, but there also is designated land elsewhere in the jurisdiction for dense development, the process succeeds. The agricultural land is retained, and the farmer reaps the economic benefit of higher valued developed property.

TDRs often become controversial when the existing zoning in a receiving area is changed to enable development rights to be transferred into it. Therefore, TDRs work best when both the sending area and receiving area haven’t been permanently zoned or are in a “holding area,” and are designated as part of a planning process. TDRs, then, might succeed in preserving rock outcroppings in Volcano Heights if an underdeveloped receiving area for development rights transferred in order to preserve the rocks is designated in the current planning process.

Neither Albuquerque nor Bernalillo County has adopted TDR ordinances. It should be noted that in the *Feasibility and Planning Analysis*, Eric Kelly determined that New Mexico municipalities and counties could adopt TDR programs without a statute or local ordinance, based on already adopted planning and zoning statutes and ordinances.

## Appendix D. Private Preservation Options

It should be noted that a variation of TDR, “Purchase of Development Rights” (“PDR”) has successfully been implemented in Massachusetts. The state purchased development rights from farmers on land which it wished to remain in agriculture. A variation of PDR can be found in Chicago, where development rights in the Hyde Park area were purchased by the City, and placed in a “bank”. Developers could then purchase them from the “bank”, and utilize them to create more dense development in a new area which the City wanted to see densely developed.

In the context of Albuquerque, owners of land containing rock outcroppings that are designated for preservation might also transfer their development rights to redevelopment areas elsewhere in the City. Redevelopment areas recently have been rezoned for higher density mixed uses, which might make them appropriate as “receiving areas.”

Kelly mentions that a TDR program can be defeated by popular opposition when an existing zoning designation is changed to accommodate receipt of development rights. It is assumed that the original zoning served the health, safety and general welfare of the area. When the area receives development rights and thus higher densities, the justification for the lower densities of adjacent properties no longer exists, and property owners in adjacent neighborhoods believe that their property values will plummet.

When Eric Kelly prepared his study in the 1990s, his conclusion was that they wouldn’t work in Albuquerque, except when a property owner had sufficient land to “receive” higher density. In those days, even cluster development in the developed areas of the City was met with harsh opposition from adjacent and nearby neighborhood associations. Whether a TDR program, with receiving areas designated elsewhere in the City, would succeed today, given today’s growing preference for higher density development,

is open to question. Kelly suggested that conservation easements might provide a better strategy for preserving land without the City actually owning it.

### II. Conservation Easements

In New Mexico, “conservation easements” are defined as “Land Use Easements,” as follows:

NMSA 1978, §47-12-1 (1991)

- H. “land use easement” means a holder’s nonpossessory interest in real property imposing any limitation or affirmative obligation the purpose of which includes retaining or protecting natural or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use or protecting natural resources;

At A. of the statute,

“holder” means any non-profit corporation, nonprofit association or nonprofit trust, the purposes or powers of which include retaining or protecting the natural or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources or maintaining production uses of real property.

Local governments qualify as “holders.” Thus the City could protect the rock outcroppings in Volcano Heights by obtaining conservation easements on areas of land containing those

## Appendix D. Private Preservation Options

rock outcroppings identified as desirable to preserve. The easements are recorded, and are governed by their specific terms. Their terms could include conditions for termination, as well as other limitations if so desired. The owner of the property would continue to own the land burdened by the easement, and would be responsible for its care and maintenance, but would not be able to develop it. The New Mexico Tax Code gives tax benefits to the landowner whose property is burdened by the easement, as does the Internal Revenue Code.

The property owner could fence in the property burdened by the easement and exclude the public; it's still his private property. If a property owner is going to develop the property as a shopping center or office park, inviting the public in, he could also invite citizens to the area protected by the easement. Terminology in the drafted easement could reflect the property owner's particular responsibilities as negotiated.

Although the Open Space Division would like to see the rock outcroppings purchased outright by the City, given budgetary limitations, obtaining a conservation easement would preserve them from development, pending availability of funds for their purchase. If such funds never were available, at the very least they'd be preserved.

It should be noted that Santa Fe County, as a result of two successful bond issues, was able to purchase land in the Galisteo Basin which contained archaeological sites. When it realized that there was additional land which also had archaeological value, and didn't have funding to purchase it as well, it utilized a conservation easement to protect it from development. A third bond issue provided sufficient funds for purchase of the land, and the easement was terminated. Thus Albuquerque could "tie up" the rock outcroppings pending obtaining funding for purchase of the sites. If preservation is the ultimate goal, lack of public access is a small price to pay.

**Conclusion**

If there are areas in Volcano Heights where TDRs would "work," either on the property where rocks are to be preserved or another property within the Plan area or in a specific zone where mixed use zoning and density are encouraged, existing incentives, such as increased density on the receiving site might be utilized to "reward" a property owner for transferring development rights. Certainly neighborhood associations would oppose the creation of receiving areas on Albuquerque's east side, although they might be acceptable on large redevelopment sites that might encourage high density development.

Conservation easements are easier to administer and create than TDRs. Considering that the Open Space Division prefers acquisition of property which it has designated as open space, but cannot now afford to purchase, conservation easements could preserve the designated property until funding is available to purchase it. On October 4<sup>th</sup> Albuquerque citizens voted down one of the Mayor's proposals for bond issues, reflecting public opposition to two public projects. In the current economic climate, it's likely that bond issues for purchase of open space might also be voted down. Conservation easements at least provide a method for preserving designated open space when funding isn't available to purchase it.

## Appendix D. Private Preservation Options

### Conservation Easement for Rock Outcropping (Sample)

This Deed of Conservation Easement is granted on the day of \_\_\_\_ by \_\_\_\_ concerning the address of \_\_\_\_ to the City of Albuquerque for the purpose of forever conserving the cultural values of said property.

#### Recitals:

##### Significance:

The property contains special cultural significance to the Tribal nation of the Pueblo Native American Tribe. This land consists of open space containing various rock outcroppings scattered throughout. These outcroppings are marked in the attached topographical map titled Exhibit 1. The preservation of these outcroppings shall be preserved pursuant to the NM Cultural Properties Preservation Easement Act, NMSA 1978, Sections 47-12A-1 through 47-12A-6. This act aids the landowner who wishes to voluntarily donate a conservation easement intended to restrict the use of this specified parcel so as to maintain in perpetuity the significant cultural and/or geological aspects of this land. Conserving the property is consistent with and important to the environment, culture and economy of the surrounding area because the development of the property would jeopardize the cultural significance of the area to the native members of the Pueblo Tribe. These sites provide the public and Pueblos with spiritual areas to hold sacred rituals and ceremonies that have held great cultural significance for countless generations. It is important to hold these areas open to future generations of interested parties to keep the spiritual significance of the area alive.

##### Qualifications:

The City of Albuquerque is a qualified “holder” as described by NMSA 1978, Section 47-12A-2 and an eligible holder pursuant to the Land Conservation Incentives Act NMSA 1978, Sections 75-9-1 to 75-9-6 (2003).

##### Intent of Conveyance:

The land owner intends to make a charitable gift of the development interest conveyed by this deed for the purpose of assuring that under the holder’s perpetual oversight, the conservation values will be maintained forever and that any misuse of the property inconsistent with the conservation values will be corrected or prevented. The intent of this conveyance is to permit all other uses of the land not inconsistent with the conservation values as determined by the City of Albuquerque in its sole discretion that are not expressly prohibited in this deed. Nothing in this deed is intended to compel the property holder to use the property in any way other than maintaining protection and conservation values. Conveyance of this deed will not adversely affect the property owner’s property rights to develop the remainder of the property not covered by the conservation easement.

## Appendix D. Private Preservation Options

### Agreement:

Now therefore, in consideration of the mutual promises and covenants contained herein, the landowner voluntarily grants and conveys the land in trust to the City of Albuquerque, and the City of Albuquerque voluntarily accepts a perpetual “land use easement” over the property herein described as subject to the easement as defined by NMSA 1978, Section 47-12A-2B of the Cultural Properties Preservation Easement Act, which is also a “qualified real property interest” as defined by the C.F.R. 170(h)(2)(c), the conveyance of which is a “charitable contribution” as defined by C.F.R. 170(h).

### Property Rights Retained by Owner:

Landowner reserves to himself/herself, and to his/her personal representatives, heirs successors, and assigns, all rights not expressly prohibited or limited by this easement, including all ownership rights of the Property, the right to include or exclude others, the right to sell or otherwise transfer ownership, and the right to mortgage the Property so long as the Mortgage is subordinated to this Deed.

General Uses of the Property: The landowner shall not perform nor knowingly allow others to perform acts that are inconsistent with the conservation or preservation purposes enumerated by this deed. The City of Albuquerque and the landowner acknowledge that any uses of the property or improvements of the property enumerated in this deed are consistent with the Conservation purposes. The landowner agrees that any other use of the land that is inconsistent with the law imposed on the Property is not protected by this deed.

### Various Specific Uses:

- A. Subdivisions: The landowner and the City of Albuquerque agree that the property must be sold or transferred as a single unit and that any further subdivision of the Property is prohibited, unless approved by the City of Albuquerque, in its sole discretion. Any adjustments to the lot lines must be approved by the City of Albuquerque. If the property is transferred or sold, the landowner must provide to the City the address and name of the grantee.
- B. Construction: Any existing structure on the Property can be repaired, maintained, or replaced in its current location, but construction of new structures on the Property is prohibited unless at least 30 days prior to undertaking any construction, and prior to applying for a building permit for such construction, the landowner shall notify the City of Albuquerque in writing and provide the City of Albuquerque with the opportunity to review the plans for such construction for compliance with the terms of this deed. The City has the power to deny any such development that does not meet the terms of this deed.
- C. Water Rights: The voluntary separation of water rights from the Property is hereby prohibited, except as provided herein. The landowner shall take all prudent measures to ensure that forfeiture or abandonment do not occur for the Property, including maintaining timely payments, beneficial use and participation in conservation programs. If for any reason the landowner cannot beneficially use the water rights on the Property, the rights can be transferred to the City of Albuquerque for purposes of conservation or elsewhere as long as it is consistent with the conservation purposes of this easement. If transferred elsewhere, the landowner must receive written consent by the City of Albuquerque to lease or transfer the rights.

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## Appendix D. Private Preservation Options

- D. Agriculture: All agricultural practices should be conducted in a sustainable manner. This includes ranching, farming and other agricultural practices. Agricultural practices shall use stewardship and management practices generally consistent with the standards of the U.S. Natural Resources Conservation Service or other commonly accepted sound management practices approved by the City to meet the conservation purpose of this deed.
- E. Timber: The cutting of any timber from on the Property is strictly prohibited except for fire management, to control insects or disease, to prevent personal injury and property damage, to maintain the character and nature of the existing natural habitat, and/or to prevent encroachment into agricultural fields and pastures.
- F. Utilities: The construction of new utilities on the property is prohibited without the prior written approval of the City of Albuquerque. This includes underground utilities.
- G. Roads: The construction of new roads shall be prohibited from the Property. If for some reason there is a specific need for a road, the landowner may present the City of Albuquerque with plans at least 30 days prior to receiving any permits or beginning any actual construction and must receive written consent from the City of Albuquerque to proceed.
- H. Off-road Vehicle Use: The use of any motorized vehicle is prohibited on the property except for the purposes of maintenance, conservation, agriculture, or emergency access.
- I. Impervious Surfaces: The construction of any permanent, impervious surface such as pavement or asphalt is prohibited except for those approved pursuant to paragraph G of this deed.
- J. Mining: The mining of gravel, rock, sand soil and other minerals is prohibited as consistent with the conservation values proposed in this deed.
- K. Refuse: The dumping, storing, or accumulation of any form of refuse is strictly prohibited from the property. Should any refuse be found on the property it is the landowner's duty to remove it. This prohibition does not apply to any form of composting as long as it is done in a manner consistent with the Conservation values expressed in this deed.
- L. Hazardous Materials: The storage, release, or treatment of hazardous chemicals on, from, or under the property is prohibited. For the purposes of this deed, any "Hazardous material" shall be any hazardous or toxic, material or waste considered hazardous according to any state, federal, or local laws.
- M. Commercial Activity:
  - a. Generally: Any commercial activity including producing, buying, selling or trading of goods or services shall be prohibited with the exceptions of recreational or home activities described below.
  - b. Commercial Recreational Activities: Use of the property other than "de minimis" uses as described in the Code of Federal Regulations (C.F.R.) 2031(c)(8)(B) are prohibited.
  - c. Commercial Home Activities: This deed does not prohibit home commercial activities legally permitted within the home by local zoning laws, as long as they are consistent with the conservation values in this deed.

## Appendix D. Private Preservation Options

- N. Recreation: Only low-impact recreational activities are permitted, such as rock study, wildlife viewing, hiking, biking, horse-back riding, snowshoeing, or cross country skiing not inconsistent with the conservation values of this deed. Recreational facilities may only be constructed in accordance with the restrictions pursuant to section B of this Deed. The use of motorized vehicles for recreational purposes is prohibited pursuant to section H of this deed.
- O. Public Access: This deed is not intended to allow public access to the property, and the landowner maintains his/her property right to exclude any trespassers, as well as his/her right to include any public access he/she sees fit in accordance with the conservation values expressed in this deed. The City of Albuquerque maintains no obligation to take any actions to prevent trespassers on the property.
- P. Signs: The use of signs shall be prohibited other than those warning trespassers of private land, signs that explain it is in the care of the City of Albuquerque, for sale signs, or any notice or postings required by law. The signs shall not exceed two by two feet, be made of reflective material, or be artificially illuminated.

Duration of the Deed: This deed shall last with the title of the land in perpetuity, and every provision of the deed shall likewise apply to any heirs, assigns, successors, executors, administrators, and all other successors. The transfer of title shall excuse the grantor of the obligations of the provisions of this deed except those for which he/she is liable before the transfer of title. The City of Albuquerque maintains the right to review the provisions of the deed and shall do so every five years and shall be at liberty to cancel or transfer their position as a holder for this easement.

Responsibilities of Landowner: Other than as specified herein, this deed is not intended to impose any legal or other responsibility on the City of Albuquerque, or in any way to affect any obligation of the landowner as owner of the property. Unless otherwise specified below, nothing in this Deed shall require the landowner to take any action to restore the condition of the property after any Act of God or other event over which landowner had no control. The landowner shall continue to be solely responsible, and the City of Albuquerque shall have no obligation for the upkeep and maintenance of the property. The landowner acknowledges that nothing in this Deed relieves the landowner of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

- a. Taxes: The landowner is solely responsible for the payment of all taxes and assessments levied against the property. If for any reason the City of Albuquerque is forced to pay any taxes or assessments on its interest in the Property, the landowner shall reimburse the City of Albuquerque for the full amount, and such payment shall constitute a lien on the property.
- b. Upkeep and Maintenance: The landowner shall be solely responsible for the upkeep and maintenance of the property.
- c. Liability and Indemnification: The landowner shall be solely responsible for any liability arising from or related to the property, including injury or damage to any person or organization related directly or indirectly to the action or omission by the landowner. If for any reason the City of Albuquerque has to pay for any damages, the landowner shall indemnify and reimburse the City for the amount as well as any attorney fees resulting from the costs of defending itself. The landowner shall not have to reimburse the City of Albuquerque if the City is to be the proximate cause of the injury.

# APPENDIX

## Appendix D. Private Preservation Options

- d. Insurance: The landowner warrants that the City of Albuquerque is and will continue to be an additional insured on the landowner's liability insurance policy covering the property. The landowner shall provide certificates of such insurance to the City of Albuquerque within thirty days after the date of recordation of this deed and subsequently, upon the City of Albuquerque's written request. Landowner shall advise the City of Albuquerque at least thirty days in advance of cancellation of any insurance policy.

### Landowner Warranties:

- a. Title warranty: The landowner warrants that he/she has good and sufficient title to the property, and that there are no liens on, leases to, pending or threatened litigation relating to the Property, or other interests in the property, including verbal agreements, that have not been disclosed to the City of Albuquerque in writing. The landowner hereby promises to defend the property and the easement against all claims from persons claiming by, through, or under the landowner.

- a. *If the landowner has a mortgage on property:* The landowner warrants that he/she has good and sufficient title to the property, that the lien on the property held by \_\_\_\_\_, dated \_\_\_\_\_, has been subordinated to this deed, and that there are no other liens on, leases to, or other interests in the property that have not been disclosed to the City of Albuquerque in writing. The landowner hereby promises to defend the property and the easement against all claims from persons claiming by, through, or under the landowner.

- b. Environmental Warranty: The landowner warrants that he/she has no knowledge of a release or threatened release of hazardous material on the property. The landowner will indemnify, defend, and hold harmless the City of Albuquerque against any litigation, claims, costs, damages, losses, or any other expenses of any kind arising from the release of hazardous material on the property. Nothing in this deed is intended to convey any sort of day-to-day managerial right to the City of Albuquerque from the landowner. The owner of the property retains the right to manage the property, subject to restrictions in this easement and any federal, state, or local laws, regulations or ordinances governing environmental conditions on the property.

Inspection: The City of Albuquerque maintains the right to inspect the property as long as the City gives the landowner reasonable, advance notice. The City of Albuquerque will typically inspect the property annually but reserves the right to inspect it any time as long as the City gives the owner proper notice. If the City of Albuquerque has reason to believe that there is an ongoing, imminent, or threatened violation of the provisions of this deed, the City of Albuquerque will make good faith efforts to contact the landowner but may enter the Property in an effort to avert this emergency without needing to give prior notice to the landowner.

Enforcement: The City of Albuquerque has all the rights, remedies, and power to enforce the terms of this deed against the landowner that are provided by law or in equity including actions prior to court action such as mediation or arbitration. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values described in this easement, the City of Albuquerque will give

## Appendix D. Private Preservation Options

written notice of the violation to the landowner and he/she will have thirty days before the City of Albuquerque will take legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the City of Albuquerque may obtain an injunction to stop the violation, temporarily or permanently, and to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the landowner shall reimburse the City of Albuquerque for all its expenses incurred in stopping and correcting the violation, including reasonable attorneys' fees and court costs. If the court finds no violation, the landowner and the City of Albuquerque shall each bear individual expenses and attorneys' fees. The landowner and the City of Albuquerque agree that this allocation of expenses is appropriate.

Transfer of Easement: The City of Albuquerque maintains the right to transfer this easement to another qualified holder according to the subsections below:

- a. Voluntary: if the City of Albuquerque ever wants to voluntarily transfer the easement, the City will give notice sixty days before the transfer takes place in order to allow the landowner to voice any preferences as to who the new holder shall be. The City of Albuquerque shall take due consideration of this suggestions and shall choose accordingly. This easement can only be transferred to an organization that is qualified as a holder under NMSA 1978, Section 47-12A-2B and that agrees to uphold the terms of this Deed.
- b. Involuntary: If the City of Albuquerque ceases to qualify under C.F.R. 170(h)(3), or NMSA 1978, Section 47-12A-1 through 47-12A-6, a court with proper jurisdiction shall dictate the transfer or this deed to another qualified organization that agrees to uphold the terms of this Deed.

Amendment of Easement: The City of Albuquerque and the landowner agree that there may be situations in which the need to amend various provisions of the deed may arise and agree that in order to amend any provisions, both the City of Albuquerque and the landowner must agree in writing to any such changes. Any written agreement, executed by both the City of Albuquerque and the landowner, to amend this deed must be filed with the County Clerk's office in which this deed is filed.

Termination of the Easement:

- a. Condemnation: The City of Albuquerque shall be informed by the property owner of any condemnation action undertaken by the federal or state government within 10 days of initiation of that action. If all or a part of the property is taken for public use (or sold to a public authority under threat of condemnation), and the easement is terminated in whole or in part, then the City of Albuquerque shall be entitled to a percentage of the condemnation award or sale proceeds (including any increase in value caused by improvements made after the date of this Deed) equal to the ratio, as of the date of this Deed, of the appraised value of the Easement to the unrestricted fair market value of the property.
- b. Changed Conditions: The landowner and the City of Albuquerque recognize that in some cases all conservation value of the property may be irreversibly lost due to changes not caused by any particular party. The City of Albuquerque and the landowner retain the right to jointly request a court with jurisdiction to terminate all or a portion of this deed and order the sale of the property. The irreversible loss of all conservation value is the only grounds upon which to terminate this deed. Upon the sale of the land, the City of Albuquerque shall be entitled to a percentage of the sale proceeds (including any increase in value caused by improvements made after the date of this

## Appendix D. Private Preservation Options

deed) equal to the ratio, as of the date of this Deed, of the appraised value of the Easement to the unrestricted fair market value of the property.

- c. **Other Termination Conditions:** This Deed constitutes a property right conveyed to the City of Albuquerque that shall immediately vest once this deed has been signed by the County Clerk and filed in the official records of Bernalillo County and shall give the City of Albuquerque the rights to the fair market value of the apportioned land, which will be stipulated to be between the landowner and the City of Albuquerque. Any funds the City of Albuquerque receives from the termination of this easement shall be used in a way consistent with the conservation values expressed in this agreement.
- d. **Economic Termination Conditions:** In no circumstances will the economic devaluation of the property or economic infeasibility of this easement be seen as grounds appropriate to terminate this easement.

**Approvals:** Before doing anything that requires the approval of the City of Albuquerque, the landowner agrees to request the approval from the City of Albuquerque in writing. The City of Albuquerque shall be given forty-five days from the day of receipt to respond in writing to the written request of the landowner.

**Notices:** Any written notices required by this deed shall be hand delivered or sent through the US mail services. The current addresses as of the date of creating this deed for the landowner and the City of Albuquerque are as follows:

To the Landowner:

To the City of Albuquerque:

All parties must be notified of any changes of addresses. Also the address of the Property shall be a suitable address for the City of Albuquerque to address any notices they are required to send to the landowner.

**Transfer of the Property:** The landowner retains the right to transfer or sell his property rights at any time as long as this deed remains attached to the property rights in the conveyance and that he/she gives the City of Albuquerque written notice sixty days before said transfer or sale. The City of Albuquerque retains the right to deny the sale of the property associated with this deed, and the landowner must receive written permission from the City of Albuquerque before selling this land. Purchasers of the property subject to the conservation easement are bound by its terms, as are heirs of the original property owner in the event of its death. If the property is foreclosed, then both the foreclosing institution and purchaser in a foreclosure sale are also subject to the terms of this provision.

**Subsequent Mortgages:** This deed in no way impairs the property owner from receiving additional mortgages or liens against the property as long as these liens are subordinate to the provisions of this Deed.

**Waiver:** No portion of this deed shall be waived without the written consent of both parties.

**Incorporation:** Any recitals set forth at the beginning of this deed as well as any attached exhibits referenced herein shall be incorporated to this deed by this reference.

**Interpretation:** Any interpretations of the contents of this deed shall be governed by the laws of the State of New Mexico. Furthermore any interpretations of the content of this deed shall be done so without regard to the authorship of the contents, but rather with regards to maximizing the proposed conservational and protectoral values associated with this deed.

**No Third Party Beneficiaries:** This deed was entered into by the landowner and the City of Albuquerque and was intended for their sole benefit. No rights or responsibilities shall be created in any third party pursuant to this Deed.

## Appendix D. Private Preservation Options

Counterparts: This deed can be broken into two or more parts, each of which shall be executed by both parties, and each part will be considered an original document, but in the aggregate this deed shall still be considered a single agreement.

Severability: If any provision of this deed is found to be illegal, this illegal content shall not affect any other provision of this deed, and the deed shall still remain legally enforceable.

Integration: This deed sets forth all provisions of the agreements between the landowner and the City of Albuquerque and supersedes any prior and subsequent negotiations, understandings, documents, or agreements relating to this deed.

Recording: the City of Albuquerque shall record this deed in a timely fashion in the official records of Bernalillo County, New Mexico. The City of Albuquerque shall also re-record this deed anytime there are changes to any provision or other information contained in this deed in order to preserve the rights and protections of this deed.

Acceptance: The City of Albuquerque has accepted the easement conveyed by this deed and the rights and responsibilities contained herein. The City of Albuquerque agrees to have and to hold this Deed of Conservation Easement unto the City of Albuquerque forever in perpetuity.

Reviewed by:

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(City Attorney)

# APPENDIX

## Appendix D. Private Preservation Options

### Signatures and Acknowledgements:

The City of Albuquerque,  
A New Mexico Municipality

The landowner:

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Print Name of Representative)

County of \_\_\_\_\_)

County of \_\_\_\_\_)

) SS  
State of \_\_\_\_\_)

) SS  
State of \_\_\_\_\_)

The foregoing Deed was acknowledged before me on the day  
of \_\_\_\_\_ by \_\_\_\_\_

The foregoing Deed was acknowledged before me on the day  
of \_\_\_\_\_ by \_\_\_\_\_, representative of  
the City of Albuquerque

\_\_\_\_\_  
(Notary Public Seal)

\_\_\_\_\_  
(Notary Public Seal)

My Commission Expires: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## E. Quick Reference Zone Matrix

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# APPENDIX

## Appendix E. Quick Reference Zone Matrix

Character Zone	Total Acreage	Max. Height	Bonus Height	Block Length	Block Perimeter	Built-to Zone (feet)	
	(in acres)	(in feet)	(in feet)	(in feet)	(max. in feet)	'A' Street	'B Street'
Town Center	68	40	75	300 - 500	1600	5-10	10-75
Regional Center	99	40	60	300-1000	1600	5-10	10-75
Village Center	12	40	60	300-800	2000	5-10	10-30
Mixed Use	180	26	40	300-1200	4000	5-20	10-75
Neighborhood Transition	32	26	NA	200-600	2000	5-15	10-30
Escarpment Transition	61	26*	NA	250-600	2000	5-10	10-30

\* Structures within the Impact Area of the Northwest Mesa Escarpment Plan are restricted to 15 feet. Beyond the Impact Area, structures within 200 feet of the Petroglyph National Monument boundary are restricted to 18 feet, with up to 50% of the building footprint allowed to go up to 26 feet.

In order to provide predictability of high-quality built environment along corridors, across property lines, and over time, Streets and Streetscape Standards take precedence over Character Zone Site Development Standards.

Mandatory Road cross sections and frontage standards are found in **Section 4.6**. Non-mandatory Road requirements and cross section options are found in **Section 4.7** and summarized below. Frontage standards for non-mandatory roads are handled by Character Zone in **Section 6** and summarized below.

Character Zone	Non-mandatory Roads		Building Frontage Required	
	'A' Street (min.)	'B Street' (max.)	'A' Street (min.)	'B Street' (min.)
Town Center	50%	50%	80%	30%
Regional Center	25%	75%	60%	20%
Village Center	25%	75%	75%	30%
Mixed Use	25%	75%	50%	25%
Neighborhood Transition	0%	100%	75%	30%
Escarpment Transition	25%	75%	75%	30%