

## **Lehner, Catalina L.**

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**From:** Sayre Gerhart [sayre.gerhart@comcast.net]  
**Sent:** Monday, October 15, 2012 8:38 PM  
**To:** Lehner, Catalina L.  
**Subject:** Letter to EPC regarding Walmart



STG-EPCletter3-1-1ATT290050.txt (66  
2.doc (77 KB... B)

Good Evening Catalina,

I did not see my letter dated last March (when I thought the hearing would be in April) in the packet of materials for the EPC. Perhaps it was posted or distributed at another time. But I worry it has gotten lost in the mass of material this application has generated.

I attach it again and please ask that it be distributed to the EPC. It is the most articulate I can be, as a private citizen, advocating for the interests of Bosque School, where I formerly was a trustee.

Thank you.

Sincerely,  
Sayre Gerhart

## SAYRE TOWNSEND GERHART, AIA

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March 1, 2012

Environmental Planning Commission  
c/o Doug Peterson, Chair  
Laurie Moyer, Vice Chair  
Ron O. Garcia  
Jonathan Siegel  
Rob Dickson  
Joe Yardumian  
Hugh Floyd  
Michael Dickson  
1 Civic Plaza  
Albuquerque, New Mexico 87102

RE: Project No. 1003859

Dear Chairman Peterson and Members of the EPC:

I am writing as a private citizen in opposition to the application for the large retail facility (LRF) and subdivision amendment, Project No. 10038059. I am a NM licensed architect, and have appeared before planning review boards as well as have served on a planning review board. I am also a parent and a former trustee of Bosque School, which is contiguous to the site of the proposed development. I have reviewed the application and find it to be in violation of City Zoning Ordinances, submittal requirements, the Albuquerque / Bernalillo County Comprehensive Plan, the West Side Strategic Plan, and equally important, the 2005 approved North Andalucia at La Luz Subdivision which includes these lands. **The Environmental Planning Commission must uphold and enforce City Ordinances and the Policies of Strategic Plans, and deny the application.**

I am writing to you a second time (my first letter is dated January 9, 2012) because I am particularly concerned about detrimental impacts that the development will have on the school which have not been raised, and detrimental impacts an approval will have in setting precedents which undermine planning enforcement in the City. I am also concerned with issues of due process, and fairness and equal treatment in the review, analysis and public participation of this application.

### A. Detrimental Impacts to Bosque School:

#### *1. Drainage:*

Background: In 2005, the lands included in Site Plan for Subdivision for the North Andalucia at La Luz had just one owner. The property owner, Silver Leaf Ventures, was required to install

privately owned and maintained stormwater facilities, which resulted in a Drainage Management Plan (DMP) approved 7/5/2006. Also recorded are Permanent Public Storm Drain Easements, Agreements and Covenants, dated 11/30/2006, between Silver Leaf Venture, the City of Albuquerque, and Bosque School, who purchased Tract 9. An additional Agreement recorded 12/01/2006 between Silver Leaf and Bosque School establishes terms including the requirement for the Bosque School to grant public drainage and storm drain easements so long as Silver Leaf Ventures assumes full responsibility and liability for undertakings, obligations relating to the easements and the construction and maintenance thereof. Silver Leaf Ventures remains in default of several items in its agreement with Bosque School despite multiple demand letters, including completion of the drainage ponds and maintenance.

In 2009, Bosque School subdivided and sold 4.5 acres of Tract 9 to ABCWUA. The agreements include provision for the vacating of drainage easements on the Bosque School property at the time ABCWUA constructs its WWTP facility.

**Concerns:**

**a. Stormwater and drainage infrastructure has not been constructed or maintained.** The letter from the applicant to the EPC dated October 27, 2011 and Sheet C10 of the application incorrectly state that stormwater infrastructure for the proposed development already exists and that all the applicant need do is install some drop inlets. In fact, the drainage ponds were not completed and have never been maintained by Silverleaf and therefore will not function properly in the event of a major storm. This continues to present a danger to Bosque School, its students, the City of Albuquerque and to Silverleaf's property. In addition, Bosque School (to the best of my knowledge) has never seen a copy of completed, City approved drainage plans, including the "spillway" drainage flows to the School's retainage area on Tract 4A west of the Corrales Riverside Drain. As a side note, the initial grading of the ponds damaged Bosque's fire road, bike path and parking area, which the school has corrected at its own expense.

The application for an amended subdivision and for a SDP for a LRF will require major installation of drainage infrastructure, design of drainage infrastructure on off site property not owned by the applicant, and will qualify as a major subdivision, Section 14-14-1-6. As such, the review of the proposal for the amended subdivision requires that in approving the amendment the board "evaluate whether the amendment or vacation action will adversely affect contiguous land within the subdivision being vacated or the interests of the City," Section 14-14-7-1(B). Staff reports and EPC proceedings to date have failed to address or evaluate any adverse impact of the drainage on Bosque School, and evaluation is particularly important as all the drainage from this development will be conveyed onto the Bosque School and ABCWUA properties.

**b. The City should require the applicant to demonstrate that the proposed development and amended subdivision will continue to conform with the approved DMP.** The application for an amended subdivision and for the Large Retail Facility represents a major amendment and significant change and intensification in use, enough to question if the proposed changes continue to conform to the approved DMP with regards to the manner of discharge, the amount of impervious area, the resultant peak discharge to the storm drains and the drainage pond, Section 14-14-4-11. The EPC is the appropriate hearing for this evaluation and to impose any conditions to protect the School from any identified adverse affects, Sections 14-16-3-11 (A)(1) and (2). The application lacks specificity regarding drainage issues and does not provide

the public with enough information for evaluation; the burden is on the applicant to demonstrate compliance, Section 14-14-2-3(B). For example, Sheet C10 of the application proposes that the stormwater design will consist of passive water harvesting "where possible." Water harvesting is an important aspect that should be incorporated into the construction plans to reduce the rate, frequency and volume of runoff discharged to the downstream pond, and to improve water quality, but the promise "where possible" provides no guarantee for the school or objective measure for enforcement.

**c. The amended subdivision places an undue burden on Bosque School for enforcement of drainage maintenance in the future.** At the time of the 2005 SDP for subdivision and pursuant agreements, the City approved a drainage plan for privately owned infrastructure to be owned and maintained by one, then two parties. The proposed amended subdivision will create potentially eight new property owners who through conveyance of Silver Leaf's obligations, per the 12/01/2006 agreement, will be fully responsible for the installation and maintenance of the drainage facilities on the lands of Bosque School and ABCWUA. It is unreasonable that the school will have expertise or capacity to monitor and enforce the maintenance of these facilities on multiple properties. As noted above, the school has been unable to enforce existing responsibilities of just one property owner, and failure of the facilities in a major storm event will potentially threaten life and property at Bosque School.

The City should revisit the installation and maintenance agreements for these facilities and take over responsibilities into the future for enforcement or maintenance of drainage for the proposed development and subdivision. Section 14-16-3-11(A)(1) of the Ordinances authorizes,

Imposition of relevant requirements contained within or authorized by the city's Subdivision Ordinance, including but not limited to dedication of rights of way and assurances for required infrastructure improvements both on site and off site.

At the least, the amended SDP for subdivision should note that the property owner is responsible for the design, installation and maintenance of drainage facilities not only on the applicant property but also of the offsite ponds and facilities.

**d. Runoff and water quality are a concern, and the City should ensure that stormwater harvesting, pollution control and water quality measures are incorporated into the development as conditions of approval, to avoid or minimize any adverse impact on the drainage ponds located on school property.** The City's Development Process Manual (DPM) requires that all retail and office developments larger than 0.5 acres incorporate and implement structural measures to address stormwater pollution and water quality. Runoff from parking lots typically includes grease and oils from vehicles along with inevitable amounts of sand and trash. Bosque School has a strong ethic for its stewardship of the environment, and the potential for pollution on its property is inconsistent with this ethic and an unacceptable risk for the health of children. The rate of flow is also a concern, and retention of stormwater must be evaluated. Pond A, which currently serves the development, will require a "spillway" for overflow volumes to Pond B, also on the Bosque School property to the south. The DMP identified and required that the spillway improvements be addressed as part of the proposed development of the applicant property. The City and Developers, through the EPC and DRB, need to coordinate to make sure that the spillway is a requirement for the project. The spillway should be integrated

into the school's use and aesthetic of its campus, and designed for a rate to prevent erosion and scour.

## *2. Buffer Zone:*

Background: The 2005 SDP for Subdivision for the North Andalusia and La Luz requires in Note 3 that: "The area adjacent to Learning Road and the northern boundary of Bosque School, Lot 4A (a minimum of 300 feet) is restricted to PRD and O-1 uses." The subdivision approval recognized the adverse impact of C-2 uses adjacent to the school property and provided this separation for the protection of the school. The 2005 SDP for subdivision even created a Tract 3 zoned SU-1 for O-1 uses, to prevent any misinterpretation of the intent of this 300 foot buffer.

The proposed amended SDP for subdivision eliminates Tract 3, and proposes to rezone the area of Tract 3 into two larger parcels Tract 3A and Tract 2A, the proposed development of the LRF, to SU-1 for C-2 and O-1 uses.

### Concerns:

a. **The City should uphold the intention of the 2005 SDP for Subdivision and retain Tract 3, with zoning SU-1 for O-1 uses only.** The applicant has not presented any justification for the change, and the change is detrimental to the adjoining property owner. The applicant is proposing a SDP for development for 11.47 acres of a 23.3 acre subdivision. The enforcement of the 300 foot buffer requirement in Note 3 does not prevent the applicant from pursuing an application for the LRF at this site. A decision to replace Tract 3 with lots including C-2 uses violates Note 3 and unfairly favors the applicant property owner to the detriment of the adjoining property owner, who was the beneficiary of this buffering requirement.

Rather, the intention of the general note to separate the school from C-2 uses should be brought up-to-date to the current boundaries of the school as a condition of the request for the amended SDP for Subdivision and for the extension of the current SDP for Subdivision. The 300 foot area would therefore extend along the east side of the applicant land along Mirandela Road to "the northern boundary of Bosque School." As noted above, the enforcement of the 300 foot buffer in Note 3 and the expansion of the zone to fit the current, existing conditions of this site does not prevent the applicant from pursuing an application for the LRF at this site.

b. **The Zoning Enforcement Official (ZEO) has included decisions in the staff report which are in error, and which promote the application to the detriment of the school.** The ZEO decision to allow parking and truck circulation on Tract 2A, the LRF lot, and within the 300 foot area which is restricted to PRD and O-1 uses is in error. The ZEO argues that the parking on Lot 2A is for the benefit of O-1 uses on proposed Tract 3A, but this is nonsense and not supported by the application. If the parking is for the benefit of Lot 3A, the boundary lines of the proposed new tracts should be moved to ensure this proposed benefit to Lot 3A. Lot 2A, despite its proposed SU-1 zoning for C-2 and O-1 uses, only proposes a C-2 use for the tract. The matter that the LRF has surplus parking is irrelevant; all the parking is accessory use to the sole proposed C-2 use of the site and is therefore part of the C-2 use. The interpretation of excess parking as an O-1 parking lot use is simply an attempt to skirt compliance with Note 3

prohibiting such use in this area. This ZEO decision is detrimental to the adjoining property owner, the school.

The decision of the ZEO to define the truck circulation as a driveway and therefore “not a use” is also in error. Truck circulation and deliveries are an accessory use to the LRF - their only purpose on this site is to service the LRF - and therefore are part of the C-2 uses and should not be within the 300 foot area required in Note 3. In fact, truck circulation is perhaps the most intense and obnoxious use associated with the LRF. Again, this ZEO decision is detrimental to the adjoining property owner, the school.

The SDP proposes parking and truck circulation on Tract 2A within the 300 foot area and does not provide any buffering or mitigation from visual or noise detriments to the school. There is no wall or landscaping on the south side of the LRF property, and these accessory uses are unsightly and fully exposed to the school. Note 3 in the 2005 SDP is intended to protect the school from C-2 uses. If the EPC does agree with the ZEO decision, at least it should require that the 8 foot wall be extended along the southern side of Tract 2A to mitigate the adverse impacts of these unsightly, so-called “O-1” and “non” uses.

### *3. Other Infrastructure:*

#### **a. The applicant is in default to the school on infrastructure requirements of the 2005 SDP plan approval.**

In addition to the installation of drainage facilities, the applicant is responsible for other infrastructure improvements to the City, and per agreements with the school, including trail infrastructure on the east side of Mirandela, curb cuts on Mirandela, bike paths, landscaping, and gates. The City should require construction of these other infrastructure obligations as a condition of approval, authorized by Section 14-16-3-11(A)(1).

The materials submitted for the record, perhaps provided by Ms. Henry, the attorney for the applicant, include a “History of the Southeast Corner of Coors and Montano.” In the document at the end, Ms. Henry presumptuously speaks for Bosque School on a matter of landscaping obligations the applicant made to the school. This interpretation is in error and self-serving, and should be disregarded.

### *4. The application is detrimental to the school, and to the health and safety of its students:*

#### **Concerns:**

**a. The location, intensity and design of this development does not respect existing neighborhood values, natural environmental conditions and carry capacities, scenic resources, and resources of social, cultural or recreational concerns. The proposed plan will have deleterious impacts on surrounding uses, established neighborhoods, and community amenities.** The abandonment of the design standards of the approved SDP for Subdivision has fatally flawed the development of this property to the point that it violates findings of its approval, and violates the fundamental policies of the Albuquerque/Bernalillo County Comprehensive Plan. Of particular concern are the deleterious affects of the proposed development on the surrounding uses and established neighborhoods, which are negatively

impacted by the traffic on the neighborhood streets, by the intensity of the development due especially to its proposed size and hours of operation, and to the incompatibility of the proposed LRF use of the site adjacent to a school for children ages 11-18.

**b. Large Retail Facility operating 24/7, selling alcohol, firearms, and imposing large retail facility traffic and trucks on the neighborhood streets is dangerous and unsafe, and will adversely affect the health, safety and general welfare of children.** The health and safety of the students is of course a paramount concern for Bosque School and any school, and for the City of Albuquerque. All City ordinances and plans include Intent sections and statements, requiring that the development and the subdivision be in the *best interest* of the public health, safety and general welfare. The applicant has provided no information to demonstrate compliance with these issues in consideration of its proximity to a school, yet the public has expressed and demonstrated factual data and testimony to inform the EPC that the development increases the risk of danger to the children. It is completely within the purview of the EPC to consider the adverse impact of a proposed development on the residents and students at existing uses on adjoining properties. The evaluation of these impacts on the health and safety of children by the City and the applicant has been negligible and negligent. The EPC should find that a newly developed (not a replacement development) LRF should not be located adjacent to a school due to a deleterious impact on the existing school use, on existing environmental and recreational resources, and that it is not in the best interest of the health and safety of children.

**c. Traffic: The City is exposing itself to risk due to well noted deficiencies in the updated TIS, which does not consider the pedestrian and bicycle circulation in its review.** The existing uses on the neighborhood streets include children walking, biking and driving. The November 22, 2011 TIS uses outdated review tools and does not use the latest version of the Highway Capacity Manual software; this has been reported more thoroughly by others. While not perhaps a requirement of an updated TIS, in the best interest of the safety and welfare of children, the traffic analysis should also evaluate the impact of LRF traffic on Mirandela Road, Antequera Road and Learning Road relevant to existing traffic patterns and to student safety. The TIS does not study the traffic at times for the highest impact to students, especially during school drop off and pick up times. Existing traffic on neighborhood streets includes a unique population of student drivers and teenage drivers associated with a high school, whose skills are different from drivers with more experience. The circulation patterns of the proposed development should be evaluated with the safety of these children in mind, in addition to the children who walk and bike on the neighborhood streets to get to school.

**d. Security of school campus: The LRF and its proposed 24/7 hours of operation impose a increased burden for security requirements on the school.** The school currently and deliberately has an open campus, and allows the community to enjoy trails through its property. The village concept for the 2005 SDP for subdivision proposed integrated development of the entire lands, buildings of compatible scale and businesses for the benefit of the local community defined as within a 3 mile radius. If the proposed LRF is approved, the school will not be able to maintain its openness, and the need to fence and secure the school property imposes a financial and aesthetic burden on the school. The many crime incidents statistically associated with LRFs and their parking lots, documented in testimony at the public hearing, also impose a potential



burden on the operation of the school, because crime which results in a fleeing perpetrator often results in a lockdown of the school campus, endangering students and disrupting operations.

The school master plan will have to be revised, another financial cost, and the assumption of the plan to reorient visitor access to the school, which includes the 5,000 students who participate in BEMP and athletic visitors, to Mirandela Rd. may have to be abandoned. Public access to the trail system on the school property will need to be restricted, and this may not even be possible. The 8 foot buffer wall on top of the 3 foot berm creates an unsafe road by CPTED standards, where eyes are not on the road and pedestrians are forced to walk for long stretches without doors and destinations. If the City approves the LRF, the applicant should be required to address and be responsible for the security impacts and financial burdens on neighboring properties.

**e. A LRF is detrimental to the property uses and values of the school, and will be detrimental to the ability of the school to attract students.** The EPC must consider the suitability of the site for the proposed amended subdivision and for a LRF. The application proposes an intensification of commercial uses on the site and ignores environmental and compatibility goals articulated in the 2005 SDP for the site. The 2005 SDP promised the school a pedestrian oriented, village-type character development. This would be compatible with the existing pedestrian oriented open campus of the school. The 2005 SDP promised respect for the natural conditions of the site, and to be complementary to La Luz, Albuquerque's first cluster housing project, and the Bosque School.

Instead, if approved the school will be in the back of and adjacent to a big box megastore, decreasing the attractiveness of the school's campus and programs for recruitment. The school has established a reputation for its environmental programs and ethics, for the beauty of its campus, and for its scholarship and integrity. The impact of the proposed development on the environment will be detrimental to the BEMP study of the bosque environment by the 5,000 school children from throughout the state. The school has relied on existing City Planning, City Ordinances and the 2005 approved subdivision plan in making its land use decisions, and it is unfair of the City to abandon its own planning and previous decisions in favor of one land owner to the detriment of another.

**f. Enforcement of the conditions and design standards of the 2005 SDP for Subdivision should be required:** The abandonment of the design standards of the 2005 SDP for Subdivision by the proposed application is unfair to Bosque School. Since the approval of the 2005 subdivision, Bosque School has bought property and has sold property, developed a master campus plan, and has completed construction of one of the 4 buildings identified in the plan for the campus. The school is now landlocked and has invested in its campus plan, and no longer has the flexibility to adjust to significant changes to conditions of adjoining sites.

The applicant property is zoned SU-1, not C-2, and this distinction is significant in that the 2005 SDP is therefore "inextricably linked" to the zoning for the property, Section 14-16-2-22(A)(1). The change in proposed use from that articulated and required in the design standards of the 2005 SDP to the current application for a LRF is significant, detrimental to neighboring properties and has not been justified. The proposed LRF cannot be brought into compliance with the 2005 design standards. The City should deny this application and abandon all pretence that an LRF is pedestrian oriented and of a village-style character.



*5. Approval of this application would be inconsistent with established review and decisions of the EPC.*

**a. Approval of LRF development so contrary to design requirements of its SDP for Subdivision will set a stunning precedent and undermine EPC enforcement of subdivision restrictions for future development applications throughout the City.** Approval of this application, which is so dramatically out of compliance with the design standards prescribed on sheets C2 and C3 of the 2005 North Andalusia at La Luz Subdivision, will send a clear message that conditions or restrictions on a SDP for Subdivision can be ignored when coming in for development review. Approval will undermine SU-1 zoning whose development is "inextricably linked" to its SDP, and the history of consideration of the "uses that are special, and for which the appropriateness of the use to a specific location depends upon the character of the site design, Section 14-16-2-22(A)(1). This is an issue of fairness and of equal treatment. If the City approves this application, it will have to provide future applicants equal interpretation to ignore SDP restrictions.

**b. Approval of this LRF application so contrary to Community Activity Center requirements would be unfair to previous applicants.** It is unfair that the City would provide such special treatment for this applicant when it has required previous applicants to comply with zoning and planning requirements. While there are probably many examples, Riverside Plaza to the north of this site and the LRF at Unser and Central are examples of applicants who were required to comply to a higher interpretation of ordinances and plans than this applicant has met. The LRF at Unser and Central is cited by Ms. Henry as a precedent for a LRF a Community Activity Center, but this applicant received a zone map amendment to rezone the land from SU-1 to C-2 and provided an enclosed plaza (albeit out of scale) development. The Riverside Plaza development provides the sort of village and plaza development required by the Community Activity Center urban form. It is especially unfair for the retailers at Riverside Plaza to compete with a LRF development down the street that does not have to invest to the same infrastructure and standards.

*6. Public participation has been impacted.*

Bosque School testified at the January 19, 2012 hearing that due to contractual concerns it could not and did not participate in the hearing. The burden is on the EPC to evaluate and consider detrimental and deleterious impacts on adjoining properties. Given the current situation where an adjoining property owner is not publically participating in the proceedings, the EPC must take extra care in consideration of the rights and concerns of impacted neighbors.

Thank you for your consideration of my comments. Again, I urge the EPC to deny this application.

Sincerely yours,

Sayre Townsend Gerhart, AIA

**Lehner, Catalina L.**

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**From:** Daniel Shaw [canyonwrenconsulting@msn.com]

**Sent:** Tuesday, October 16, 2012 1:01 PM

**To:** Lehner, Catalina L.

**Subject:** Resubmitted Testimony RE: Project #1003859

Ms. Lehner

In reviewing the record it appears that the letter I sent to you on 2 March and that you acknowledged receiving 5 March was not included. I know that with such a large file I might have missed it, but I did review the Staff Report as well as the appendices. Can you please make sure that this makes it into the official record before Thursday's EPC meeting? Please confirm.

Thank you for doing a tremendous amount of work on a very complicated project.

Daniel Shaw

Secretary, Taylor Ranch Neighborhood Association

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**Subject:** RE: Project #1003859

**Date:** Mon, 5 Mar 2012 09:02:07 -0700

**From:** CLehner@cabq.gov

**To:** canyonwrenconsulting@msn.com

Hi Daniel,

Thank you for submitting the well thought-out letter. I printed it out for inclusion in the record for this case.

-Catalina

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**From:** Daniel Shaw [mailto:canyonwrenconsulting@msn.com]

**Sent:** Friday, March 02, 2012 10:01 PM

**To:** Lehner, Catalina L.; tim flynn-o'brien

**Subject:** Project #1003859

The Albuquerque Environmental Planning Commission

c/o Catalina Lehner, City Planner, [clehner@cabq.gov](mailto:clehner@cabq.gov)

Planning Department

Albuquerque, NM 87102

Proposed Wal-Mart, Coors Boulevard and Montano Road NW submitted to  
The Environmental Planning Commission (EPC) as **Project #1003859**

Dear Environmental Planning Commissioners and Ms. Lehner:

Attached is a letter documenting the deficiencies in Proposed Wal-Mart, Coors Boulevard and Montano Road NW submitted to

The Environmental Planning Commission (EPC) as **Project #1003859** in not meeting a number of key policies and requirements related to the environment and education and detailed in City Rank 1 through 3 documents and therefore creating but one set of reasons the application should be denied.

Respectfully submitted,

Daniel Shaw

Taylor Ranch Homeowner

6124 Mosquero Place NW

Albuquerque, NM 87120

10/16/2012

2 March 2012

6124 Mosquero Place NW  
Albuquerque, NM 87120

The Albuquerque Environmental Planning Commission  
c/o Catalina Lehner, City Planner. [clehner@cabq.gov](mailto:clehner@cabq.gov)  
Planning Department  
Albuquerque, NM 87102

Regarding: Proposed Wal-Mart, Coors Boulevard and Montano Road NW submitted to  
The Environmental Planning Commission (EPC) as **Project #1003859**

Dear Environmental Planning Commissioners and Ms. Lehner:

I have been a bosque researcher and educator for over 15 years. Although I co-direct the Bosque Ecosystem Monitoring Program (BEMP) and am adjunct Biology Department faculty at the University of New Mexico I only speak for myself with this letter.

After carefully reviewing the the proposed plan for a Wal-Mart at Coors and Montano by the The Silver Leaf, Wal-Mart, and Tierra West group (applicant) and then evaluating that plan in terms of the requirements and policies of the Albuquerque/Bernalillo County Comprehensive Plan, The Westside Strategic Plan, Coors Corridor Plan, and the Site Plan for North Andalusia at La Luz (City Plans) it is clear that the ***proposal described as Project #1003859 should be denied.***

This letter is not an exhaustive listing of the proposal's deficiencies. It does however focus on a series of the applicant's failures to meet the adopted requirements of City Plans related to environmental and education issues that **cannot or cannot easily be remedied through conditions.**

In her 19 January testimony, the applicant's legal counsel has correctly noted that the proposed development is east of both the formally designated bosque and its 100 foot buffer. However, the applicant's counsel failed to state that the proposed development falls under several special restrictions based on its location. The proposed site is adjacent to the Pueblo Montano Open Space Trail Head and Park. It is also, in fact, within the "Bosque Interface/Bosque Transition" zone as defined in the Westside Strategic Plan because the land of this proposal is east of Coors. Blvd. and west of the Rio Grande (pp. 207-208).

This proposed development therefore requires either or both special protection and or consideration under the following City Plans:

**Rank 1- Albuquerque/Bernalillo County Comprehensive Plan.** Of note:  
{Policy B. Land Use1. Open Space Network, Policy c: "Development in or adjacent to the proposed Open Space network shall be compatible with open space purposes. "(p. II 6)}

{Protect lands adjacent to the river by assuring compatible land uses (p. II-6)}

{8. Developed Landscape, Policy a. The Goal is to maintain and improve the natural and the developed landscapes' quality. (p. II-67) Policy a. The natural and visual environment, particularly features unique to Albuquerque, shall be respected as a significant determinant in development decisions. (p II-67)}

**Rank 2 - Westside Strategic Plan.** Among other requirements it states:  
{Policy 7. Natural and Cultural Resources, Recreation and Special Areas. "The Plan's intent is to preserve and protect critical natural features of the area, and to require development that is sensitive and environmentally sound." Where the plan's special points of emphasis include: "Require development that is environmentally sound" and "Land use decisions must protect natural, cultural, and recreational needs." (pp. 207-208)}

**Rank 2 - Bosque Action Plan.** In particular it calls for:  
{Policy 1, H, and Policy 6; Both require evaluating the ecological impacts of facilities and development in and adjacent to the bosque (p. 8 and p. 12)}

**Rank 3 - Coors Corridor Plan.** Is explicit in protecting upland areas east of Coors Blvd:  
{ To preserve the unique natural features (bosque and escarpment) and integrating balance between the built and natural environments, where the environment is an equal consideration to traffic, development, and view preservation. (p.9 and p. 50)}

**The applicant's proposal is DEFICIENT in the following area:**

The applicant's proposal fails to integrate protection and appropriate ecological continuity within the "Bosque Interface/Bosque Transition." The plan is disadvantageous to the migrating and resident vertebrate species that breed, roost, and otherwise utilize the area west of the Corrales Return Drain for habitat. The 50 acres immediately west of the bosque and adjacent to the applicant's site plan (depicted in figure 1) support at least 122 vertebrate species as documented in the attached "Documented Vertebrate Observations, City of Albuquerque Pueblo Montano Park Area" (appendix 1). That report indicates that species roosting and using the area adjacent to the proposed development include **bald eagle** and **willow flycatcher**, each species with special legal standing.



*(Figure 1) Study area outlined in red with the Pueblo Montano Park shown with a green star*

Location of proposed big box store indicated with red square box (not to scale)

The land west of the Corrales Drain supports essential habitat, as documented in figures 2, 3, and 4. It is an ecotone as defined by its merging of the bosque riparian forest and the adjacent upland grassland. The ditch itself is part of the very rare 0.2% of New Mexico's surface area that is covered with water.

*Examples of animals using the area west of the Corrales Return Drain for essential habitat*



*Fig. 2*



*Fig. 3*



*Fig. 4*

A large retail facility operating 24 hours a day would cause ecological disruption. The attendant noise and light pollution can disrupt animal life cycles as documented in Travis Longcore, and Catherine Rich. 2004. Ecological light pollution. *Frontiers in Ecology and the Environment* 2: 191–198. [http://dx.doi.org/10.1890/1540-9295\(2004\)002\[0191:ELP\]2.0.CO;2](http://dx.doi.org/10.1890/1540-9295(2004)002[0191:ELP]2.0.CO;2)

The land area west of the Corrales Return Drain and the proposed development provides essential habitat for wildlife reproduction as depicted in figures 5 - 9. Again, all of these images are from the area outside the bosque and adjacent to the proposed development.

*Examples of animals using the area west of the Corrales Return Drain for mating, breeding, and rearing of young*



**Fig. 5**



**Fig. 6**



**Fig. 7**



**Fig. 8**



**Fig. 9**



The land west of the Corrales Return that abuts the proposed development is an area of rich biological diversity. It includes at least 19 species of mammals (e.g. Figure 10), 2 species of amphibians (e.g. Figure 11), and 91 bird species (e.g. Figure 11). The land proposed for development does not have full commercial zoning. It is restricted with SU1 for C-2 and O-1 zoning, with a subdivision site plan that calls for a pedestrian friendly plaza and village concept with significant green spaces. One of the key reasons for the green spaces is to maintain and enhance the habitat within this important biological and ecological zone. The SU1 qualification is there because the land is recognized as being inappropriate for some types of commercial development. The EPC has full discretion to rule out commercial uses at the Coors and Montano site that are incompatible with existing community and environmental features and values. A proposed large retail facility at Coors and Montano is exactly the sort of development the SU1 condition can and should prohibit.

*Examples of vertebrate biodiversity on the land west of the Corrales Return Drain*



Figure 10



Figure 11



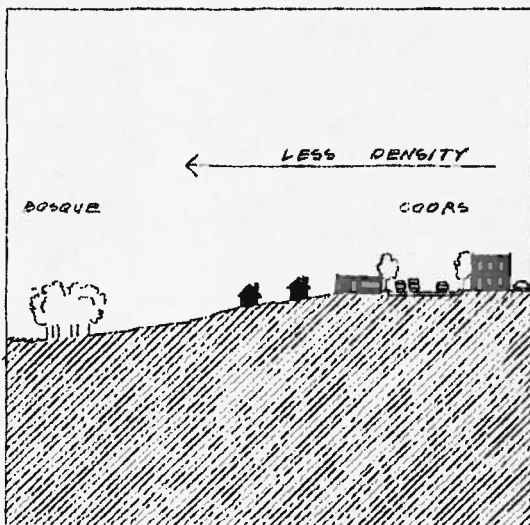
Figure 12



The Coors Corridor Plan policy 1 states that, "The Coors Corridor area shall be carefully designed to provide access to the (bosque and river) lands while still preserving the natural wildlife habitat and maintaining essential flood control and drainage functions." Nowhere in the applicant's proposal is there any explicit or implicit attempt to mitigate habitat disruption and preserve let alone enhance wildlife habitat.

Furthermore, Bosque Ecosystem Monitoring Program (BEMP)(APPENDIX 2) long-term research indicates that there is connectivity between the shallow ground water aquifer and the Corrales Return Drain in the Montano Area. Nowhere in the applicant's proposal is there a mitigation plan to address contamination, such as oil and other automobile chemicals that would accumulate on the very large paved surfaces of the large retail facility, from mixing with the surface runoff and then migrating from the proposed ponds to the Corrales Return Drain. The Return Drain flows into the highly sensitive Oxbow area that is designated as an important habitat area in the Bosque Action Plan.

The Bosque Interface/Bosque Transition is described in the Westside Strategic Plan (7. Natural and Cultural Resources) as a critical portion of the bosque and Coors Corridor region as a whole, stating, "The actual river banks are outside of the Plan boundary on the West Side, but the transition woodland area between the river and the upland mesa is a



*Bosque Interface Sketch from the  
Westside Strategic Plan P208*

very special part of the area. This area is important for biological, environmental, historic, and recreational reasons. It also provides visual relief from urbanization through one of the most scenic views from the West Side." (p. 207)

The Westside Strategic Plan asks, "...what happens in an interface area, i.e., ...what will a development's impact be on a sensitive Bosque environment?" And then provides the following answer, "The West Side is an urban area integrally tied to the greater metropolitan area and will continue to grow and develop, **but the natural, cultural, and recreational needs of the area and the greater community must be recognized and protected by land use decisions.**" (Emphasis added.)

Therefore, it is not a suggestion but an obligation of the Environmental Planning Commission under the City's applicable Rank 1, 2, and 3 plans to protect the upland area adjacent to the Bosque. The proposed and poorly designed, oversized large retail facility and its associated negative impacts on the environment as a whole and wildlife in particular require that the EPC deny the applicant's proposal.

The Albuquerque/Bernalillo County Comprehensive Plan section 6 on "Economic Development" states that, "The Goal is to achieve steady and diversified economic

development balanced with other important social, cultural, and environmental goals." (p. II-97). The plan in question, does not balance, but rather intrudes in a permanently destructive manner on the environmental integrity of the bosque and its upland transition zone.

The Albuquerque/Bernalillo County Comprehensive Plan section 7 on "Education" places particular importance on supporting and making available a wide variety of educational and recreational opportunities. Policy d, within section 7 is specific in directing that, "Efforts should be made to integrate educational programs with the natural and cultural environments." (p. II-99). The plan also states that the City and County will, "Actively support attempts to provide aid to public and private schools." Policy e directs that, Variety and flexibility in educational and recreational resources shall be encouraged through joint use of facilities. It then goes on to encourage that the City and County should "1) Preserve areas of scientific, natural, historic and cultural interest for educational as well as recreational purposes; include environmental studies in primary, secondary, and post secondary educational programs. 2) Provide environmental teaching resources for the classroom. 3) Use selected Major Public Open Space sites as an outdoor laboratory or classroom." (II-100)

This is exactly what takes place at the land adjacent to the proposed development (Figs. 13-17). The City and County are using this very part of the Bosque as a major recreation trailhead to the Bosque. Both Governments have been key partners for over a decade in supporting the Bosque Ecosystem Monitoring Program (BEMP) an environmental education and citizen science research effort of the University of New Mexico Biology Department and Bosque School. BEMP uses the Pueblo Montano Park area as a gateway each year for thousands of students from across the City, County, and region to learn about and care for the Rio Grande and its riverside forest, the bosque. The City invested \$4.5 million in the purchase of this portion of the bosque and the land for the Pueblo Montano park. The City and County are both partners of BEMP and support its programs both financially and with staff time. In return, BEMP provides the City and County with data and analysis that are used to manage the Rio Grande and Bosque. Furthermore, this is a major effort to build a sense of stewardship in young citizens.

The proposed large retail facility is incompatible with the pedestrian-centered BEMP activities along Mirandela Road that include the Pueblo Montano Park, the future Water Utility Facility, and the bosque itself. It will disrupt and detract from the wildlife viewing opportunities that these thousands of school children participate in each year. Rather than creating a gentle and scale appropriate transition from the bosque to Coors Blvd, the proposed development will abruptly disrupt

The City and County have invested millions of dollars to protect key habitat and create a recreation and education hub for thousands of citizens at Coors and Montano. It would be fool hardy to allow degradation of that investment.

*Land west of the Corrales Return Drain is a gateway for environmental stewardship*



*Fig. 13*



*Fig. 15*



*Fig. 14*



*Fig. 16*



*Fig. 17*

The necessity of protecting the bosque and adjacent uplands from inappropriate development is amplified in the relevant Rank 1, 2, and 3 plans time and time again. Not in passing, but from the opening statements of purpose and goals all the way down to detailed objectives. There are many sound reasons for rejecting the proposal to build a Wal-Mart at Coors and Montano, key among them are a whole series of environmental problems the development would create.

Therefore, I urge the Environmental Planning Commission to **deny Project #1003859**

Respectfully submitted,

Daniel Shaw

# Documented Vertebrate Observations City of Albuquerque Pueblo Montano Park Area

Bosque Ecosystem Monitoring Program (BEMP) Preliminary Report February 2012

This report covers the upland area that is east of the bosque. It is bounded to the north by Montano Blvd., to the east by the Corrales Return Drain, to the south by the waste water lift station, and to the west by Mirandela (figure 1). This covers amphibian, reptile, bird, and mammal observations by the Bosque Ecosystem Monitoring Program (BEMP) staff and bird observations by Hawks Aloft biologists.



*(Figure 1) Study area outlined in red with the Pueblo Montano Park shown with a green star*

The Hawks Aloft data covers December 2003 to February 2011. Species observations were done along an established transect on the bank of the Corrales Return Drain.

The BEMP data covers October 2005 through February 2012. BEMP data were gathered through the use of herptile pitfall traps, infrared/motion sensitive camera traps, small mammal traps, and direct observations.

These surveys documented 122 vertebrate species (Figure 2) in the area delineated in red in figure 1. This included 2 amphibian, 10 reptile, 91 bird, and 19 mammal species. In addition to the 19 documented mammals a recently started acoustical signature study has documented at least 5 different species of bats.

Of particular note, Hawks Aloft biologist staff have documented willow flycatcher along the Corrales Return Drain. Also, multiple bald eagle sightings along this stretch in the winter of 2011-2012 include eagles perching in cottonwoods east of the Corrales Return Drain.

Figure 2. Documented Vertebrate Species in Pueblo Montano Park area, west of the Corrales Return Drain

|                               | BEMP Observation | Partner Observation | Breeding on site |
|-------------------------------|------------------|---------------------|------------------|
| <b>Amphibians</b>             |                  |                     |                  |
| <i>Toads and Frogs</i>        |                  |                     |                  |
| Woodhouse's toad              | BEMP             |                     | X                |
| Bullfrog                      | BEMP             |                     | X                |
| <b>Reptiles</b>               |                  |                     |                  |
| <i>Lizards</i>                |                  |                     |                  |
| Side blotched lizard          | BEMP             |                     |                  |
| New Mexico whiptail           | BEMP             |                     |                  |
| Prairie lizard                |                  |                     |                  |
| <i>Turtles</i>                |                  |                     |                  |
| Painted turtle                | BEMP             |                     | X                |
| Ornate box turtle             | BEMP             |                     |                  |
| Spiny softshell turtle        | BEMP             |                     |                  |
| Red-eared slider              | BEMP             |                     |                  |
| <i>Snakes</i>                 |                  |                     |                  |
| Western hognose snake         | BEMP             |                     |                  |
| Bullsnake                     | BEMP             |                     | X                |
| Common garter snake           | BEMP             |                     |                  |
| <b>Birds</b>                  |                  |                     |                  |
| <i>Grebes</i>                 |                  |                     |                  |
| Pied-billed grebe             |                  | HA                  |                  |
| <i>Bitterns, Herons, Ibis</i> |                  |                     |                  |
| Great blue heron              | BEMP             | HA                  |                  |
| Snowy egret                   | BEMP             |                     |                  |
| Green heron                   | BEMP             |                     |                  |
| <i>American Vultures</i>      |                  |                     |                  |
| Turkey vulture                | BEMP             | HA                  |                  |
| <i>Ducks, Geese, Swans</i>    |                  |                     |                  |
| Snow goose                    |                  | HA                  |                  |
| Canada goose                  | BEMP             | HA                  |                  |
| Wood duck                     | BEMP             | HA                  |                  |
| American wigeon               | BEMP             | HA                  |                  |
| Mallard                       | BEMP             | HA                  | X                |
| Green-winged teal             |                  | HA                  |                  |
| Canvasback                    | BEMP             |                     |                  |
| Redhead                       |                  | HA                  |                  |

|   | BEMP Observation | Partner Observation | Breeding on site |
|---|------------------|---------------------|------------------|
| Common merganser                        |                  | HA                  |                  |
| <i>Kites, Eagles, Hawks, Falcons</i>    |                  |                     |                  |
| Bald eagle                              | BEMP             |                     |                  |
| Sharp-shinned hawk                      |                  | HA                  |                  |
| Cooper's hawk                           | BEMP             | HA                  |                  |
| Swainson's hawk                         | BEMP             |                     |                  |
| Red-tailed hawk                         | BEMP             |                     |                  |
| American kestrel                        | BEMP             |                     |                  |
| <i>Turkey, Quail</i>                    |                  |                     |                  |
| Gambel's quail                          |                  | HA                  |                  |
| <i>Rails, Gallinules, Coots, Cranes</i> |                  |                     |                  |
| American coot                           | BEMP             |                     |                  |
| <i>Shorebirds</i>                       |                  |                     |                  |
| Killdeer                                | BEMP             |                     | X                |
| <i>Pigeons, Doves</i>                   |                  |                     |                  |
| Mourning dove                           |                  | HA                  |                  |
| Pigeon                                  | BEMP             |                     |                  |
| <i>Cuckoos, Roadrunner</i>              |                  |                     |                  |
| Greater roadrunner                      | BEMP             | HA                  |                  |
| <i>Owls</i>                             |                  |                     |                  |
| Great horned owl                        | BEMP             |                     | X                |
| <i>Hummingbirds</i>                     |                  |                     |                  |
| Black-chinned hummingbird               | BEMP             | HA                  |                  |
| Calliope hummingbird                    |                  | HA                  |                  |
| Broad-tailed hummingbird                |                  | HA                  |                  |
| Rufous hummingbird                      |                  | HA                  |                  |
| <i>Kingfishers</i>                      |                  |                     |                  |
| Belted kingfisher                       | BEMP             | HA                  |                  |
| <i>Woodpeckers</i>                      |                  |                     |                  |
| Downy woodpecker                        | BEMP             | HA                  |                  |
| Northern flicker                        | BEMP             | HA                  |                  |

|  | BEMP Observation | Partner Observation | Breeding on site |
|--|------------------|---------------------|------------------|
| Western wood-pewee                           |                  | HA                  |                  |
| Willow flycatcher                            |                  | HA                  |                  |
| Dusky flycatcher                             |                  | HA                  |                  |
| Gray flycatcher                              |                  | HA                  |                  |
| Black phoebe                                 | BEMP             | HA                  |                  |
| Say's phoebe                                 | BEMP             | HA                  | X                |
| Western kingbird                             |                  | HA                  |                  |
| <i>Jays, Magpies, Crows</i>                  |                  |                     |                  |
| American crow                                | BEMP             |                     |                  |
| Common raven                                 | BEMP             |                     |                  |
| <i>Swallows</i>                              |                  |                     |                  |
| Violet-green Swallow                         |                  | HA                  |                  |
| Barn swallow                                 | BEMP             | HA                  |                  |
| <i>Chickadees and Titmice</i>                |                  |                     |                  |
| Black-capped chickadee                       |                  | HA                  |                  |
| Mountain chickadee                           | BEMP             | HA                  |                  |
| Bushtit                                      |                  | HA                  |                  |
| <i>Nuthatches, Creepers</i>                  |                  |                     |                  |
| White-breasted nuthatch                      | BEMP             | HA                  |                  |
| <i>Wrens</i>                                 |                  |                     |                  |
| Bewick's wren                                | BEMP             | HA                  | X                |
| House wren                                   |                  | HA                  |                  |
| Marsh Wren                                   |                  | HA                  |                  |
| <i>Thrushes</i>                              |                  |                     |                  |
| Ruby-crowned kinglet                         |                  | HA                  |                  |
| Blue-gray gnatcatcher                        |                  | HA                  |                  |
| Eastern bluebird                             | BEMP             | HA                  | X                |
| Hermit thrush                                |                  | HA                  |                  |
| American robin                               | BEMP             | HA                  |                  |
| <i>Waxwings, Silky-Flycatcher, Starlings</i> |                  |                     |                  |
| European starling                            | BEMP             |                     |                  |
| <i>Wood Warblers</i>                         |                  |                     |                  |
| Orange-crowned warbler                       |                  | HA                  |                  |
| Yellow warbler                               |                  | HA                  |                  |
| Yellow-rumped warbler                        | BEMP             | HA                  |                  |
| MacGillivray's warbler                       |                  | HA                  |                  |



|                                      | BEMP Observation | Partner Observation | Breeding on site |
|--------------------------------------|------------------|---------------------|------------------|
| Common yellowthroat                  |                  | HA                  |                  |
| Wilson's warbler                     |                  | HA                  |                  |
| Yellow-breasted Chat                 |                  | HA                  |                  |
| <i>Tanagers, Grosbeaks, Buntings</i> |                  |                     |                  |
| Summer tanager                       |                  | HA                  |                  |
| Western tanager                      | BEMP             | HA                  |                  |
| Black-headed grosbeak                |                  | HA                  |                  |
| Lazuli bunting                       |                  | HA                  |                  |
| <i>Emberline Sparrows</i>            |                  |                     |                  |
| Green-tailed towhee                  |                  | HA                  |                  |
| Spotted towhee                       | BEMP             | HA                  |                  |
| Chipping sparrow                     |                  | HA                  |                  |
| Lark sparrow                         |                  | HA                  |                  |
| Song sparrow                         |                  | HA                  |                  |
| Lincoln's sparrow                    |                  | HA                  |                  |
| White-throated sparrow               |                  | HA                  |                  |
| White-crowned sparrow                | BEMP             | HA                  |                  |
| Dark-eyed junco                      | BEMP             | HA                  |                  |
| <i>Blackbirds</i>                    |                  |                     |                  |
| Red-winged blackbird                 | BEMP             | HA                  |                  |
| Western meadowlark                   | BEMP             |                     |                  |
| Brown-headed cowbird                 |                  | HA                  |                  |
| Bullock's oriole                     |                  | HA                  |                  |
| <i>Finches</i>                       |                  |                     |                  |
| House finch                          | BEMP             | HA                  | x                |
| Pine Siskin                          |                  | HA                  |                  |
| Lesser goldfinch                     | BEMP             | HA                  |                  |
| American goldfinch                   |                  | HA                  |                  |
| House sparrow                        | BEMP             |                     |                  |
| <b>Mammals</b>                       |                  |                     |                  |
| <i>Insectivores</i>                  |                  |                     |                  |
| Desert shrew                         | BEMP             |                     | x                |
| <i>Rabbits and Hares</i>             |                  |                     |                  |
| Desert cottontail                    | BEMP             |                     |                  |
| Black-tailed jackrabbit              | BEMP             |                     | x                |

## Appendix 2



March 2, 2012

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### Summary Report – Shallow Groundwater and Hydrologic Connectivity - Montañito Bridge Area

There is measurable hydrologic connectivity between groundwater, river flow, and ditch water levels at both the Savannah and Montañito BEMP sites (south of the Montañito Bridge, on the west side of the Rio Grande). The Montañito BEMP site is just north of the Savannah site. At Montañito, the groundwater levels are between 34 and 39% correlated with the water level in the riverside drain. Each  $R^2$  value is significant to 0.001 or less, except for the west well ( $p=0.0016$ ). The groundwater levels are between 78 and 83% correlated, with all values significant at  $<.0001$ . At Savannah, the groundwater levels are between 34 and 38% correlated with the water level in the ditch. Each  $R^2$  value is significant to 0.001 or less. The groundwater levels at Savannah are between 73 and 81% correlated with river flow, with all values significant at  $<.0001$ . These values indicate that the groundwater in the bosque behind the Bosque School is significantly correlated with, or related to, the water levels in the riverside drain, and strongly and significantly related to water levels in the Rio Grande.

