

DESCRIPTION OF CONDITIONAL USE PERMIT PROCESS AND CRITERIA

As used herein, SLDC means the Sustainable Land Development Code and SGMP means the Sustainable Growth Management Plan.

What is a Conditional Use Permit (CUP)?

A CUP is a discretionary review process where the applicant's reports, plans and supporting documents are reviewed through a public hearing process. No inherent right exists to receive a CUP.

What public hearings are required before a CUP is issued?

Quasi-judicial public hearings are held on CUP applications before:

- An independent Hearing Officer who is a licensed attorney;
- The Planning Commission; and
- If an aggrieved party appeals the Planning Commission's decision, the Board of County Commissioners.

Each body must adopt a final written order establishing how the application does not or does meet the CUP approval criteria, with or without reasonable conditions.

What criteria must be met before a CUP may be approved?

CUPs may only be approved if it is determined that the use for which the permit is requested will not:

1. Be detrimental to the health, safety and general welfare of the area;
2. Tend to create congestion in roads;
3. Create a potential hazard for fire, panic, or other danger;
4. Tend to overcrowd land and cause undue concentration of population;
5. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. Interfere with adequate light and air; and
7. Be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.

Can conditions be imposed on CUPs?

Yes, the Planning Commission and the Board of County Commissioners (on appeal) may:

“1. Impose such reasonable standards, conditions, or mitigation requirements, in addition to any general standard specified in the SLDC or the SGMP, as the Planning Commission

may deem necessary. Such additional standards, conditions, or mitigation requirements may include, but are not be limited to:

- a. financing and availability of adequate public facilities or services;
 - b. reservations and dedications;
 - c. payment of development fees;
 - d. establishment of assessment and public improvement districts;
 - e. adoption of restrictive covenants or easements;
 - f. special buffers or setbacks, yard requirements, increased screening or landscaping requirements;
 - g. development phasing;
 - h. standards pertaining to traffic, circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, or preservation of archaeological, cultural and historic resources; and
 - i. provision of sustainable design and improvement features, solar, wind or other renewable energy source, rainwater capture, storage and treatment or other sustainability requirements.
2. Require that a payment and performance guaranty be delivered by the owner/applicant to the Administrator to ensure compliance with all conditions and mitigation measures as are set forth in the development order; and
 3. Encourage that a voluntary development agreement be entered into between the owner/applicant and the County to carry out all requirements, conditions and mitigation measures.”

[SLDC, § 4.9.6.6.]

How is the public informed about public hearings on CUP applications?

Applicants must provide legal notice to surrounding property owners, post a yellow notice board on the property and access points, and advertise in the paper. In addition, the County is required to post information about commercial renewable energy project applications on a webpage dedicated to such applications. This will include the date, time, and location of public hearings as they are scheduled.

How will Santa Fe County ensure it will have the expertise to independently evaluate commercial renewable energy project applications?

Resolution No. 2023-093 directs Santa Fe County staff to procure or otherwise obtain appropriate, necessary, independent, and qualified experts to independently evaluate applications for commercial renewable energy projects, including, but not limited to, any applications for permits under the 2021 Edition of the International Fire Code for battery energy storage systems (BESS).

How does the public make their views known on CUP applications?

The public may submit written comments or appear and testify at the public hearings on the CUP applications. Written comments should be submitted via the assigned case manager, so as to avoid the appearance of ex parte communications with decision making bodies. (See below.)

Written comments submitted via the case manager will be part of the public record and will be included in the packet material that the Hearing Officer, Planning Commission, and Board of County Commissioners (on appeal) view.

Public testimony at public hearings may be limited to a set number of minutes. Accordingly, if you are part of a group, it is suggested that each party speaking take a separate topic so you have time to present all of your issues.

Can the public talk directly to the Hearing Officer, Planning Commissioner Members, and County Commissioners about a CUP application outside of the public hearings?

Generally, no. Quasi-judicial public hearings mean that *ex parte* communications with decision-making bodies are generally prohibited. *Ex parte* communication means a direct or indirect communication between a party or a party's representative and a member of a decision-making body outside the present of other parties concerning a pending application that deals with substantive matters or issues on the merits of the proceeding.

Section 11(A) of the Santa Fe County Code of Conduct provides that “[a]n **Elected Official** or **Appointed Official** designated to hear an **Administrative Adjudicatory Matter** pursuant to a County ordinance, including but not limited to the County's Land Development Code, shall not initiate, permit or consider an **Ex Parte Communication**.”

How do you appeal the Planning Commission's final order on a CUP application to the Board of County Commissioners?

Any party with standing may appeal a final decision of the Planning Commission to the Board of County Commissioners. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. See SLDC Section 4.5.

When do CUPs expire?

Substantial construction or operation of the building, structure or use authorized by the CUP must commence within twenty-four (24) months of the development order granting the CUP or the CUP shall expire; provided, however, that the deadline

may be extended by the Planning Commission for up to twelve (12) additional months. No further extension shall be granted under any circumstances, and any changes in the requirements of the SLDC, or federal or state law shall apply to any new CUP development approval application.

If approved, can CUPs be amended?

Yes. Minor amendments may be approved administratively. Minor amendments that cause detrimental impact and major amendments require a new CUP application that follows the same procedures as are applicable to the issuance of the original CUP development approval. See SLDC Section 4.9.6.9.

Below are the SLDC sections for reference.

Conditional Use Permits (CUP) – SLDC SECTIONS

Appendix A. Definition:

Conditional Use Permit: a quasi-judicial discretionary approval of a Conditional Use that meets all of the conditions of the Code.

Procedure:

Table 4-1 and Section 4.9.6 of the SLDC lays out the procedure of a CUP, see below

Application Type	Discretionary review?	Application Requirements			Review/Approval Process				
		Pre-application TAC meeting	Pre-application neighborhood meeting	Studies, reports, assessments	Agency review	Approval by Administrator	Hearing required?		
							Hearing Officer	Planning Commission	BCC
Conditional use permit	yes	yes	as needed	see Table 6-1	as needed	no	yes	yes	no

Section 4.9.6. Conditional Use Permits (CUP). For approval of certain conditional uses as set forth in the Use Matrix and elsewhere in the SLDC, pursuant to this Section.

4.9.6.1. Purpose and Findings. This Section provides for certain uses that, because of unique characteristics or potential impacts on adjacent land uses, are not permitted in zoning districts as a matter of right but which may, under appropriate standards and factors set forth herein, be approved. These uses shall be permitted through the issuance of a conditional use permit (CUP).

4.9.6.2. Applicability. The provisions of this Section apply to any application for approval of a CUP as required by the Use Matrix. Conditional uses are those uses that are generally compatible with the land uses permitted by right in a zoning district but that require individual review of their location, design and configuration, and the imposition of conditions or mitigations in order to ensure the appropriateness of the use at a particular location within a given zoning district. Only those uses that are enumerated as conditional uses in a zoning district, as set forth in the use matrix, may be authorized by the Planning Commission. No inherent right exists to receive a CUP. Concurrent with approval of a CUP, additional standards, conditions and mitigating requirements may be attached to the development order. Additionally, every CUP application shall be required to comply with all applicable requirements contained in the SLDC.

4.9.6.3. Application. An applicant may apply for a CUP by filing an application for discretionary development approval with the Administrator. A site development plan is required to be submitted with any CUP application and shall include any SRAs required pursuant to Table 6-1 in Chapter 6.

4.9.6.4. Review. The application shall be referred to the Hearing Officer and Planning Commission for the holding of a quasi-judicial public hearing.

4.9.6.5. Approval Criteria. CUPs may only be approved if it is determined that the use for which the permit is requested will not:

1. Be detrimental to the health, safety and general welfare of the area;
2. Tend to create congestion in roads;
3. Create a potential hazard for fire, panic, or other danger;
4. Tend to overcrowd land and cause undue concentration of population;
5. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. Interfere with adequate light and air; and
7. Be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.

4.9.6.6. Conditions. In approving any CUP, the Planning Commission may:

1. Impose such reasonable standards, conditions, or mitigation requirements, in addition to any general standard specified in the SLDC or the SGMP, as the Planning Commission may deem necessary. Such additional standards, conditions, or mitigation requirements may include, but are not be limited to:
 - a. financing and availability of adequate public facilities or services;
 - b. reservations and dedications;
 - c. payment of development fees;
 - d. establishment of assessment and public improvement districts;
 - e. adoption of restrictive covenants or easements;
 - f. special buffers or setbacks, yard requirements, increased screening or landscaping requirements;
 - g. development phasing;
 - h. standards pertaining to traffic, circulation, noise, lighting, hours of operation, protection of environmentally sensitive areas, or preservation of archaeological, cultural and historic resources; and
 - i. provision of sustainable design and improvement features, solar, wind or other renewable energy source, rainwater capture, storage and treatment or other sustainability requirements.

2. Require that a payment and performance guaranty be delivered by the owner/applicant to the Administrator to ensure compliance with all conditions and mitigation measures as are set forth in the development order; and

3. Encourage that a voluntary development agreement be entered into between the owner/applicant and the County to carry out all requirements, conditions and mitigation measures.

4.9.6.7. Scope of Approval. The CUP approval applies only to the project as presented and approved at the hearing. If the project changes in any way it will be subject to the major/minor amendments provisions of Section 4.9.6.9.

4.9.6.8. Recording Procedures. The CUP showing the site layout and conditions of approval shall be recorded at the expense of the applicant in the office of the County Clerk.

4.9.6.9. Amendments. An amendment is a request for any enlargement, expansion, greater density or intensity, relocation, decrease in a project's size or density, or modification of any condition of a previously approved and currently valid CUP.

1. Minor Amendments. Shifts in on-site location and changes in size, shape, intensity, or configuration of less than five percent (5%), or a five percent (5%) or less increase in either impervious surface or floor area over what was originally approved, may be authorized by the Administrator, provided that such changes comply with the following criteria:

a. No previous minor amendment has been previously granted pursuant to this Section;

b. Nothing in the currently valid CUP precludes or otherwise limits such expansion or enlargement; and

c. The proposal conforms to the SLDC and is consistent with the goals, policies and strategies of the SGMP.

2. Minor Amendments Causing Detrimental Impact. If the Administrator determines that there may be any detrimental impact on adjacent property caused by the minor amendment's change in the appearance or use of the property or other contributing factor, the owner/applicant shall be required to file a major amendment.

3. Major Amendments. Any proposed amendment, other than minor amendments provided for in Section 4.9.6.9.1, shall be approved in the same manner and under the same procedures as are applicable to the issuance of the original CUP development approval.

4.9.6.10. Expiration of CUP. Substantial construction or operation of the building, structure or use authorized by the CUP must commence within twenty-four (24) months of the development order granting the CUP or the CUP shall expire; provided, however, that the deadline may be extended by the Planning Commission for up to twelve (12) additional months. No further extension shall be granted under any circumstances,

and any changes in the requirements of the SLDC, or federal or state law shall apply to any new CUP development approval application.

The planning Commission makes a final decision on a CUP. The final decision of the Planning Commission may be appealed to the Board of County Commissioners (BCC) as follows:

4.5. APPEALS.

4.5.1. Applicability. Any aggrieved person with standing may appeal a development order to the Planning Commission or Board, as designated in this chapter.

4.5.4. Appeal of a Final Decision of the Planning Commission. Any party with standing may appeal a final decision of the Planning Commission to the Board. The application seeking an appeal of a decision of the Planning Commission must be filed with the Administrator. An appeal from a decision of the Planning Commission must be filed within thirty (30) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be forwarded by the Administrator to the Board. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal shall be placed on the docket of the Board for consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be reviewed de novo by the Board. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

HEARING PROCESS

The public hearing process is regulated by the following SLDC section

Section 4.7.2. Quasi-Judicial Public Hearings.

4.7.2.1. Conduct of Hearing. Any person or persons may appear at a quasi-judicial public hearing and submit evidence, either on their own behalf or as a representative. Each person who appears at a public hearing shall take a proper oath and state, for the record, his/her name, address, and, if appearing on behalf of an association, the name and mailing address of the association. The hearing shall be conducted in accordance with the procedures set forth in the Board's Rules of Order. At any point, members of the Board, the Planning Commission or the Hearing Officer conducting the hearing may ask questions of the owner/applicant, staff, or public, or of any witness, or require cross-examination by persons with standing in the proceeding to be conducted through questions submitted to the chair of the Board, Planning Commission or to the Hearing Officer, who will in turn direct questions to the witness. The order of proceedings shall be as follows:

1. The Administrator, or other County staff member designated by the Administrator, shall present a description of the proposed development, the

relevant sections of the SGMP, area, district or community plans, the SLDC, and state and federal law that apply to the application, and describe the legal or factual issues to be determined. The Administrator or County consultant or staff member shall have the opportunity to present a recommendation and respond to questions from the Board, Planning Commission or Hearing Officer concerning any statements or evidence, after the owner/applicant has had the opportunity to reply;

2. The owner/applicant may offer the testimony of experts, consultants or lay witnesses and documentary evidence that the owner/applicant deems appropriate, subject to cross examination by adverse parties with standing within reasonable time limits established by the Board, Planning Commission or Hearing Officer;

3. Testimony, including expert, consultant or lay witnesses, and relevant documentary evidence for or against the application, from the public, governmental agencies or entities and interested parties with standing, shall be received, subject to reasonable time limits established by the Board, Planning Commission or Hearing Officer, subject to cross examination by the owner/applicant, any adverse interested party with standing, or by the County;

4. The owner/applicant may reply to any testimony or evidence presented, subject to cross examination;

5. The Board, Planning Commission or Hearing Officer may pose questions to the owner/applicant, the County, any consultant or lay witness at any time during the hearing concerning any statements, evidence, or applicability of policies and regulations from the SGMP, the SLDC, other County ordinances and regulations, any applicable area, or community plan, or other governmental law or recommendations; and

6. The Board, Planning Commission or Hearing Officer conducting the hearing shall close the public portion of the hearing and conduct deliberations. The Board or Planning Commission may elect to deliberate in a closed meeting pursuant to the Open Meetings Act, NMSA 1978, §§10-15-1 et seq.