Sustainable Land Development Code (SLDC)

Comments Received January 2012

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From: Francois-Marie PATORNI [mailto:fmpatorni@earthlink.net]
Sent: Monday, January 02, 2012 10:53 AM
To: 'Kathy Holian'
Cc: Robert Griego
Subject: RE: Green Building Code

Hello Kathy and Happy New Year!

I read your thoughts about the building code: it is indeed wise and economical to built properly insulated houses. Actually, the logic that you are presenting is remiscent of the points I made about burying powerlines, i.e. that this would be economical through time.

I think that the real issue here is how to convince builders (whether they are contractors or private persons) to adopt good standards on matter which are not a safety issue (like the aluminum wiring that you were discussing). One can have a top-down approach through regulation forcing people to do what the government thinks is good for them; or use a set of instruments using a combination of tax incentives and subsidies which would pay themselves through time, there is a multitude of options here; public education; convincing mortage companies to give incentives to green home builders, etc.

A second issue is the application of the standards: to which kind of building would they apply if there is a regulation? Commercial buildings? Public buildings? Buildings over a certain size? Buildings in some locations? What would be the exemptions? What flexibility would there be in the code?

Just thoughts …
Thank you again for your good work,

All my best,
François-Marie

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Melissa S. Holmes

From: Robert Griego
Sent: Thursday, January 19, 2012 8:36 AM
To: Melissa S. Holmes
Subject: FW: first four chapters
Attachments: SLDCDraft and comment2.doc

SLDC comments.

From: walter wait [mailto:waltwait@q.com]
Sent: Monday, January 09, 2012 11:09 AM
To: Robert Griego
Cc: Gold, David; Mee, William; RIII
Subject: first four chapters

Attached are some initial thoughts on the first four chapters. Dave, you may wish to post them and see what other folks think.
They are largely unedited, but I did want to get them into the review process... It's in Word format.

Happy New Year all

Walt

REVIEW COMMENTS January 8, 2012 Walter Wait

Santa Fe County Sustainable Land Development Code
Santa%20Fe%20Logo

Note: The draft Code Chapter 1-4 is a word document converted from a PDF file. It does not contain any charts or tables. The full draft can be found on the County Web-Site. There are sections of the draft that have no comments. This just means that this review does not comment upon these sections. Comments are made in Bold and in shades of Red.

DRAFT 12/13/11

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CHAPTER ONE ñ GENERAL PROVISIONS

1.1. SHORT TITLE. This Ordinance, as amended from time to time,

shall be cited as ìThe Santa Fe County Sustainable Land Development Codeî and shall be referred to as ìthe SLDC.î

1.2. AUTHORITY. The SLDC is promulgated pursuant to the authority set forth in Art. IX, X and XIII of the New Mexico Constitution (1912); NMSA 1978 ß 4-37-1 (1975), NMSA 1978 ßß3-21-1 et seq. (1965), NMSA 1978 ß3-18-7 (2003); NMSA 1978 ßß3-19-1 et seq. (1965); NMSA 1978 ßß3-18-1 et seq. (1965), and NMSA 1978 ßß 19-10-4.1, 4.2 and 4.3 (1985), NMSA 1978, ß 3-20-1 et seq. (1973), NMSA 1978, ß 3-33-1 et seq. (1965), NMSA 1978, ß 3-35-1 et seq. (1965), NMSA 1978, ß 3-45-1 et seq. (1965), NMSA 1978, ß 4-37-1 et seq. (1975), NMSA 1978, ß 5-11-1 et seq. (2001), NMSA 1978, ß 5-11-1 et seq. (2001), NMSA 1978, ß 6-27-1 et seq. (2004), NMSA 1978, ß 7-91-1 et seq. (2005), NMSA 1978, ß 11-3A-1 et seq. (1994), NMSA 1978, ß 47-5-1 (1963), NMSA 1978 ßß 47-6-1(1973), NMSA 1978, ß 58-18-1 et seq. (1975), NMSA 1978 ß60-13-1; Federal Insurance Regulation 1910. The SLDC constitutes an exercise of the Countyís independent and separate but related police, zoning, planning, environmental, fiscal and public nuisance powers for the health, safety and general welfare of the County and applies to all areas within the exterior boundaries of the County that lie outside of the incorporated boundaries of a municipality without exception.

1.3. EFFECTIVE DATE. This ordinance shall become effective ninety (90) days after recordation.

1.4. PURPOSE AND INTENT.

1.4.1. The SLDC, all amendments to the SLDC, shall be designed to implement and be consistent with the goals, objectives, policies, and strategies of the Sustainable Growth Management Plan (SGMP) through comprehensive, concurrent, consistent, integrated, effective, time limited and concise land development approvals. The SLDC is designed to protect and promote the health, safety and general welfare of the present and future residents of the County. The SLDC is a police power, public nuisance, environmental and land use regulation designed to establish separate land use, growth management, environmental, fiscal, adequate public facility, transportation, police and fire, school, library, storm water management, emergency service and preparedness, health and safety standards. The SLDC is designed to specifically provide protection of cultural, historical and archeological resources, lessening of air and water pollution, assurance and conservation of water resources, prevention of adverse climate change, promotion of sustainability, green development, and to provide standards to protect from adverse public nuisance or land

use effects and impacts resulting from public or private development within the County.

Because the Code is "predicated" on the Plan, the code should reference the plan whenever possible.

1.4.2. The SLDC Shall:

1.4.2.1. Require that no new development approval shall be granted unless there is adequate on and off-site provision of capital facilities and services available to the development at levels of service established in the SGMP, the Capital Improvement and Services Program (ìCIPî) and the Official Map established pursuant to the SGMP;

1.4.2.2. Utilize a development agreement process, where appropriate, to assure that properties receiving development approvals are granted vested rights to assure completion of the project through all stages and phases under the provisions of the SLDC as they existed at the time of submission of a complete application for development approval, without fear of being overridden by newly adopted regulations, in exchange for commitments to mitigate environmental degradation, advance adequate public facilities and services for needs generated by new development, to eliminate existing deficiencies and to proportionally meet county and regional facility and service needs;

Do these "vested rights" apply to antique subdivision plats". What document spells out these rights and who generates it? Who is to create the development agreement process. It does not seem to be mentioned in the "process" part of the code.

1.4.2.3. Establish sustainable design and improvement standards and review processes by which development applications shall be evaluated, including the preparation of environmental, fiscal impact, traffic, water availability, emergency service and response, consistency and adequate public facility and services studies, reports and assessments (ìSRAsî);

Who is responsible for establishing the standards and review process for evaluation? Is their a time period for this to be done. What happenes to applications that are submitted after the code is adopted and the standards have yet to be written?

Is the responsibility for establishing the standards to be found in unwritten portions of the code?

1.4.2.4. Require that development and administrative fees;

dedications; public improvement district taxes, assessments, charges and fees; homeowner association assessments; public and private utility rates, fees and charges; impact fees; and other appropriate mitigation fees, conditions and exactions that are required as ad hoc conditions of development approval, and are not legislatively required by the SLDC, be roughly or reasonably proportional to the need for adequate public facilities and services at adopted levels of service, the need for which is generated by the development at the time of development approval;

1.4.2.5. Designate appropriate zoning districts to implement the SGMP sustainable development areas (SDA-1, SDA-2, and SDA-3) and identify appropriate regulations and incentives to encourage development within the SDA-1 priority growth areas;

1.4.2.6. Formulate guidelines to implement growth management, sustainable design and improvement standards, renewable energy and new urbanism strategies, techniques, and action programs and adopt appropriate budgets and capital improvement plan and programs to implement them;

1.4.2.7. Enhance the physical, cultural, social, traditional and environmental values treasured by County residents;

1.4.2.8. Provide for objective and fair administrative and quasi-judicial processes, findings and recommendations including, but not limited to, the establishment of a Hearing Officer process;

1.4.2.9. Establish rights for communities, community organizations, registered organizations, acequia associationís, Tribal governments, adjoining property owners, neighborhood and homeowner associations and non-profit organizations with respect to attendance at pre-application meetings with applicants for development approval;

1.4.2.9 appears to only establish the right of a pre-application meeting, and little in the way of follow-up or any participation in either the approval process for "completeness" or in the decisions resulting in development order approval.

1.4.2.10. Accommodate within appropriate zoning districts, regulations for protection and expansion of local small businesses, professions, culture, art and crafts including live/work, home occupations and appropriate accessory uses;

1.4.2.11. Assure that a diversity of housing choices to enable residents within a wide range of economic levels and age groups is

available;

1.4.2.12. Express and reflect the highly unique sense of place and the desirable qualities of Santa Fe County through innovative and sustainable design and architectural standards for development compatible with compact development and traditional and historic communities;

1.4.2.13. Restrict development within lands containing environmental, ecological, archaeological, historical or cultural sensitivity and preserve agriculture and ranch lands and utilize: clustering; use of purchase and transfer of development rights; federal and state income tax credits and deductions for donation of development and conservation easements; development of solar and wind resources and other incentives to maximize economic return and to preserve such resources to the maximum extent feasible;

1.4.2.14. Place high regard for the protection of individual property rights in appropriate balance with the communityís need to implement the goals, objectives, policies and strategies of the SGMP;

1.4.2.15. Reconstitute the County Development Review Committee (ìCDRCî) as the Countyís statutorily authorized Planning Commission to carry out the statutory and SLDC duties and responsibilities for reviewing and recommending on amendments to the SGMP, Area, Specific, District and Community Plans, the Official Map, the CIP, the SLDC and for the hearing of applications for development approval;

1.4.2.16. Provide for special review of developments of countywide impacts (ìDCIsî);

1.4.2.17. Create planned development zoning districts (ìPDDsî) that reflect development patterns that promote walkable mixed use communities without the need for multiple variances or waivers from area, height or use requirements;

1.4.2.18. Provide a procedure for mandatory pre-application review of certain development projects, to afford an opportunity to meet with the developer, the opportunity to review and comment on the project, in order to assess the projectís impacts on its surroundings and on the Countyís resources and to identify issues, solutions and mitigation measures;

1.4.2.19. Ensure that building projects are planned, designed, constructed, and managed to minimize adverse climate change, environmental impacts; to conserve natural resources; to promote

sustainable development; and to enhance the quality of life in Santa Fe County;

1.4.2.20. Prescribe sustainable design and improvement standards for all public and private buildings, structures and land uses;

1.4.2.21. Develop strategies, bonuses, incentives, transfers of development rights, tax credits, monetization of solar, wind and rain water recapture facilities to encourage priority infill development;

1.4.2.22. Respect historical patterns and boundaries in the development approval process for new development and redevelopment;

1.4.2.23. Require that new development reflect the transportation network of the region and provide a framework of inter-connectivity of the road network and pedestrian and bicycle systems;

1.4.2.24. Provide the opportunity for the establishment of a public improvement or assessment district or homeowner associations to finance the capital improvements necessary to meet adequate public facilities and service requirements, including the ongoing maintenance and operation of such facilities and services;

1.4.2.25. Provide the opportunity for appropriate building densities and land uses within walking distance of transit stops in SDA-1 through appropriate zoning; and

1.4.2.26. Require that new development provide a range of parks, open space and trails and community gardens within neighborhoods.

1.4.2.27. Discretionary Development Approval Projects, as defined by the SLDC, shall be required to provide the following as a pre-condition to development approval:

1.4.2.27.1. A General, Area, Specific, District and Community Plan Consistency Report demonstrating consistency with such SGMP goals, objectives, policies and strategies and with applicable state and federal statutes and regulations;

1.4.2.27.2. An Environmental Impact Report (iEIRi) analyzing adverse effects and impacts relating to, or stemming from: wildlife and vegetation natural habitats and corridors; flood plains, floodways, stream corridors and wetlands; steep slopes and hillsides; air and water pollution; climate change, traffic safety and congestion; excessive energy consumption from vehicle miles traveled;

archeological, historical and cultural artifacts and resources reflecting the heritage of the area; toxic chemical pollution and related diseases and conditions affecting the health and safety of current and future residents; open space and scenic vistas;

1.4.2.27.3. A Fiscal Impact Assessment (iFIAî) describing the effects and impacts of the project upon County revenue and costs necessitated by additional public facilities and services generated by the development project and the feasibility for financing such facility and service costs;

1.4.2.27.4. An Adequate Public Facilities and Services Assessment (îAPFAî) indicating whether public facilities and services, taking into account the Countyís Capital Improvement and Service Program, are adequate to service the proposed development project;

1.4.2.27.5. A Water Availability Report to determine the permanent availability of and impacts to groundwater and surface water resources;

1.4.2.27.6. A Traffic Impact Assessment, providing information necessary to assess adverse transportation effects and impacts of traffic generated by proposed development projects, including isolated and cumulative adverse effects and

impacts to the traffic shed and traffic capacity, the passage of public safety and emergency response vehicles and any contribution to hazardous traffic conditions by vehicles going to and from the project site;

1.4.2.27.7. In the case of developments of county-wide impact (îDCIî), an Emergency Service and Preparedness Report, identifying the name, location and description of all potentially dangerous facilities and Material Safety Data Sheets describing all additives, chemicals and organics to be or currently used on the proposed development site, including but not limited to pipelines, wells and isolation valves, and providing for a written fire prevention, health and safety response plan for any and all potential emergencies, including explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide, methane or other toxic gas emissions or hazardous material spills or vehicle accidents; and

1.4.2.27.8. In the case of DCIs, a Geo-hydrologic Report, describing any adverse impacts and effects of development with respect to groundwater resources located within geological formations in sufficient proximity to a development project; identifying fractured,

faulted and any other formations that would permit extraneous oil, gas, dirty or gray water, rocks, mud or other toxic chemicals, minerals and pollutants to degrade the ground or subsurface water resources, or allow ground or subsurface water resources to be reduced, polluted and unavailable for public or private water supplies.

1.4.2.27 appears to indicate that ALL discretionary Development projects must submit all studies and reports. Table 4.5.2.1 seems to indicate that certain "classes" of discretionary Development do not require reports. This is true for both variances and appeals.
So which is it? 4.5.3.1 appears to allow the administrator to set the studies and reports requirements within the context of a pre-application TAC meeting.
It would seem that from a developers point of view, studies and reports that back up the proposed developments merits would be a valuable asset to winning a variance or reversing a decision on appeal. Having the reports works both ways of course.

1.5. FINDINGS. The Board hereby finds, declares and determines that the SLDC:

1.5.1. Promotes the health, safety, and welfare of the County, its residents, and its environment by regulating development activities to assure that development does not create land use and public nuisance impacts or effects upon surrounding property, the County and the region;

1.5.2. Promotes the purposes of planning and land use regulation by assuring that adequate public facilities and services as defined by the SGMP and CIP, including roads, fire, police and emergency response, storm water detention, parks and recreation, open space, trails, public sewer and water, will be available on or off-site at the time of development approval;

1.5.3. Protects the Countyís priceless, unique, and fragile ecosystem and environmentally sensitive lands including but not limited to waterways and streams, wetlands, floodways and flood plains; hillsides and steep slopes; flora and fauna habitats and habitat corridors, air and water quality; eco-tourist sites and scenic vistas, natural resources, archaeological, cultural, and historical resources;

1.5.4. Requires vertical and horizontal consistency of the SLDC and related land use, building, housing; public and private utility and environmental codes, with the SGMP, Area, Specific, District and Community Plan; the CIP; the Official Map; and related regional, state and federal legislation, plans and programs;

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1.5.5. Promotes sustainable development , green building and renewable energy standards and practices; and

1.5.6. Provides for efficient, comprehensive, concurrent and timely response to applications for development approval.

1.6. APPLICABILITY. The SLDC shall apply within the exterior boundaries of Santa Fe County. The SLDC shall not apply within the exterior boundaries of a municipality. The SLDC shall not apply to property owned by the United States or held by the United States in trust for a federally-recognized Tribal government, or to property owned by a member of a federally-recognized Indian Pueblo, Reservation or Pueblo and within the exterior boundaries of such federally-recognized Indian Pueblo, Reservation or Pueblo.

1.7. ENACTMENT AND REPEALS. Upon the adoption of the SLDC, the following are hereby repealed in their entirety: the Flood Prevention and Stormwater Management Ordinance of 2008-10; the Santa Fe County Land Development Code, Ordinance 1996-10; together with all amendments thereto; the original Santa Fe County Land Development Code Ordinance No. 1980-6. Ordinances No. 2000-12, 2000-13, 2001-01, 2002-02, 2002-9, 2003-7, 2005-08, 2006-10, 2006-11, 2007-2, and 2008-5 shall remain in effect until amended following adoption of revised community plans that are consistent with the SGMP and this ordinance.

1.8. SCOPE. All publicly and privately owned buildings, structures, lands, land uses, capital improvements and capital infrastructure projects, including but not limited to state, federal, regional, city, county, school, authority, assessment or public improvement district, public or private utility, and Pueblos located in the unincorporated portion of the County, shall be subject to the SLDC, where the County has jurisdiction arising under the laws and constitutions of the United States or the state of New Mexico.

1.9. CONSISTENCY.

1.9.1. The Sustainable Growth Management Plan (SGMP) adopted by the Board is the General Plan. The SLDC shall be consistent with the SGMP. Existing or future adopted Area, Specific, District and Community Plans that are consistent with the SGMP, shall be deemed to be a part of the SGMP, or an amendment to the SGMP.

Does the **BCC have to reinstate or instruct a new planning committee to be formed? Who will decide if a community plan is consistent with the SGMP and in what time frame. What mechanism is there in the code to provide for plan up-**

dates? Does the BCC have to reinstate or in many instances re-create the community planning committees?

Comment [1]: Walter Wait Jan 8, 12 1:52 PM

1.9.2. Amendments to the SLDC. Any amendment to the SLDC shall be required to be consistent with the SGMP and shall satisfy the consistency requirement only if such amendment, fully complies with the goals, policies and strategies of the SGMP.

1.10. COORDINATION WITH OTHER REGULATIONS.

1.10.1. Generally. The use of buildings, structures and land is subject to all other County, state or federal statutes, ordinances or regulations as well as the SLDC, whether or not such other provisions are specifically referenced in the SLDC. References to other ordinances, statutes or regulations or to the provisions of the SLDC are for the convenience of the reader. The lack of a cross-reference does not exempt a land, building, structure, or use from other ordinances, statutes or regulations.

1.10.2. SLDC as Paramount Regulation. Where a regulation or standard contained within the SLDC imposes higher criteria or standards than those required under another County ordinance or regulation, the regulation adopted under the SLDC controls. If the other County ordinance or regulation imposes higher standards, that ordinance or regulation controls so long as it is consistent with the purposes, findings and intent of the SLDC and with the goals, objectives, policies and strategies of the SGMP. Where a regulation or standard contained in State or Federal laws or regulations imposes less stringent standards than established in the SLDC, the SLDC shall apply.

1.10.3. Rules of Construction. Provisions of the SLDC are basic and minimum requirements for the protection of public health, safety, comfort, convenience, prosperity, and welfare. The SLDC shall be liberally interpreted in order to further its underlying purposes, intent, criteria and standards and to implement the goals, objectives, policies and strategies of the SGMP. The meaning of any and all words, terms, or phrases in the SLDC shall be construed in accordance with Appendix A, Definitions and Rules of Interpretation of the SLDC, which is incorporated herein by reference. The SLDC contains numerous tables, graphics, pictures, illustrations and drawings in order to assist the reader in understanding and applying the SLDC. To the extent there is any inconsistency between the text of the SLDC and any such table, graphic, picture, illustration or drawing, the text controls unless otherwise provided in the specific section.

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1.10.4. Minimum Requirements. The issuance of any development approval or development order pursuant to the SLDC shall not relieve the recipient from the responsibility to comply with all other County, state or federal laws, ordinances or regulations.

1.11. TRANSITIONAL PROVISIONS

1.11.1. Application for Development Approval. Any application for a development approval, including but not limited to: a rezoning, approval of an overlay zone, amendment to the SLDC, development of countywide impact, an amendment to the SGMP or General Plan, an amendment to an Area, Specific. District or Community Plan or zoning ordinance; a development agreement, a conditional or special use, variance, building or grading permit or road construction permit; certificate of occupancy; for which a complete application was submitted before authorization of publication of title and general summary of this SLDC by the Board, may be approved and completed in conformance with the terms and conditions applicable at the time of submittal. If the development approval is not completed within the time allowed under the original development approval or permit, then the development may be constructed, completed or occupied but only in strict compliance with the provisions, criteria and standards of the SLDC as adopted herein.

1.11.2. Permits and Approvals Without Vested Rights. Permits and approvals granted by the Board of County Commissioners, County Development Review Committee or the Administrator prior to the effective date of this ordinance for which rights have not vested (approved master plans, special exceptions, recognition of nonconforming uses, development plans, subdivisions, exception plats, and lot line adjustments) shall be henceforth governed by the SLDC.

1.11.3. Permits and Approvals With Vested Rights. Permits and approvals granted by the Board of County Commissioners, County Development Review Committee or the Administrator prior to enactment of this ordinance for which rights have vested shall be recognized by the County.

Must assume that "vested Rights" are defined in the appendix. If not, then vested rights must be defined. Does it mean that a property that does not comply with new zoning laws, but is currently legally platted, has a vested right for a building permit?

1.11.4. Approved Master Plans. Properties that have received final approval of a master plan within five years of the effective date of this ordinance shall file an application for approval of a

development plan, preliminary development plan or subdivision plat no later than one year after the effective date of this Ordinance, or the approval of the master plan shall expire and standards established by the SLDC shall apply to any application for development of the property.

1.11.5. Approved Preliminary Development Plans or Plats. Properties that have received preliminary development plan or plat approval but have not received final development plan or plat approval, shall within 24 months of said approval file an application for approval of a final development plan or subdivision plat in accordance with that preliminary plan or plat orthe approval of the preliminary development plan or plat shall expire and any application for development will be governed and processed according to the SLDC.

1.11.6. Approved but Unrecorded Final Development Plans and Plats.

1.11.6.1. Properties that have received final development plan or plat approval but have not recorded the plan or plat may complete the recordation process under the terms of the final approval.

1.11.6.2. Approved and Recorded Final Development Plans, Plats or Permits. Properties that have received final development plan or plat approval and have recorded the plan or plat shall apply for construction permits consistent with that plan or plat within 24 months or the approval will expire and standards established by the SLDC for approval of development shall apply to any application for development of the property.

This might be a real problem. As I interpret this it means that the owner of a 2.5 acre plot who has owned the property as vacant land for twenty years MUST build on it within a 24 month window or discover that the plat falls under new zoning laws that may not permit building on such a small lot. If this is true, then the County will be flooded with requests for variances and legal arguments concerning "taking".
The code needs to fully identify and address "grandfather plats", perhaps by issuing certificates reflecting what is allowable in terms of building - based on the plats history.

1.11.6.3. Any subdivision for which a Preliminary Plat was approved before the first reading of this amended SLDC may be granted Final Plat approval if the Planning Commission and Board find that the final plat is in substantial compliance with the previously approved preliminary plat.

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1.12. CONCURRENT PROCESSING. One of the principal purposes of the SLDC is to encourage applicants to concurrently submit an application for multiple development approvals on a single project in order to facilitate, speed up and make more efficient the development approval process. Any application which includes requests for two or more development approvals cumulatively comply with the requirements of the SLDC for each type of development approval applied for prior to engaging in that type of development. The County may issue a development order denying, approving, approving with conditions and mitigation requirements, approving any part of an application and approving other parts in phases or denying other parts. This section shall not apply to applications seeking approval but that do not comply with the applicable zoning.

1.13. PERIODIC REVIEW. The Board shall periodically review the SLDC and make appropriate amendments. The Administrator, the Planning Commission, other interested persons or groups may make recommendations to the Board for amendments to the SLDC.

1.14. SEVERABILITY. If any court of competent jurisdiction decrees that any specific provision of the SLDC is invalid or unenforceable, that determination shall not affect any provision not specifically included in the order or judgment. If any court of competent jurisdiction determines that any provision of the SLDC cannot be applied to any particular property, building, structure or use, that determination shall not affect the application of the SLDC to any other property, building, structure or use not specifically included in the order or judgment.

1.15. SLDC TEXT AMENDMENTS OR ZONING MAP. This section provides uniform procedures for amendments to the SLDC text or the zoning map.

1.15.1. Applicability. The provisions of this section shall apply to any application to:

1.15.1.1. Amend the text of the SLDC;

1.15.1.2. Amend the zoning map of the SLDC by reclassifying the zoning district of a tract, parcel or lot from one zoning district to another; or by reclassifying the zoning districts for areas, communities or countywide.

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1.15.2. Initiation.

1.15.2.1. SLDC text or map amendments may be initiated by the Board, the Planning Commission, an owner/applicant, or the Administrator for specific tracts, parcels or lots requiring quasi-judicial hearings; or for General, Area, Specific, District, Community Plan or countywide zoning map or SLDC text changes requiring legislative hearings.

1.15.2.2. No text or map amendments to the SLDC may be proposed by an owner/applicant unless accompanied by a concurrent application for discretionary development approval on the same land, together with a major site plan, preparation of SRAs and meeting all requirements of the SLDC for such discretionary development approvals.

1.15.2.3. No amendment to the SLDC text or zoning map requiring a quasi-judicial hearing shall be granted unless the Board makes a finding that there has been a substantial change in the conditions of the area surrounding the ownerís property or an error or mistake in the SLDC text or zoning map; or the amendment is consistent with the applicable General, Area, Specific, District or Community Plans for the property.

1.15.3. Legislative Hearings. The Planning Commission and Board shall consider amendments to the SLDC during a public hearing. The hearing shall be conducted as a legislative hearing where the SLDC text or map amendment does not concern a single tract, parcel or lot under common ownership, or the land affected by the text or map amendment is not predominantly owned by a single person or entity under common ownership.

1.15.4. Quasi-Judicial Hearings. The public hearing before the Planning Commission and Board shall be quasi-judicial where the proposed SLDC text or map amendment has been filed by an owner/applicant; the text or map amendment concerns a single tract, parcel or lot under common ownership; or the land affected by the text or map amendment is predominantly owned by a single person or entity under common ownership.

1.15.5. Hearing Officer. Where the SLDC text or map amendment concerns a matter which is subject to a quasi-judicial hearing as opposed to a legislative matter and has been initiated by an owner/applicant, the Administrator, upon the filing of the report of the pre-application meeting, certification that the

application is complete, all SRAs have been filed and all required fees have been paid, shall refer the application to the Hearing Officer to hold a quasi-judicial public hearing.

1.15.6. Decision. After receipt of the Planning Commissionís recommendation, the Board shall approve, conditionally approve or deny the map or text amendment. If the proposed map or text amendment is inconsistent with the General, Area, District, Specific or Community plan, the proposed amendment shall be denied unless a concurrent application for an amendment to the General, Area, District, Specific or Community plan has been submitted by the owner/applicant, the Board, the Planning Commission or the Administrator, and has been concurrently approved to eliminate any inconsistency.

1.15.7. Approval Criteria. In reviewing an application for an SLDC text or map amendment, the Hearing Officer, Planning Commission or Board shall consider the criteria set forth in in this subsection. No single factor is controlling; each must be weighed in relation to the other. The Board, Planning Commission or Hearing Officer may attach to the development order approving or conditionally approving the application, any and all applicable conditions and mitigation requirements.

1.15.7.1. Consistency. An SLDC text or map amendment shall be consistent with the SGMP, Area, District, Specific or Community plan, the Official Map and the CIP.

1.15.7.2. Criteria.

1.15.7.2.1. Public Policy. The Board has determined through the SGMP that vast acreages of contiguous single-use zoning produces uniform sprawl with adverse consequences, such as traffic congestion, air pollution, increased energy usage, fiscal impact, inadequate provision of public facilities and services, loss of environmentally sensitive land and ground water pollution. Accordingly, SLDC text or map amendments shall be granted primarily to promote compact development, economic, commercial and residential mixed uses, traditional neighborhood and transit oriented development, sustainable design and higher densities within the SGMP SDA-1 and - 2 areas. Important public policies in favor of the SLDC text or map amendment shall be considered, including but not limited to:

.1 the provision of a greater amount of affordable housing;
.2 economic, non-residential and renewable energy development;
.3 advancement of public facilities and services and elimination of

deficiencies through use of development agreements;
.4 traditional neighborhood, transit oriented, infill, opportunity center and compact mixed-use development;
.5 substantial preservation of open space;
.6 sustainable energy efficient construction and neighborhood design; and
.7 consistency with the SGMP, Area, District, Specific or Community Plan goals, policies and strategies applicable to the property.

1.15.7.2.2. Adverse Impacts on Neighboring Lands. The Board, Planning Commission or Hearing Officer shall consider the nature and degree of any adverse impacts upon neighboring lands. Tracts, parcels or lots shall not be rezoned in a way that is substantially inconsistent with the uses of the surrounding area, whether more or less restrictive.

1.15.7.2.3. Suitability as Presently Zoned. The Board, Planning Commission or Hearing Officer shall consider the suitability or unsuitability of the tract, parcel or lot for its use as presently zoned. This factor shall however, be weighed in relation to proof of a clerical mistake in the text or map dimensions and uses of the SLDC zoning district, substantially changed conditions in the area surrounding the property, or to effectuate the important findings of 1.15.7.2 of the SLDC, and is supported by the goals, policies, and strategies of the SLDC, the SGMP, Area, District, Specific or Community plan.

1.15.7.3. Subsequent Applications.

1.15.7.3.1. Applicability. The provisions of this subsection do not apply to any SLDC text or map amendment that is initiated by the County.

1.15.7.3.2. Withdrawal after Planning Commission Hearing. No SLDC text or map amendment application shall be received or filed if, during the previous twelve (12) months, an application was received or filed and withdrawn after a public hearing has been held by the Hearing Officer; unless the owner/applicant acknowledges with a sworn affidavit that new, relevant, and substantial evidence is available, that could not have been secured at the time set for the original hearing. The Administrator shall receive and process the new application subject to compliance with all of the provisions of this Section.

1.15.7.3.3. Denial. No application for an SLDC text or map amendment shall be received or filed with the Administrator within two (2) years after the County has denied an application for an SLDC text or

map amendment with regard to any portion of the same property.

1.15.7.3.4. Amendments. Any subsequent amendment to the SLDC text or map requires a new application and a new fee pursuant to Appendix C of the SLDC, and shall be processed as set forth in this section.

1.15.7.3.5. Scope of Approval. No construction of a building or structure, grading, occupancy or use of the land shall be commenced without the owner/applicant obtaining all further required development approvals.

1.15.7.3.6. Recording and Publication. The amendment shall be recorded and published in accordance with law. When the amendment involves map changes to existing zoning district boundaries, the form of the amending ordinance shall contain a narrative description of the land to be reclassified or reference to an accompanying plat of such land, showing the new zoning classifications and designating the new boundaries. The Administrator shall refer to the attested ordinance as a record of the current zoning status until such time as the zoning map is physically changed.

CHAPTER TWO ñ PLANNING
2. PLANNING

2.1. PLANS AND PLAN AMENDMENTS. This chapter establishes the authority to adopt certain County land use plans in addition to providing a uniform procedure for the amendment of such plans. This chapter establishes requirements and procedures for proposed amendments to the SGMP, or any plan element contained within the SGMP or adoption or amendment of Area, Specific, District or Community Plan. A proposed amendment of the plans discussed in this chapter requires legislative Board approval, except where such amendment or approval applies solely or predominantly to a single parcel of land in common ownership, in which event the amendment or approval shall be processed as a quasi-judicial determination.

2.1.1. The Sustainable Growth Management Plan (SGMP) shall serve as the constitution to the SLDC. Within the SGMP are the following plan elements relating to particular planning subjects:

2.1.1.1. A Sustainable Vision;

2.1.1.2. Land Use;

2.1.1.3. Economic Development;

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2.1.1.4. Agriculture and Ranching;

2.1.1.5. Resource Conservation;

2.1.1.6. Open Space, Trails, Parks and Recreation Areas;

2.1.1.7. Renewable Energy and Energy Efficiency;

2.1.1.8. Sustainable Green Design and Development;

2.1.1.9. Public Safety;

2.1.1.10. Transportation;

2.1.1.11. Water, Wastewater and Storm Water Management;

2.1.1.12. Adequate Public Facilities and Financing;

2.1.1.13. Housing;

2.1.1.14. Governance; and

2.1.1.15. Implementation.

2.1.2. Specific Plans.

2.1.2.1. A specific plan implements the SGMP with respect to a particular property or properties and accompanies the development approval of individual property or properties.

2.1.2.2. A specific plan differs from a General, Area, District, or Community plan in the following ways:

2.1.2.2.1. A specific plan is not a component of the SGMP, although a specific plan must be consistent with the SGMP. A specific plan is therefore a separately adopted general plan implementation document.

2.1.2.2.2. The purpose of a specific plan is the systematic implementation of the SGMP. Neither Area, District or Community plans have an emphasis on implementation. A specific plan is used to refine the policies of the SGMP relating to a defined geographic area.

2.1.2.3. A specific plan shall be required for any nonresidential

development, a subdivision within SDA-2 or 3, or a planned development district.

2.1.2.4. A specific plan shall conform to the base zoning district and all allowable overlay and planned districts permitted in the base zoning district for the land contained within the specific plan area and shall conform to the procedures set forth in the SLDC. No amendment to the text or map of a base zoning district shall be approved unless it meets the standards for plan amendments set forth in ß 2.1.6 of this Chapter. Plan amendments and zoning, text and map amendments may be included within a specific plan provided they comply with the standards of ßß 2.1.2.6.3 and 1.15.7.2 of the SLDC. The adoption of a specific plan does not eliminate the need for obtaining all other SLDC required discretionary and ministerial development approvals prior to any construction, land alteration or use of the property as authorized in the specific plan.

2.1.2.5. Amendments to the text or maps of a specific plan shall be processed in the same manner as for initial adoption of the specific plan.

2.1.2.6. A specific plan shall include text and a diagram or diagrams that specify all of the following in detail:

2.1.2.6.1. The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan;

2.1.2.6.2. The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan;

2.1.2.6.3. The standards and criteria by which development will proceed and standards for the conservation, development, and utilization of natural resources, where applicable;

2.1.2.6.4. A program of implementation measures from the CIP including regulations, programs, public works projects, and financing measures necessary to carry out subparagraphs (1), (2), and (3);

2.1.2.6.5. The distribution, number and type of residential units and nonresidential structures, floor area ratio (FAR) of nonresidential structures, area, height and yard requirements, parking, location, timing, phasing and extent of the uses of land including open space within the area covered by the specific plan; the proposed

distribution, location, interconnectivity, bicycle and pedestrian lanes, extent and intensity of major components of public and private transportation, sewage, water, storm water management, solid waste disposal, energy, parks, recreation facilities, sheriff, fire and emergency response, trails and other adequate public facilities and services proposed to be located within the area covered by the specific plan and needed to support the land uses described in the specific plan;

2.1.2.6.6. Sustainable design and improvement standards and criteria by which development will proceed, and standards for the conservation of agricultural, ranch, open space, scenic vistas, habitats and habitat corridors, ground and surface water, archaeological, cultural, historical and environmentally sensitive lands and natural resources;

2.1.2.6.7. A plan of implementation and action measures, including all of the development approvals and land use techniques that will be needed to achieve build out of the area, including but not limited to zoning, subdivision approval, supplemental use permit, planned districts, supplemental and accessory uses, variances, transfers of development rights (TDRs) or purchase of development rights (PDRs), creation of homeowner associations, assessment and public improvement districts, affordable housing, public improvements and services, impact fees, dedications and other financing measures, utilization of a Capital Improvement Program (CIP) and Official Map techniques, development agreements, and conditions, covenants, and restrictions necessary to carry out the goals, objectives, policies and standards of the SGMP, Area District, or Community plan and the purposes, intent, findings and requirements of the SLDC and other applicable state and federal law; and

2.1.2.6.8. An analysis of the consistency of the specific plan to the SGMP, and any applicable Area, District or Community plan, and all of the Studies, Reports and Assessments (ISRAsî) required pursuant to Chapter 7 of the SLDC.

2.1.2.6.9. The specific plan shall include a statement describing the relationship of the specific plan to the SGMP and how the specific plan is consistent with the SGMP.

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2.1.3. Area Plan.

2.1.3.1. An Area Plan covers a defined geographic area of the county and provides planning, design and implementation strategies consistent with the SGMP. Area Plans provide basic information on the natural features, resources, and physical constraints that affect development of the planning area. They also specify detailed land-use designation used to review specific development proposals and to plan services and facilities.

2.1.3.2. An area plan may be used to guide development applications, to develop facilities and services, infrastructure, annexation, assessment districts and other area needs.

2.1.3.3. An Area Plan is consistent with and is adopted as an amendment to the SGMP.

2.1.4. District Plan

2.1.4.1. A District Plan provides specific planning and design for single use and mixed use development specialized around a predominant activity. A District plan may contain specific planning and implementation steps and may be used to guide development applications, to develop facilities and services, infrastructure, annexation, assessment districts and other district needs.

2.1.4.2. A District Plan is consistent with and adopted as an amendment to the SGMP and any Area or Community Plan.

2.1.5. Community Plan

2.1.5.1. A Community Plan is an amendment to the SGMP that provides specific planning, design and implementation for a traditional, contemporary or other geographic community. A community plan may be implemented either through the zoning map or through creation of a planned district.

2.1.5.2. It is the intent of this subsection to permit communities to create a community planning process, directed by County planning staff. The community planning process is intended to provide diversity of representation during the planning process and provide consistency with the goals and policies of the SGMP and SLDC.

2.1.5.3. The Community Plan is intended to identify development and growth impacts for an area and provide strategies and land use

recommendations including a future land use plan consistent with the SGMP.

2.1.5.4. A Community Plan is intended to permit communities to recommend adoption of particular land use regulations based on the needs and goals of the community, and to subsequently update plans as necessary due to changing circumstances.

2.1.5.5. Community Planning Process.

2.1.5.5.1. The community planning process is initiated by filing a letter of application with the Administrator. Alternatively, the Administrator may initiate the planning process sua sponte. The application shall include:

2.1.5.5.2. A list of members who are proposed to be the initial members of the planning committee, which shall include residents, property owners and business owners who are generally representative of the community;

2.1.5.5.3. An explanation of the conditions that justify undertaking the community planning process, or an explanation of conditions that justify amending an existing community plan; and

2.1.5.5.4. A map of the proposed community boundary, or, in the case of an application for amendment of an existing plan, a map or the existing community boundary.

2.1.5.5.5. The application shall be reviewed by the Administrator for completeness and referred to the Board of County Commissioners. If the application is approved, the Board shall, by resolution, establish the planning committee and, if the application is for a new planning area, establish the planning area. The Board shall approve the planning committee upon recommendation of the Administrator. Once the committee is approved, County planning staff may initiate planning activities. Additional persons may participate as members of the planning committee throughout the planning process without the necessity of appointment by the Board.

2.1.5.5.6. All planning sessions and activities shall be open to the public and advertised throughout the community and coordinated by County planning staff. Open discussion and diversity of opinion shall be encouraged. The community plan shall document resident, property owner and business owner participation and representation.

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2.1.5.5.7. County planning staff in coordination with the planning committee shall develop a public participation plan that assures representation of a diverse cross section of the community. The public participation plan may include public meetings, surveys, establishment of topic specific subcommittees, outreach to community groups and interested parties.

2.1.5.5.8. County planning staff shall provide planning expertise and administrative support to the planning committee. The planning committee shall determine the planning process to be used and the basic guidelines for decision-making; however, all decisions of the planning committee shall be made by consensus.

2.1.5.5.9. The planning committee shall work closely with County planning staff to develop and draft a community plan or amendment that is consistent with the SGMP.

2.1.5.5.10. To develop the community plan, the planning committee with support and guidance from County staff, shall accomplish each of the following tasks:

.1 Compile an initial list of issues, present the list to the community, and take note of all feedback. Analyze all such feedback and make appropriate amendments to the list;

.2 Describe and analyze the planning framework;
.3 Develop community profile and provide demographic data of plan area;
.4 Prepare a community vision statement, which must be a clear statement of the desired future of the community;
.5 Prepare a description of how the community fits within the development patterns within the context of the overall County;
.6 Analyze the existing land use and zoning within the community and create a map depicting existing land uses and development patterns;
.7 Analyze the local natural resources, including water quality and availability;
.8 Examine the local infrastructure, including utilities, telecommunications, roads and traffic; and
.9 Develop a land use plan and implementation strategies which includes a future land use map, proposed zoning and design standards (as applicable).

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2.1.5.6. Review and Adoption.

2.1.5.6.1. County planning staff shall review and analyze the proposed plan for consistency with the SGMP.

2.1.5.6.2. Once the planning committee has accomplished all the tasks described in subsection 2.1.5.5.10 , the proposed plan shall be referred to the Administrator for referral to appropriate County staff and outside review agencies.

2.1.5.6.3. The Administrator shall make a determination of consistency before the adoption process begins.

2.1.5.6.4. Once determined to be consistent, the planning committee, with the assistance of County staff, shall conduct no fewer than two (2) public meetings within the community on the draft community plan or amendment.

2.1.5.6.5. Notice of the public hearing shall be provided by publication once a week for two consecutive weeks in a newspaper of general circulation within the community, and by posting notices for at least two weeks prior to the public hearings in a conspicuous place in the community.

2.1.5.6.6. Following the completion of the public hearings, the Administrator shall review all comments received during the public hearings and make a recommendation on the proposed plan or amendment to the Planning Commission and the Board of County Commissioners.

2.1.5.6.7. The Board may approve the community plan as submitted, approve with amendments, or deny.

2.1.5.7. Status of Community Plans. After approval by the Board, a community plan shall constitute an amendment to the SGMP.

2.1.5.8. Implementation.

2.1.5.8.1. Following approval of a community plan, County staff shall

develop the appropriate ordinance or resolution to implement the Community Plan.

2.1.5.9. Periodic Review. Each community plan will be reviewed periodically by the planning committee and County staff.

There is an implied understanding that the original planning committee as formulated is a standing committee that was not terminated by the BCC once the community plan was adopted. If the community plans require the creation and maintenance of a standing planning committee, then that must be added to both the new code and to existing ordinance.

2.1.5.9.1. The review will be made for recommendations for appropriate amendments and shall include at least one public meeting in the community. The recommendations of the planning committee and any recommendations received during the public meeting, and a recommendation of the Administrator, shall be presented to the Board of County Commissioners.

There is an assumption that original planning committees are on-going and will remain so indefinitely. This is not true.

2.1.6. PLAN AMENDMENTS.

2.1.6.1. The Board, the Planning Commission or the Administrator may initiate proposed amendments to the SGMP, Area, Specific, District or Community Plans. An owner within the area encompassed by the plan may initiate proposed amendments to a specific plan. Proposed amendments to a community plan shall be accomplished through the procedure set forth above. Where an owner is the initiator, the owner may combine an application for an amendment to a specific plan with an application for development approval, and such combined applications shall be processed concurrently.

2.1.6.2. No amendment to the future land use maps of the SGMP, Area, District or Community Plan or the zoning map of the SLDC, involving a majority of the land within a single tract or parcel of land in the same ownership shall be adopted unless it is demonstrated that there has been a substantial change in the condition of the area surrounding the ownerís property, or there was an error or mistake

made in the adoption of the future land use or zoning map. An application to amend any plan described in this Chapter shall be processed according to the Procedures set forth in Chapter 4 of the SLDC.

An application to amend any plan described in this Chapter shall be filed with the Administrator and shall contain the information set forth in Appendix B of the SLDC. All such applications shall be considered twice a year. The Administrator shall collect all applications for such plan amendments from January 1 until June 30, and from July 1 until December 31 of each calendar year, and shall submit the applications to the Planning Commission for consideration, beginning with the regular meetings of the Planning Commission held in July and January, respectively, for processing.

2.1.6.3. The Administrator shall review the application and shall determine if the application is complete pursuant to the provisions of §4.10 of the SLDC. The Administrator shall inform the applicant of the status of the completeness of the application. If the Administrator determines that the application is incomplete, the application shall be returned to the applicant. The applicant shall be instructed in writing as to the reasons for the incompleteness of the application.
The Planning Commission shall hold either a legislative or quasi-judicial public hearing upon the proposed plan or zoning map amendment depending upon whether the proposed amendment is applicable only to a single development tract, parcel or lot or to a single parcel of land under common ownership which constitutes the majority of land affected by the proposed amendment, or whether the proposed amendment is applicable to multiple development tracts, parcels or lots. The Planning Commission shall issue a development order in accordance with the procedures set forth in §4.17 of the SLDC.

2.1.6.4. In determining whether a proposed amendment shall be approved, the Planning Commission and Board shall consider the factors set forth in the SLDC, New Mexico judicial decisions and statutes. No SGMP amendment, Area, Specific, District or Community plan amendment or SLDC zoning map amendment will be approved unless it is consistent with the SGMP or the applicable Area, Specific, District or Community Plan.

2.1.6.5. The applicant, and any person that could have proposed a plan amendment under this Chapter, may appeal the decision of the Planning Commission to the Board so long as the person or the applicant files a written notice of appeal with the Administrator

within ten (10) days of the date of the Planning Commissionís development order or decision.

Approval of an amendment to the SGMP or Area, Specific, District or Community plan does not authorize the use, occupancy, or development of property. The approval of a plan amendment shall require the applicant to apply for development approval pursuant to the provisions of the SLDC, which may occur concurrently with the plan amendment process.

2.1.6.6. The Board, Planning Commission or the Administrator shall initiate a county-wide review of future land-use maps of the SGMP, Area, Specific, District or Community plan, and the zoning map of the SLDC, every three (3) to five (5) years.

2.1.7. CONSISTENCY.

2.1.7.1. The SLDC shall be consistent with the SGMP and applicable Area, Specific, District or Community Plans, the CIP and the Official Map. An amendment to the text or zoning map of the SLDC is consistent and in accordance and complies with the goals, policies, and strategies contained in the SGMP, Area, Specific, District or Community Plan, the CIP and the Official Map. Any amendments to the SLDC, including but not limited to development approvals, shall be consistent with the following:

2.1.7.2. The adopted SGMP, as it may be amended from time to time, in effect at the time of the request for amendment;

2.1.7.3. An adopted Area, Specific, District or Community plan;

2.1.7.4. The Official Map; and

2.1.7.5. The CIP.

2.2. COMMUNITY PARTICIPATION.

2.2.1. Intent.

2.2.1.1. In accordance with the SGMP, the community participation provisions of the SLDC are designed to maximize public input in

important decisions that affect the County, a community or neighborhood.

2.2.1.2. The establishment of Community Organizations (COs) and Registered Organizations (ROs) is intended to provide improved public participation and to provide an organized and fair process whereby public input may be received on applications for development and community development issues.

2.2.2. Community Organizations.

2.2.2.1. Community Organizations (COs) are hereby established.

2.2.2.2. A CO is a new or pre-existing association or organization that is recognized by resolution of the Board to represent a specified geographical area within the County.

2.2.2.3. A CO must file an application for recognition as a CO in order to be recognized by the Board as a CO. The application must be filed with the Administrator, and shall include all of the following:

2.2.2.3.1. The name, address, telephone number and e-mail address of the CO, and the name, address and telephone number of the person, as applicable, who will be designated by the CO to receive notice from the County and to represent the CO in dealings with County staff;

2.2.2.3.2. A map or written description of the organizationís geographical boundaries or geographical interests;

2.2.2.3.3. A list of the officers of the organization;

2.2.2.3.4. A signed copy of the relevant organizing documents of the CO;

2.2.2.3.5. Information concerning the organization's regular meeting location and date;

2.2.2.3.6. The date the organization was founded; and

2.2.2.3.7. The number of organization members.

2.2.2.4. The Administrator shall review the application and supporting materials, and shall make a recommendation to the Board who, in its sole discretion, may approve the application, deny it or approve it with conditions.

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2.2.2.5. Once approved by the Board, the CO will have the following rights and responsibilities:

2.2.2.6. The right to receive notice and provide written recommendations for any discretionary development application pending within the geographic area designated in the resolution of the Board recognizing the CO or notice of any public hearing or public meeting concerning such application;

2.2.2.7. The right to participate in administrative adjudicatory proceedings pending within the area designated in the resolution of the Board recognizing the CO, and as such will, as appropriate, be permitted to present evidence and witnesses at a quasi-judicial hearing before the Board, Planning Commission, or Hearing Officer;

2.2.2.8. The right to receive notice, participate and make recommendations, as deemed appropriate by the Board, for any amendment to the SGMP, SLDC or an area, specific or community plan, within the established geographical boundaries or interests of the CO;

2.2.2.9. The right to participate and make recommendations in the development of a community strategic work plan, studies, CIP, ICIP and public improvement and assessment districts, and levels of service for community infrastructure and services;

2.2.2.10. The right to coordinate with ROs, property owners, business owners and residents within the boundaries of the CO in matters related to a pending discretionary development review or administrative adjudicatory application;

2.2.2.11. The right to meet with the Administrator concerning matters of interest to the CO;

2.2.2.12. The right to participate in Town Hall meetings with the Administrator and appropriate County staff; and

2.2.2.13. The right to participate in CO leadership retreats and training programs which may include an annual Congress of Community Organizations, as applicable.

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Community Plans were created by planning organizations approved by the Board. These boards essntially went out of business when the plans and associated ordinances were approved by the BCC. The rules infer that those areas with existing community plans would carry over to CO status. However, many of these organizations do not exist. There does not appear to be a process to re-establish these organizations to serve as the CO of an established community plan. There needs to be clear rules as to how these community plans will be administrated and by whom.

2.2.3. Registered Organizations.

2.2.3.1. Registered Organizations (ROs) are hereby established.

2.2.3.2. A Registered Organization (îROî) is any organization (unincorporated association, partnership, limited liability company, corporation) interested in development projects or other County activities. An RO may include an acequia or land grant association, assessment and public improvement districts, public or private utility, school district, homeowner association, or neighborhood association.

2.2.3.3. An RO must file an application for recognition as a RO in order to be recognized by the Administrator as an RO. The application must be filed with the Administrator, and shall include all of the following:

2.2.3.3.1. The name, address, telephone number and e-mail address of the RO, and the name, address and telephone of the person, as applicable, who will be designated by the RO to receive notice from the County and to represent the RO in dealings with County staff;

2.2.3.3.2. A map or written description of the organizationís geographical boundaries or geographical interests as appropriate;

2.2.3.3.3. A list of the organization's topic(s) of interest;

2.2.3.3.4. A list of the officers and members of the organization, including specifically phone numbers of representatives of the RO and e-mail addresses of the members;

There is absolutely no legal reason for the County to ask for the E-mail addresses of any organization's members. This requirement would be challenged in court.

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2.2.3.3.5. A signed copy of the relevant organizing documents of the RO;

"Relevant Organization Documents" I assume could be one page statement from an individual announcing his or her intention of advocating a specific land use position wher-by notification of an applicant's intent is desired.

2.2.3.3.6. Information concerning the organization's regular meeting location and date;

An informal organization may not have a regular meeting location or date and should not be presumed to have one.

2.2.3.3.7. The date the organization was founded; and

2.2.3.3.8. The number of organization members.

2.2.3.4. In order to preserve the autonomy and independence of COs and ROs, staff support will be limited to administrative functions in support of CO and RO rights, including providing notice, scheduling meetings and receiving comments.

2.2.3.5. The Administrator shall review the application and supporting materials, and in his/her sole discretion, may approve the application, deny it or approve it with conditions.

2.2.3.6. Once approved by the Administrator, the RO will have the following rights and responsibilities:

2.2.3.6.1. The right to receive notice and provide written recommendations for any discretionary development application pending within the geographic area designated or the topic(s) of interests disclosed in the RO application or notice of any public hearing or public meeting concerning such application;

2.2.3.6.2. The right to receive notice, participate and make recommendations, as deemed appropriate by the Administrator, for any amendment to the SGMP, SLDC or an Area, Specific, District or Community plan within the established geographical boundaries or interests of the RO;

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2.2.3.6.3. The right to coordinate with COs, property owners, business owners and residents within the boundaries of the RO in matters related to a pending discretionary development review or administrative adjudicatory application;

2.2.3.6.4. The right to meet with the Administrator concerning matters of interest to the RO;

2.2.3.6.5. The right to participate in Town Hall meetings with the Administrator and appropriate County staff; and

2.2.3.6.6. The right to participate in RO leadership retreats and training programs which may include an annual Congress of Community Organizations, as applicable.

CHAPTER THREE ñDECISION-MAKING BODIES

3.1. PURPOSE AND FINDINGS. The purpose of this chapter is to establish the authority of the Board, Planning Commission, Administrator and Hearing Officer.

3.2. THE BOARD OF COUNTY COMMISSIONERS

3.2.1. Specific Powers and Responsibilities. The Board shall have the responsibilities set forth in the SLDC as well as all powers and duties conferred upon it by State Law. Accordingly, the Board shall have the following powers and duties:

3.2.1.1. To initiate legislative amendments to the SGMP, an Area, Specific, District or Community Plan;

3.2.1.2. To initiate legislative amendments to the text and maps of the SLDC including zoning maps;

3.2.1.3. Except where a final development order has been authorized to be issued by the Planning Commission or the Administrator, to approve, approve with conditions or deny specific applications for discretionary development approval, and issue development orders on matters receiving discretionary development approval;

3.2.1.4. To approve, approve with conditions or deny development agreements;

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3.2.1.5. To legislatively adopt and amend an Official Map and CIP;

3.2.1.6. To legislatively establish assessment and public improvement districts or other districts;

3.2.1.7. To legislatively establish and amend schedules for administrative, application and consultant fees, dedications, impact fees, money-in-lieu of land, affordable housing fees, other exactions and security instruments, including but not limited to bonds, letters of credit and cash escrow deposits, for payment and performance of obligations;

3.2.1.8. To initiate litigation and seek equitable and legal remedies to enforce violations of the SLDC, development agreements and the terms and conditions of development approval and take such any other actions, including the settlement of actions, as is authorized by the SLDC, other ordinances, regulations and statutes;

3.2.1.9. To take such other action not expressly delegated exclusively to any other agency or official by the SLDC as the Board may deem desirable and necessary to implement the provisions of the SLDC and the SGMP;

3.2.1.10. To appoint members of the Planning Commission, Hearing Officers, and other Boards and Committees that it may create;

3.2.1.11. To the extent permitted by State law, to delegate to the Planning Commission the power, authority, jurisdiction and duty to enforce and carry out the provisions of law relating to planning, platting and zoning; as well as to retain as much of this power, authority, jurisdiction and duty; and

3.2.1.12. To hear and rule on appeals from discretionary decisions of the Planning Commission as set forth in ß 3.3.2.3 of this Chapter.

3.2.2. Final Action and Appeals. The Board shall hold public hearings, and issue development orders, on applications for legislative or discretionary development approval, except where a final development order is authorized to be issued by the Planning Commission. Where the Planning Commission has authority to issue a development order determining a matter, the Board shall have appellate authority to review such development order if an appeal is properly perfected by the Administrator, the owner/applicant, or any other person or entity with standing to appeal the development order, no more than thirty (30) days from the date of the development order.

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What happens if the review is late? How can an appeal reach the board within 30 days if it takes almost that long to get an item on the agenda.

How long will it take to notify entities with standing of a decision? Again, if it takes a week, then there are three weeks left to get something on th agenda. How long will anyone have to prepare a response?

3.2.3. Conflict of Interest: Quasi-Judicial Proceedings. A member of the Board of County Commissioners shall not vote or participate in any discretionary development matter pending before the Board as specified in County Code of Conduct.

3.3. PLANNING COMMISSION.

3.3.1. Creation and Responsibilities. There is hereby created a County Planning Commission (iPlanning Commissioní) which shall have the responsibilities and duties specified in the SLDC and in NMSA 1978, ß 3-19-1 (1965)(as amended) et seq. and NMSA 1978, ß 3-21-1 (1965) (as amended) et seq.

3.3.2. Duties and Powers of the Planning Commission. The duties and authority of the planning commission are as follows:

3.3.2.1. To perform the functions specified in NMSA 1978 ßß 3-19-1 and 3-21-7 (1965);

3.3.2.2. To review and recommend to the Board, for adoption, text and map amendments to the SLDC, SGMP amendments and the adoption and amendment of an Official Map, a Capital Improvements Plan (iCIPí) and other programs for public improvements and services and financing;

3.3.2.3. To hold public hearings and prepare written recommendations to the Board on all discretionary development approvals specified in Section 4.6 of this SLDC subject to appeal to the Board;

3.3.2.4. To hold public hearings and recommend action on an Area, Specific, District or Community Plan, preliminary and final development orders, and quasi-judicial discretionary development applications specified inß 4.5.7 of this SLDC; and

3.3.2.5. To enter upon any land that is the subject of an application that is the subject of this ordinance, make examinations and surveys, and place and maintain necessary monuments and markers upon the land pursuant to NMSA ß 3-19-4, upon reasonable notice of not less than seventy two (72) hours to the owner/applicant or designated agent of the land to be entered, and after adoption of an order

authorizing the time, place and location of the entry onto land or site examination.

3.3.2.6. To make decisions on appeals from final decisions of the Administrator.

Are there time limits to this?
Are there procedures?

3.3.3. Membership and Terms.

3.3.3.1. Number; Appointments; Residency. The Planning Commission shall consist of seven (7) members, who shall be appointed by the Board. Planning Commission members must be registered voters of the County. One member shall reside in each of the Commission Districts, in order to provide diversity of representation; the remaining members shall be at large and may reside in any area of the County and be nominated by any Commissioner.

3.3.3.2. Terms and Removal. The initial members of the Planning Commission shall be the current members of the County Development Review Committee, who shall serve out their remaining terms. Thereafter, terms of members of the Planning Commission shall be for two (2) years or until their successors are appointed. Three (3) members shall be appointed in even numbered years and four (4) members shall be appointed in odd numbered years. Members shall serve for no more than three (3) consecutive terms. Members may be removed by the Board after a public hearing solely for reasonable cause set forth in writing and made part of the public record.

3.3.3.3. Vacancies. The Board shall appoint a person to fill a vacancy as soon as practicable after the vacancy is created.

3.3.4. Conduct of Planning Commission Business.

3.3.4.1. Officers; Quorum; Rules of Order. The Planning Commission shall follow the Rules of Order established by the Board for the conduct of meetings in the County.

3.3.4.2. Meetings. The Planning Commission shall meet at least once

a month. All meetings of the Planning Commission shall be open to the public. Notice of such meetings shall be given in accordance with the applicable Board approved resolution establishing statutory notice for public meetings.

3.3.4.3. Minutes and Other Records. The County Clerk shall keep minutes of the proceedings of the Planning Commission, which shall reflect the vote on each matter put to a vote or, if a member is absent or fails to vote, reflect such fact; and such other records as are necessary to memorialize its transactions, findings, recommendations, resolutions, determinations and development orders, all of which shall be filed in the office of the County Clerk.

3.3.4.4. Conflict of Interest. A member of the Planning Commission shall not vote or participate in any discretionary development matter pending before the Planning Commission as specified in County Code of Conduct.

3.3.4.5. Recommendations and Development Orders. The Planning Commission shall not make a recommendation or take final action on any matter without first considering evidence received from the Administrator, planning staff, a Hearing Officer, or owner/applicant, reports of the pre-application neighborhood meeting, other persons with standing, Tribal governments, and other County, regional, state or federal departments or agencies, as determined by law.

There is no mention of community input in this section except for the pre-application neighborhood meetings, unless "other person with standing' means community planning entities.

3.4. ADMINISTRATOR

3.4.1. Appointment. A person shall be appointed by the County Manager to serve as the Administrator. Where the SLDC assigns a responsibility to the Administrator, with the consent of the County Manager, the Administrator may delegate that responsibility to any other official, employee or consultant of the County.

Think it should read " appointed by th County Manager" and APPROVED by the CC.

Can the Administrator delegate responsibility fto a contractor/consultant? This would not be good and would probably be struck down in the courts.

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3.4.2. Responsibilities. The Administrator shall have the responsibility to administer and enforce the provisions of the SLDC, make advisory opinions on the interpretation of the SLDC, the SGMP, an Area, Specific, District or Community Plan, hold and determine the adequacy of security instruments and issue ministerial development orders as set forth in the SLDC, subject to appeal to the Planning Commission.

I for one am not comfortable with such a brief description of the administrator responsibilities.

Is there process identified in the code that refers to just how the administrtaor shall ' hold and determine the adequacy of security instruments? I trust that "security instruments" are defined in the appendix.

What is the relationship between the administrtaor and the County Clerk's office - who I assume would be responsible for holding any financial vehicles.

Is there oversight? if not, why not?

can a financial decision made by the administrator be appealed? if so, how? I there a process?

3.4.3. Technical Advisory Committee.

3.4.3.1. Appointment; Responsibilities. A Technical Advisory Committee (TAC) is hereby created, the members of which may be appointed by the Administrator. The TAC shall assist the Administrator as requested with review of applications.

3.4.3.2. Members. The TAC may include representatives, as appropriate, from all County departments. In addition and as appropriate, the TAC may include, for a specific development approval application, representatives of school districts, cities, Tribal governments, public and private utilities, assessment or public improvement districts, acequia associations, regional, state or federal agencies and persons possessing necessary technical expertise.

why not Community Planning Organizations/

3.4.3.3. Meetings. The TAC shall meet regularly as required at the request of the Administrator. An owner/applicant shall appear before the TAC prior to filing an application as provided by the

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Administrator.

If an applicant must meet with TAC prior to filing an application, yet TAC representatives might be formed by the administrator for "spcific applications", the "specific representatives" would not be on board the TAC team until after the tAC meeting. The administrator would not know who to place on a TAC tem until after the initial presentation by the applicant.
how is this remedied, or is the TAC meeting actually a series of meetings?

3.5. HEARING OFFICER.

3.5.1. Establishment. The SLDC hereby establishes the position of Hearing Officer for the purpose of assisting in the adjudication of quasi-judicial applications for discretionary development approval. More than one (1) Hearing Officer may be appointed, as appropriate.

3.5.2. Referral of Matters for Hearing.

3.5.2.1. Applications shall be referred to a Hearing Officer to conduct public hearings, make written findings of fact, conclusions of law and recommendations, and file
written reports with such findings, conclusions of law and recommendations to the Planning Commission or Board for further action, in the following matters:

Is there any time limits to this process?

3.5.2.1.1. a major subdivision;

3.5.2.1.2. a variance;

3.5.2.1.3. a beneficial use determination;

3.5.2.1.4. a rezoning;

3.5.2.1.5. site-specific amendments to the SGMP, an Area, Specific, District or Community Plan;

3.5.2.1.6. a planned development district;

3.5.2.1.7. a major site plan;

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3.5.2.1.8. a text amendment to the SLDC that requires a quasi-judicial public hearing pursuant to Chapter 1of the SLDC; or

3.5.2.1.9. a Development of County-Wide Impact (DCI).

3.5.2.2. The Administrator, the Planning Commission, or the Board may refer other matters to a Hearing Officer, as appropriate.

3.5.3. Term and Removal. A Hearing Officer or Hearing Officers shall be appointed by the Board for a definite term, not to exceed four (4) years, and may be re-appointed at the conclusion of any term. A Hearing Officer may be removed by the Board solely for reasonable cause. Reasonable cause for removal of a Hearing Officer shall include, but not be limited to, violations of the standards set forth in the New Mexico Code of Judicial Conduct, as adopted by the New Mexico Supreme Court.

3.5.4. Qualifications. A Hearing Officer shall have a J.D. degree from a law school certified by the American Bar Association or Association of American Law Schools, with not less than six (6) years of legal experience, and shall be licensed to practice law in New Mexico for a period of not less than three (3) years. A Hearing Officer shall not hold other appointed or elective office or position in government during his/her term.

3.5.5. Powers and Duties. A Hearing Officer shall have all powers necessary to conduct quasi-judicial hearings assigned to a Hearing Officer by the SLDC.

4. CHAPTER FOUR ñ PROCEDURES

4.1. PURPOSE AND FINDINGS. The purpose of this chapter is to designate the procedures for filing and processing applications. The format of this Chapter is designed to allow users to quickly and efficiently ascertain the various steps involved in processing applications, from the initiation and filing of an application, administrative completeness review, and review for compliance with SLDC standards, through public hearings, determination and appeal. The provisions of this chapter are intended to imple-ment and be consistent with the SGMP.

4.2. APPROVAL REQUIRED. No change in use shall be made, no land division, subdivision, construction, land alteration, land use or

development activity and no building or structure shall be erected, added to, or structurally altered, or occupied unless all applicable development approvals and the appropriate development order are obtained in accordance with this Chapter. Development orders are required for land division, subdivision, construction, land alteration, land use or development activity, to ensure compliance with the SLDC, other County ordinances and regulations and applicable state and federal laws and regulations.

4.3. COMMON PROCEDURES. This Chapter describes the common procedure to process an application for a development approval. Requirements for specific types of applications regarding the procedure to be employed are set out in Tables 4.1 Review Process and 4.2. Approval Process.

4.4. CATEGORIES OF DEVELOPMENT PROCEEDINGS. There are three basic types or categories of proceedings authorized in the SLDC:
4.4.1. Legislative. Legislative proceedings involve a change in land-use policy by the Board upon recommendation of the Planning Commission, including adoption of any change in the SGMP or adoption of any change to an Area, Specific, District or Community Plan; adoption of or any amendment to the text or zoning map of the SLDC, the CIP or the Official Map; creation of a planned development district (PDD); an overlay zoning district classification; and approval of any development agreements that apply either countywide or to a large number of properties under separate ownership. A public hearing is required but the procedural requirements of a quasi-judicial hearing do not apply.

4.4.2. Quasi-Judicial Proceedings. A quasi-judicial proceeding involves the use of a discretionary standard, as specified in the SLDC, to an application for discretionary development approval that is applicable to specific land in common ownership or to an area of land in which the predominant ownership is in a single ownership. Quasi-judicial discretionary proceedings require a public hearing consistent with the standards of procedural due process as established in § 4.8.2 of the SLDC. In making quasi-judicial decisions, the Board, Planning Commission and Hearing Officer shall investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, make written findings of fact, conclusions of law and recommendations and exercise discretion of a

judicial nature. In the land-use context, these quasi-judicial decisions generally involve the application of land-use policies to individual properties in common ownership as opposed to the creation

of policy. These decisions require an exercise of discretion in applying the requirements and standards of the SLDC, state and federal law.

What is the "discretionary standard" and where in the code is it defined. If the code itself is the "standard" that must be made clear.

3.5.2.1 states that the hearing officer shall conduct public meetings. 4.4.2 states that "everyone" shall hold hearings. clarification is needed.

4.4.3. Ministerial Development Proceedings. Ministerial development proceedings involve nondiscretionary application of the standards of the SLDC to an application and typically occur late in the process. A public hearing is not required for action on an application for ministerial development approval"

4.5. PROCEDURAL REQUIREMENTS.

4.5.1. In General. This Section describes the procedural elements common to all applications. The specific procedures for reviewing various applications differ. Generally, the procedures for all applications have these common elements:

4.5.1.1. Pre-application TAC meeting and Pre-application neighborhood meeting;

4.5.1.2. Submittal of a complete application, including required fees, appropriate affidavits, and Studies, Reports and Assessments;

4.5.1.3. Review of the application by the Administrator and a determination by the Administrator that the application is complete or incomplete;

4.5.1.4. Required public notice and publication;

4.5.1.5. Staff review, with assistance of the Technical Advisory Committee;

4.5.1.6. As appropriate, referral to State review agencies, review and response of the State review agencies, receipt of favorable or unfavorable opinion, subsequent proceedings;

4.5.1.7. As appropriate, public hearing before the Planning Commission, Board or Hearing Officer;

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4.5.1.8. Issuance of a development order approving, approving with conditions, or denying the application, together with written findings describing and supporting the action adopted;

4.5.1.9. Any appeal of the development order; and

4.5.1.10. Any application for a variance or beneficial use or value determination (BUD).

4.5.2. Procedural Requirements Table

4.5.2.1. The procedural requirements are set forth in Table 4-1: Procedural Requirements.

There does not appear to be any requirement for the applicant to meet with the administrtor to set up the timing of a TAC meeting.

Table 4-1: Procedural Requirements

The table needs reference to where the definition of each catagory can be found. If there is no such definition, it needs to be created.

If there is a "major" and "minor" subdivision plat, where is the line drawn? who decides?
Why is there no pre-application neighborhood meeting for minor subdivision?

4.5.3. Pre-Application TAC Meeting.

4.5.3.1. Applicants required to conduct a pre-application meeting with the Technical Advisory Committee will meet to discuss the proposed application prior to filing the application. During the meeting, the applicant will discuss the application in general but in enough detail so that a reasonable assessment can be made of compliance with the SLDC. The meeting should include a discussion of requirements of the SLDC that are applicable to the application, the procedure to be followed, notice to be provided, schedule for review and hearing, and other relevant subjects. Technical requirements may also be discussed.

There does not appear to be any reporting requirement for the TAC meeting. without such a required report, there would be no record of what procedures, studies or directives TAC imposed on the applicant. This could lead to a "he said/she said situation in any legal situation that might arise later on.

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4.5.4. Pre-Application Neighborhood Meeting.

4.5.4.1. Notice of Pre-Application Meeting. All persons entitled to notice of the pre-application meeting shall be invited by a letter sent first class mail, return receipt requested. Persons invited shall include all of the following:

4.5.4.1.1. The applicable CO and/or RO.

4.5.4.1.2. Property owners entitled to notice of the application as required in Section 4.14;

Does the administrator provide information to the applicant concerning the addresses of those entitled to notice? Who mails out the letters? Who is responsible under 4.5.4.1 for making the invitation? Is this nailed down during the initial TAC meeting?

4.5.4.2. Where Held. The meeting shall be held at a convenient meeting space nearest to the land that is the subject of the application.

4.5.4.3. When Conducted. The pre-application meeting shall take place after the pre-application TAC meeting and prior to filing of the application.

4.5.4.4. Materials for the Pre-Application Neighborhood Meeting. The applicant shall prepare an adequate number of the plans described below of the proposed development in rough format to present during the meeting. Plans should include: the boundary lines of the development; the approximate location of any significant features, such as roadways, utilities, wetlands, floodways, hillsides and existing buildings or structure; the proposed uses for the property; the number of dwelling units and floor area ratio (ìFARî) for non-residential uses; the proposed layout, including open space, location of buildings, roadways, schools and other community facilities, if applicable.

4.5.4.4 Materials for Pre-Application Meeting

If the assumption that the Pre-Application Meeting would be held fairly soon after the applicants initial TAC meeting, it is fairly realistic to say that none of the studies and reports requested by TAC will be available to Pre-Application Meeting participants. Further, even if the participants request additional studies, the re-

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quests never get official sanction and may or may not be "ordered" by the administrator.
Perhaps most importantly, there is no requirement for the applicant to state what conditions were proscribed by the TAC at the Pre-Application Meeting.

The list of requirements for the applicant to provide to the participants does not include full disclosure of the true ownership of the proposed development. It only requires the name of the applicant. This can be truly misleading to the public. The County and the public should require not only the name of the entity listed in the application but all linked corporate investors, owned subsidiaries, and the names of corporate interests that are associated with the applicant, or any corporation or company that the applicant may represent.
The Applicant should also be required to disclose financial details sufficient to insure that the project has a reasonable expectation of completion.

The meeting essentials does not require the applicant to disclose the results or the report of the initial TAC meeting. What reports and studies are required, when the studies should be completed, and what process is expected of the applicant.

4.5.4.5. Report on Pre-Application Neighborhood Meeting. The applicant shall furnish a written report on the pre-application meeting. At a minimum, the report shall include:

4.5.4.5.1. dates and locations of all meetings;

4.5.4.5.2. a list of persons and organizations invited to the pre-application meeting;

4.5.4.5.3. a copy of the notice;

4.5.4.5.4. a list of persons and organizations attending the pre-application meeting;

4.5.4.5.5. a copy of all materials distributed at the meeting;

4.5.4.5.6. a summary of all concerns, issues and problems; a summary of how the owner has addressed or intends to address concerns, issues, and problems expressed but not resolved during the process including those that the applicant is unable to address, and specifically including any conditions or mitigating actions agreed to.

4.5.4.5 Report of the Pre-Application Meeting

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The paragraph does not state to whom the Pre-Application report should be sent, nor is their any vehicle included to insure that the report provided is accurate, inadequate or unacceptable to the meeting participants. In fact, there is no requirement that the meeting report should be provided to the meeting participants. There is no requirement for timely dissemination of the report.
There is no requirement that the Pre-Application Meeting report must be considered by the Administrator as an attachment to the application.

4.5.4.6. Any CO, RO or person entitled to notice of the application shall also have the right to furnish a written report to the Administrator.

4.5.4.6 Participant Reports

There is no requirement for any reports submitted by Pre-Application Meeting participants to be included in the application as an attachment. This is especially important when participants, having an opportunity to review the Applicant's meeting report, take issue with the applicant's view of the meetings findings, results, or requests for additional information.

4.5.4.7. County staff shall not be expected to attend the pre-application meeting.

4.5.4.8. The applicant may hold a mediation to address concerns from the neighborhood pre-application meeting.

There is no reporting requirement to inform the administrator of what happened during mediation. There is no requirement that a record of mediation become part of the application or become a requirement for "completeness".

4.5.5. Application

4.5.5.1. A completed application form, provided by the Administrator must be submitted before an application will be considered.

4.5.5.1 should indicate that the application form and all attachments required by the code must be completed before an application can be considered.

4.5.5.2. Attachments. Before an application will be considered or processed it must contain all attachments required by the SLDC.

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4.5.5.2
Should there be a requirement for the Administrator to set an "outer limit" for the applicant to deliver all of the required attachments before the process is terminated?
Once terminated, the applicants would have to go through another round of TAC and Public pre-meetings.

Can an "application": be accepted by the administrator without attachments but only "processed" when all attachments are submitted?

It is not clear what attachements must be submitted with the application. Does the TAC report (if there is one) and the PA meeting reports and associated comments become a required attachment? where does it say this.

4.5.5.3. Public Access. All complete applications shall be placed on file and made available to the public.

4.5.5.3 Public Access

Does "complete application" refer to the application AND the required attachments, or just the application. The public must have access to all of the attachments. The application and its attachments MUST be available over the internet or as digital documents. A large application might have hundreds of pages of studies and reports attached and the public would not have suitable access if the documents were "placed on file" in the Administrators office.

There is no statement that public input or comment concerning the adequacy of the submitted documentation associated with the application has been solicited or considered by the administrator as part of the completeness review.

4.5.5 Application

Where in the SDLC does it specify what attachments must be submitted in order for a determination of "completeness" to be made. 4.5.3.1 states that such requirements will be presented to the applicant at the Pre-Application TAC meeting, however, there are no reporting requirements. There is no directive insuring that a) a report of the proceedings will be created, and b) that the report dictating the applicants requirements become part of the application's attachments.
Since 4.5.5.3 calls for all applications to be made available to the Public, the public should be made aware of the need for an application's required attachments

as early as possible. Timely Public Access to the TAC report therefore, is extremely important.

4.5.6. Completeness Review.

4.5.6 Completeness Review

How does the administrator determine completeness. What process permits report review? Is the review done by TAC? the Public? Expert written testimony? For all parties, the adequacy of studies and reports must be determined in order to avoid costly and lengthy legal appeal.

There is no code language to permit the rejection of submitted studies or reports, unless it will be found in the unwritten chapter 7.

There is no process to return appealed applications to the administrator. The code should indicate that when a development order is overturned by an appeal to the planning commission and a development order is deemed incomplete, that the application must be returned to the administrator.

4.5.6.1. Scope. All applications shall be reviewed by the Administrator for completeness.

4.5.6.2. Completeness Review Determination. The Administrator shall issue a determination on completeness after review of application and attachments within a reasonable period of time. The Administrator shall issue a development order deeming the application complete or incomplete. The Administrator shall transmit such determination to the owner/applicant.

4.5.6.3. Subsequent Determination That an Application is Incomplete. If the Administrator subsequently determines that the materials submitted to the review agency or department in support of the application is not complete, any completeness determination may be revised by the Administrator. If the application, together with the submitted materials, is determined to be incomplete, the development order issued by the Administrator shall specify the information required. The owner/applicant may resubmit the application with the information required by the Administrator. The owner/applicant shall not be required to pay any additional fees if the application is resubmitted or the Administrator's decision is appealed within thirty

days.

4.5.6.3 Incomplete Application

What happens if the reason for rejection is inadequate or inaccurate studies or reports? Who would pay for the re-write or re-draft of a new report? Would it be the County's obligation.
"Subsequent Determination", Does this term mean that if an application is " deemed complete and after all appeals are filed and settled, that the administrator could still demand changes to any or all of the attachments?

It would appear by the statement in 4.5.6.6 that at least in technical terms, a final development order of completeness is NEVER really complete. Is this true?

What happens if, down the line, the reports that were used to base a determination are found to be faulty. Does this mean that the "completeness" order becomes void? what then. Does the applicant have to correct and resubmit the faulty report? Stop work? Go back to square one?

4.5.6.4. Status of Order on Completeness. The final determination of the Administrator on completeness of an application constitutes a final development order and is appealable to the Planning Commission. The development order on completeness, issued by the Planning Commission upon any appeal, shall be final and not be appealable to the Board.

I would be oncerned about inadequate or incomplete reports and studies being passed as "complete"... without some sort of appeal. Poor studies might easily form the basis for most of the appeals that reach the courts.

Here is the kind of legal language one could expect: The development Order should be overturned because it was predicated upon false, forged, fraudulent and/or inaccurate documents.

4.5.6.5. Review by the Planning Commission. The Planning Commission shall issue a final development order on any appeal of a completeness determination of the Administrator at the next available meeting.

4.5.6.6. Further Information Requests. After the Administrator or the

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Planning Commission accepts a development application as complete, the Administrator, the Hearing Officer, the Planning Commission or the Board may, in the course of processing the application, request the owner/applicant to clarify, amplify,

correct, or otherwise supplement the information required for the application, if such is required to render a final development order on the merits.

4.5.6.7. Agency Review and Opinions. The Administrator shall refer applications, as appropriate, to the following federal, State or County agencies for completeness review, substantive review and opinions. The review agencies shall provide a response to the Administrator within thirty (30) working days of receipt.

4.5.6.7

The paragraph should be altered as follows:

...all appropriate federal, state, county, tribal, community or individuals with standing".

While 4.5.3 and 4.5.4 list meetings with recommendations and 4.5.5.3 states that submissions will be made available to the public, 4.5.6.7 does NOT require the administrator to do any of the following:

a) review the pre-application reports and comments,
b) review the TAC recommendations and meeting reports
c) review public comment submitted to the administrator as a result of 4.5.5.3

4.5.6.7 appears to deliberately exclude community and RO input to the decision making process concerning the ADEQUACY of the submissions.

There does not appear to be any time table for the administrator to follow in issuing a completeness determiantion.

Once complete the administrator has ten days to complete a review of ther application and take action. 4.5.8. states that it could be directly refered to the BCC and thus bypass the planning commission. This would leave no oportunity foir appeal except through the courts. Is this what is intended?

4.5.6.7.1. Office of the New Mexico State Engineer (OSE);

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4.5.6.7.2. New Mexico Environment Department (NMED);

4.5.6.7.3. New Mexico Department of Transportation (NMDOT);

4.5.6.7.4. the applicable Soil and Water Conservation District;

4.5.6.7.5. State Historic Preservation Office (SHPO);

4.5.6.7.6. Tribal Government; and

4.5.6.7.7. Any County Departments and other public agencies that the Administrator deems necessary to assist the Administrator and staff to determine compliance with this and other relevant Ordinances.

4.5.7. Procedures for Approval Table. The procedures for approval of applications are set forth in Table 4-2.

Table 4-2: Procedures for Approval

4.5.8. Review and Final Action by the Administrator. Within ten (10) days of the receipt of all necessary referral comments, or as soon thereafter as possible, the Administrator shall complete the review. Following completion of the review, the Administrator may take final action, make the appropriate recommendation or take other appropriate action. The Administrator may, in the Administratorís discretion, refer an Application that is committed to the Administratorís authority for review and final action to the Planning Commission or the Board of County Commissioners.

Once "complete" the administrator has ten days to complete a review and take action. 4.5.8 states that the application could be directly refered to the BCC. This would bypass the planning commission and would leave no opportunity for appeal except through the courts.

4.5.9. Review and Final Action by the Planning Commission or the Board. Upon receipt of a complete Application and appropriate recommendation of the Administrator or the Hearing Officer, the Planning Commission or the Board shall review the Application for compliance with this ordinance and other applicable law. Following completion of the review and following a public hearing on the Application, the Planning Commission or the Board may take final action, make the appropriate recommendation or take other appropriate action.

4.5.10. Conditions. In acting upon an Application, the

decision-making body shall be authorized to impose such conditions upon the Application as allowed by law and as may be necessary to reduce or minimize any potential adverse impact upon other property in the area or to carry out the general purpose and intent of the SLDC, so long as the condition relates to a situation created or aggravated by the proposed use, is roughly proportional to its impact.

what body acts as the advocate to point out potential adverse impacts. How is the administrator to know? the studies an reports? TAC? The public?

4.5.11. Notice of Decision. Written notice of a final decision of the Administrator to approve or approve with conditions pursuant to NMSA 1978, Sec. 39-3-1.1 shall constitute the issuance of the permit. Written notice of a final decision of the Administrator to deny an Application shall be provided to the Applicant and a copy shall be filed in the office of the Administrator. If an Application has not been approved, the specific reasons for disapproval shall be indicated in the written notice.

4.5.12. Findings of Fact, Conclusions of Law. Written notice of a final decision of the Planning Commission or the Board to approve, or approve with conditions, an application pursuant to NMSA 1978, Sec. 39-3-1.1 shall constitute the issuance of the permit. Staff or the Hearing Officer, as appropriate, shall prepare findings of fact and conclusions of law pursuant to NMSA 1978, Sec. 39-3-1.1 to document final action taken on each Application. Such findings and conclusions shall be approved by the decision-making body and filed with the County Clerk.

4.5.13. Reapplication. After final action on an Application, another Application shall not be filed within one year of the date of final action, unless the new Application is materially different from the prior Application (e.g., a new use, a substantial decrease in proposed density and/or intensity).

4.6. APPEALS.

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

4.6.2. Notice of Appeal. A notice of appeal shall be filed with the Administrator within thirty (30) days after the development order is filed in the office of the Administrator and mailed to the owner/applicant. The appeal shall contain a written statement of the

reasons as to why the appellant claims the final decision is erroneous.

4.6.2. should also stipulate tht the development order be mailed to any entity with standing. How else would these organizations gain knowledge of the development order.

4.6.3. Time Limit. Consistent with notice, the Board or Planning Commission shall place the appeal on the next available agenda. Any appeal to the Board shall be decided within thirty (30) days from the time the appeal is filed with the Administrator.

what happens if the Board or Planning Commission does not set the appeal for the next session. I it reasonable to expect that the Planning Commission could place an appeal on their agenda within thirty days?

4.6.4. Appeals of an Administrative Decision of the Administrator. An aggrieved person with standing may appeal the decision of the Administrator to approve, deny or approve with conditions an application. An appeal from a decision of the Administrator shall be filed in writing with the Administrator within five (5) working days of the date of the decision. If no appeal is filed within five (5) days, the decision shall be final. The timely filing of an appeal shall stay further processing of the application unless the Administrator certifies to the Planning Commission that special circumstances exist.

4.6.4

How does the public find out about the decisions of an administrator? What is the process and how can an appeal go forward. For example, the code draft states that there is a five day window to make an appeal. This is unreasonable. If a decision is made at 3PM and notification is posted the following day, the US postal service will take at least two days to deliver a first class piece of mail. That means that it is quite possible that four of the five days would be taken up just in delivery. There is no opportunity to consider or draft a response or a a request for appeal.

4..6.2 states thirty days. 4.6.4, 4.6.5, and 4.6.6 state five days.

4.6.5. Appeals of Subdivision Decisions Under Summary Review. Any person with standing who is or may be adversely affected by a decision approving or disapproving a final plat under summary review must appeal the decision to the Board within five (5) working days of the decision. The Board shall hear the appeal and shall render a

decision.

Five days is not long enough for registered mail to (1) reach the applicant, or party with standing, (b) to draft a response, and (3) to deliver the reply unless all notification is done electronically. This expected turn around, especially in cases where appeals could require lengthy argument, is completely unworkable.

4.6.6. 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 five (5) working days of the date of the decision and recordation of the final development order by the Planning Commission. The application shall be submitted to the Administrator. The Administrator shall provide to the Board a copy of the record of the proceedings below of the decision appealed. The appeal must be placed on the docket of the Board for further consideration on the next available agenda. An appeal of the decision of the Planning Commission shall be de novo. The timely filing of an appeal shall stay further processing of the application unless the Board determines that special circumstances exist.

4.6.7. Appeals of BCC Decisions. Any person aggrieved by a decision of the Board of County Commissioners pursuant to this section may appeal to District Court in accordance with NMSA 1978, ß 39-3-1.1 (1998)(as amended) and NMRA 2007, Rule 1-074.

4.7. NOTICE.

4.7.1. Generally. The notice requirements for each application are prescribed in the subsections of this Chapter and by state law.

4.7.2. Notice of Hearing. Notice of a public hearing to be conducted by the Hearing Officer, Planning Commission, or the Board, shall be provided as described in the resolution adopted by the Board pursuant to the Open Meetings Act. Public hearings shall be conducted according to the Board's rules of order.

4.7.3. General Notice of Applications Requiring a Public Hearing. All applications not requiring specific notice under subsequent subsections shall provide the following notice:

4.7.3.1. Newspaper. Notice of shall be published by the applicant in a newspaper of general circulation at least fifteen days (15) prior to the date of the hearing. The Administrator shall provide

the form of the notice to the applicant.

4.7.3.2. First Class Mail. Notice of the public hearing shall be mailed by first class mail at least fifteen days (15) prior to the date of the hearing to the owners, as shown by the records of the County Assessor, of lots or of land within 500 feet of the subject property, excluding public right-of-ways. The Administrator shall provide the form of the notice to the applicant.

4.7.3.3. Posting. Notice of the public hearing shall be posted on the parcel at least fifteen (15) days prior to the date of the hearing. The notice to be posted shall be provided by the Administrator and shall be prominently posted on the property in such a way as to give reasonable notice to persons interested in the application. The notice shall be visible from a public road. If no part of the property or structure is visible from a public road, the property shall be posted as required in this paragraph and a second notice shall be posted on a public road nearest the property. Posted notice shall be removed no later than seven (7) days after a final decision has been made on the application.

4.7.3.4. Supplemental Notice. Reasonable effort shall be made to give notice to all persons, COs and ROs who have made a written request to the Board for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

4.7.3.4

What constitutes "reasonable n otice" Why should this not be as in 4.7.3.2 with the caveat "unless electronic notification has been requested".

4.7.3.5. Verification. Written verification of the publication, list of persons sent a mailing, and affidavit of posting which includes a photograph of the posted notice shall be provided to the Administrator prior to the public hearing.

4.7.4. Specific Notice of Zoning, Rezoning, Amendment, Repeal.

4.7.4.1. Newspaper. Notice of the public hearing concerning an application to zone a parcel or parcels, or to amend, rezone, supplement or repeal zoning on a parcel or parcel, shall be provided by the Administrator and published by the applicant in a newspaper of

general circulation at least fifteen days prior to the date of the hearing.

4.7.4.2. Certified Mail. Whenever a change in zoning is proposed for an area of one block or less, notice of the public hearing shall be mailed by certified mail, return receipt requested, to the owners, as shown by the records of the County Assessor, of lots within the area proposed to be changed by the zoning regulation and within 100 feet of subject property, excluding public right-of-way.

4.7.4.3. First Class Mail. Whenever an application proposes to zone a parcel, or to amend, rezone, supplement or repeal zoning of a parcel or parcels for an area of more than one block, notice of the public hearing shall be mailed by first class mail to the owners, as shown by the records of the County Assessor, of lots or of land within the area proposed to be changed by a zoning regulation and within 100 feet from subject property or area, excluding public right-of-ways. If notice by first class mail to the owner is returned undelivered, the Administrator shall attempt to discover the owner's most recent address and shall remit the notice by certified mail, return receipt requested, to that address.

4.7.4.4. Posting. Whenever an application proposes to zone a parcel, or to amend, rezone, supplement or repeal zoning on a parcel or parcels for an area of more than one block, notice of the public hearing shall be posted on the parcel at least fifteen days prior to the date of the hearing. The notice to be posted shall be provided by the Administrator and shall be prominently posted on the property in such a way as to give reasonable notice to persons interested in the application. The notice shall be visible from a public road. If no part of the property or structure is visible from a public road, the property shall be posted as required in this paragraph and a second notice shall be posted on a public road nearest the property. Posted notice shall be removed no later than seven (7) days after a final decision has been made on the application.

4.7.4.5. Supplemental Notice. Reasonable effort shall be made to give notice to all persons, COs and ROs who have made a written request to the Board for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

All of the other notification catagories carry time limits.

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Reasonable effort needs to be defined clearly.

4.7.4.6. Verification. Written verification of the publication, list of persons sent a mailing, certificates of mailing with return receipts and affidavit of posting which includes a photograph of the posted notice shall be provided to the Administrator prior to the public hearing.

4.7.5. Specific Notice Applicable to Subdivisions

4.7.5.1. Newspaper. Notice of the hearing on an application for approval of a preliminary plat pursuant to NMSA 1978, Sec. 47-6-14(A) shall be provided by the Administrator and shall be published by the applicant at least twenty-one (21) days prior to the hearing date. The notice of hearing shall include the subject of the hearing, the time and place of the hearing, the manner for interested persons to present their views, and the place and manner for interested persons to secure copies of any favorable or adverse opinion and of the developer's proposal. The notice shall be published in a newspaper of general circulation in the county.

4.7.5.2. Posting. Notice of the hearing on an application for approval of a preliminary plat pursuant to NMSA 1978, Sec. 47-6-14(A) shall be posted on the property at least fifteen (15) days prior to the date of the hearing. The notice to be posted shall be provided by the Administrator and shall be prominently posted on the property in such a way as to give reasonable notice to persons interested in the application. The notice shall be visible from a public road. If no part of the property or structure is visible from a public road, the property shall be posted as required in this paragraph and a second notice shall be posted on a public road nearest the property. Posted Notice shall be removed no later than seven (7) days after a final decision has been made on the application.

4.7.5.3. Supplemental Notice. Reasonable effort shall be made to give notice to all persons, COs and ROs who have made a written request to the Board for advance notice of its hearings. Notice shall also be given to any public agency that issued an opinion or withheld an opinion on the basis of insufficient information.

4.7.5.4. Verification. Written verification of the publication, list of persons sent a mailing, and affidavit of posting which includes a photograph of the posted notice shall be provided to the Administrator prior to the public hearing.

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4.7.6. Notice of Administrative Action. Notice of a proposed land division or subdivision that is to be approved administratively shall provide the following notice:

4.7.6

Electronic notification to CO's and RO ishould be required for any public meeting.

4.7.6.1. Posting. Notice of the public hearing shall be posted on the parcel at least fifteen (15) days prior to the date of the hearing. The notice to be posted shall be provided by the Administrator and shall be prominently posted on the property in such a way as to give reasonable notice to persons interested in the application. The notice shall be visible from a public road. If no part of the property or structure is visible from a public road, the property shall be posted as required in this paragraph and a second notice shall be posted on a public road nearest the property. Posted notice shall be removed no later than seven (7) days after a final decision has been made on the application.

4.7.7. Notice of Issuance of a Development Permit. Notice of issuance of a development permit shall be posted on the property for at least fifteen (15) days subsequent to the issuance of the permit except that a development permit for construction of a building shall remain posted during construction.

4.7.8. Contents of Notice. Published, posted and mailed notice shall include a minimum of the following:

4.7.8.1. The name of the applicant;

4.7.8.1

The name of the applicant or corporation and any affiliated or linked individual, partnership, corporation or entity with an investment or other interest in the application

4.7.8.2. The general location of the parcel that is the subject of the application;

4.7.8.3. The street or road address of the property subject to the application or, if the street or road address is unavailable, a legal description by metes and bounds;

4.7.8.4. The current zoning classification(s) and zoning district in which the property is located, and the present use of the property;

4.7.8.5. The nature and type of approval requested and a brief description of the proposed development, including proposed density or building intensity, zoning classifications and uses requested;

4.7.8.6. The time, date and location where a decision on the application is expected;

4.7.8.7. A phone number to contact the County; and

4.7.8.8. A statement that interested parties may appear at a public hearing.

4.7.9. Constructive Notice. Minor defects in public notice shall not invalidate proceedings so long as a bona fide attempt has been made to provide notice and that notice was constructively received. In all cases, however, the requirements for the timing of the notice and for specifying the date, time and place of a hearing and the location of the subject property shall be strictly construed. If questions arise regarding the adequacy of notice, the body conducting the hearing shall make a finding concerning compliance with the notice requirements of this Ordinance.

4.7.10. Action to Be Consistent with Notice. The Administrator, Hearing Officer, Planning Commission or Board shall only take action, including approval, conditional approval or denial of the application that is consistent with the notice given.

4.7.11. Minor Amendments Not Requiring Re-notification. The Administrator, Hearing Officer, Planning Commission or Board may allow minor amendments to the application without re-submittal of the entire application. For purposes of this section, "minor amendments" are amendments that do not:

4.7.11.1. Increase the number of dwelling units, floor area, height, impervious surface development, or require any additional land-use disturbance;

4.7.11.2. Introduce different land uses than that requested in the application;

4.7.11.3. Request consideration of a larger land area than indicated in the original application;

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4.7.11.4. Request a greater variance than that requested in the application;

4.7.11.5. Request any diminution in buffer or transition area dimensions, floor area ratios (FAR), reduction in required yards, setbacks or landscaping, increase of maximum allowed height, or any change in the design characteristics or materials used in construction of the structures; or

4.7.11.6. Reduce or eliminate conditions attached to a legislative or quasi-judicial development order unless a new application is filed.

4.8. HEARING STANDARDS

4.8.1. Legislative Hearings

4.8.1.1. Conduct of Hearing. Testimony may be presented by the owner/applicant, any member of the public, and by the County or other affected governmental entities. Testimony need not be submitted under oath or affirmation. The Planning Commission or Board may establish a time limit for testimony and may limit testimony where it is repetitive.

4.8.1.2. Special Rules: Contested Zoning Matters. If the owners of twenty percent of more of the area of the lots and of land included in an area proposed to be changed by a zoning regulation or within one hundred feet, excluding public right-of-way, of the area proposed to be changed by a zoning regulation, protest in writing the proposed change in the zoning regulation, the proposed change in zoning shall not become effective unless the change is approved by a two thirds vote of the Board. NMSA 1978, Sec. 3-21-6(C).

If th property under consideration is part of a large holding with a single holder, what use is this? The developer could simply buffer his request for a zone change with a 100 foot "buffer" and being the only property owner - would have no legal opposition to the change request. In this case there would be no legal "neighbors".

4.8.1.3. Planning Commission Recommendation. The Planning Commission shall make a written recommendation to the Board on any application requiring final approval of the Board that an application be

approved, approved with conditions, or denied. If an application requiring final approval of the Board has been duly submitted to the Planning Commission, and the Planning Commission has failed to convene a quorum or to make a recommendation approving, approving with conditions or denying such development approval at two (2) consecutive meetings the application shall move to the Board without a recommendation.

4.8.1.4. Minutes. Written minutes shall be prepared and retained with the evidence submitted at the Planning Commission hearing. Verbatim minutes shall be prepared for all applications for which the Planning Commission has final authority.

4.8.1.5. Board Action. The Board shall hold a public hearing to consider a legislative application. The Board shall duly consider the recommendation of the Planning Commission.

4.8.2. Quasi-Judicial Public Hearings

4.8.2.1. Conduct of Hearing. Any person or persons may appear at a quasi-judicial public hearing and submit evidence, either individually 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 ofproceedings shall be as follows:

4.8.2.1.1. 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, specific, 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;

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4.8.2.1.2. 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;

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

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

4.8.2.1.5. 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, specific or community plan, or other governmental law or recommendations; and

4.8.2.1.6. 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, ßß10-15-1 et seq.

4.8.2.2. When Conducted. For an application for approval of a preliminary plat, the first public hearing must take place within thirty (30) days from the receipt of all requested public agency opinions where all such opinions are favorable, or within thirty (30) days from the date that all public agencies complete their review of additional information submitted by the subdivider pursuant to NMSA 1978, Sec. 47-6-11. If a requested opinion is not received within the thirty-day period, the public hearing shall be conducted notwithstanding.

There is no opportunity for discovery in the process. This could become a huge problem, If one side or ther other does not have access to reports, interogato-

ries, statements of fact, and exhibits prior to the quasi-judicial meeting, they have no real opportunity to respond to them, rebut the statements or even offer reasonable comment. It would be like giving the BCC the initial 1000 page proposed county plan and asking them to rule on its content in 15 minutes.

The quasi-Judicial process needs to have rules of discovery. As was mentioned in the planning process, it might be possible to allow the administrator to choose one of two paths for this process... the first, where little opposition is noted and little controversy is expected, the other - more legal in its orientation toward discovery. The administrator could move from the expeditious process to the more legal process at any time- once it becomes clear that various arguments cannot be resolved in a simple manner.

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SANTA FE ASSOCIATION OF REALTORS®

MEMORANDUM

Santa Fe County, New Mexico:
2011 Draft of the Sustainable Land Development Code
Chapters 1-4

January 24, 2012

BACKGROUND

Santa Fe County is proposing to replace its current Land Development Code with the Sustainable Land Development Code ("SLDC"). The County previously released a draft version of Chapters 1 through 5 of the SLDC in July of 2009. Following the release of that draft, the County undertook a planning process to draft the Santa Fe County Sustainable Growth Management Plan (the "SGMP"), which was adopted on November 9, 2010 and November 30, 2010 by the County.

Chapters 1 through 4 of the SLDC primarily address administrative matters: the authority and administration of the code, goals and objectives, approval of plans and code amendments, and common procedures associated with development review. These provisions will implement the more substantive requirements of the SLDC that will be in other chapters that the County has not yet released.

ANALYSIS

PRIMARY ISSUES OF CONCERN WITH THE SLDC

Issue: The piecemeal release of the SLDC in phases prevents a complete and thorough review.

The County has only released Chapters 1 through 4 of the SLDC for review. It has not provided a definitive schedule for the release of additional chapters of the SLDC and its Appendices. Because of this phased approach to releasing the SLDC to the public, many of its most critical details are not yet available for review and comment. The zoning classifications and regulations, the design requirements, the impact fee and capital improvement program, and the filing fee schedules are examples of information that is not yet available.

The County's release of the SLDC chapters in this piecemeal fashion may be motivated by a good faith effort to make the information available for review by the public as soon as it is drafted. The County may also be releasing a few chapters at a time in order to garner public support on an incremental basis before it releases additional chapters that are more likely to prompt opposition and concern. It is critically important that the SLDC be reviewed as a whole, and that no part of the SLDC be finalized until all the pieces are available for a thorough review.

Recommendation: The Santa Fe Association of REALTORS® requests that the County acknowledge the importance of allowing the public an opportunity to review the SLDC in its entirety, and to comment on it as a whole, prior to the County putting any part of the SLDC to a vote. The Association emphasizes that any comments that it makes at this time are preliminary, and that until the entire SLDC has been made available for review and comment, the Association reserves the right to amend or revise or retract its comments on Chapters 1 through 4 of the SLDC. The Association also stressses that any absence of comments on a particular portion of those chapters at this time does not indicate the Association's approval or acceptance of the provisions in question.

Issue: The SLDC's use of Specific Plans is unnecessary and the provisions addressing such plans are burdensome.

The SLDC provides for the use of Specific Plans, a planning tool mostly used in the State of California for the evaluation of individual development proposals. The SLDC states that: "A specific plan implements the [Sustainable Growth Management Plan] with respect to a particular property or properties and accompanies the development approval of individual property or properties."[1] It also provides that a specific plan is "a separately adopted general plan implementation document."[2]

During our review of the 2009 version of the SLDC (Chapters 1 through 5), as well as in early drafts of the SGMP, the Association expressed concerns about the use of the specific plan process. Early drafts of the SGMP proposed that specific plans be required for all mixed use or planned developments, such as infill, new urbanism, transit-oriented development and traditional neighborhood development, which the Association believed would be counter-productive to the County's policies and goals intended to promote this type of development. It appeared that the County responded to these concerns by eliminating in later drafts any requirement in the SGMP for the use of specific plans. However, the current draft of the SLDC once again imposes a requirement for the use of specific plans, despite the changes made in the SGMP. It states that a specific plan "shall be required for any nonresidential development, a subdivision within [Sustainable Development Area]-2 or 3, or a planned development district."[3] The effect of this provision is that nearly every proposal to construct a small office, store or restaurant in the County will need to include a specific plan proposal. This requirement is unreasonable and will very likely deter non-residential development in the County.

Moreover, the County has provided almost no justification for the use of specific plans. After spending over a year in the preparation and adoption of the SGMP, a very detailed master plan that maps out the land use policies for the County, it now proposes, in effect, to require constant "refinement" of the SGMP for almost all land uses in the County.[4] This requirement suggests that the County lacks confidence that the policies and vision set forth in the SGMP and that they

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[1] Section 2.1.2.1 of the SLDC.
[2] Section 2.1.2.2.1 of the SLDC.
[3] Section 2.1.2.3 of the SLDC.
[4] Section 2.1.2.2.2 of the SLDC states that the specific plan "is used to refine the policies of the SGMP relating to a defined geographic area."

are inadequate to guide land use in the County. If this is not the case, the requirement for constant refinement through specific plans is simply unnecessary.

In addition, Section 2.1.2 of the SLDC contains extensive submission requirements for a specific plan proposal. The specific plan must contain very detailed information on the project design and proposed operation, as well as analysis of the consistency of the specific plan to the SGMP and any applicable Area, District or Community Plan. It must also include various "Studies, Reports and Assessments ("SRA"s)." These submission requirements will likely drive up the cost of development in the County substantially.

With respect to the *process* involved in the adoption of a specific plan, the SLDC fails to include sufficient details on these requirements. Section 2.1.6 contains a description of procedures relating to the amendment of a specific plan and suggests that both the Planning Commission and the Board of County Commissioners have some form of review authority over such amendments. Assuming that the specific plan adoption procedures are similar to those for a specific plan amendment, these requirements are troubling because of the discretionary nature of this type of review. It is also significant that the County will only consider amendments to a specific plan twice a year,[5] likely thwarting any benefit of having the specific plan amendment reviewed concurrently with the corresponding development approvals.

Recommendation: The Santa Fe Association of REALTORS® requests that the County remove the requirement for use of a specific plan for any nonresidential development, certain subdivisions, or a planned development district, and point out that this requirement is unnecessary based on the extensive work undertaken by the County during the adoption of the SGMP. If the County is intent on having some role for a specific plan in the SLDC, it should limit it to large or complex projects that require some form of modification to the zoning code or map as part of the approval. Finally, the Association requests that the County revise the SLDC to incorporate procedural requirements for the adoption of specific plans and allow specific plan amendments to be reviewed more often than twice a year.

Issue: The SLDC development review procedures use inconsistent terminology and are unclear.

The SLDC uses several terms to refer to a project approval (or denial). There are references to the County issuing a "development order," a "development approval," and a "final decision." The following are examples of the use of these terms (emphasis added):

- **Sections 4.2.** No change in use shall be made … unless all applicable *development approvals* and the appropriate *development order* are obtained in accordance with this Chapter. *Development orders* are required for land division, subdivision, construction, land alteration, land use or development activity, to ensure compliance with the SLDC, other County ordinances and regulations and applicable state and federal laws and regulations.
- **Section 4.3.** This Chapter describes the common procedure to process an application for a *development approval*…

[5] Section 2.1.6.2 of the SLDC states that the applications for plan amendments will be considered twice a year.

- **Section 4.4.3.** ...A public hearing is not required for action on an application for ministerial *development approval*.
- **Section 4.5.1.8.** [Generally, the procedures for all applications have these common elements:] Issuance of a *development order* approving, approving with conditions, or denying the application, together with written findings describing and supporting the action adopted;
- **Section 4.5.1.9.** [Generally, the procedures for all applications have these common elements:] Any appeal of the *development order*;
- **Section 4.5.6.2.** The Administrator shall issue a determination on completeness after review of application and attachments within a reasonable period of time. The Administrator shall issue a *development order* deeming the application complete or incomplete. The Administrator shall transmit such determination to the owner/applicant.
- **Section 4.5.11.** Written notice of a *final decision* of the Administrator to approve or approve with conditions pursuant to NMSA 1978, Sec. 39-3-1.1 shall constitute the issuance of the permit.
- **Section 4.6.2.** The appeal shall contain a written statement of the reasons as to why the appellant claims the *final decision* is erroneous.
- **Section 4.6.6.** Any party with standing may appeal a *final decision* of the Planning Commission to the Board.[6]

With reference to these examples above, there are several instances in which the terms are used interchangeably, suggesting that they have the same meaning. For example, Section 4.3 states that Chapter 4 contains the "common procedure to process an application for a *development approval*."[7] Then, in the outline of general procedures, Section 4.5.1 states that a "*development order*" is issued to approve or deny a project.[8] Later, the more detailed procedures in section 4.5 refer to the issuance of a "*final decision.*"[9] Similarly, in the section on appeals, the SLDC states that: "Any person with standing may appeal a *development order* to the Planning Commission or Board, as designated in this Chapter," and immediately thereafter, states that: "The appeal shall contain a written statement of the reasons as to why the appellant claims the *final decision* is erroneous."[10]

In contrast, Section 4.2 states that: "No change in use shall be made, no land division, subdivision, construction, land alteration, land use or development activity and no building or structure shall be erected, added to, or structurally altered, or occupied unless all applicable *development approvals* and the appropriate *development order* are obtained in accordance with this Chapter."[11] This section suggests that there is a distinction between a "development approval" and a "development order" but the chapter does not contain any explanation of this distinction. Nor does it address the regulatory implications of each.

Overall, the apparent inconsistencies in the SLDC's use of these terms makes the development approval and appeal process unclear, which may confuse and frustrate property owners seeking project approvals and hinder efficient implementation of the SLDC by County staff.

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[6] See also Sections 3.3.4.5 and 3.4.2 of the SLDC.
[7] Section 4.3 of the SLDC (emphasis added).
[8] Sections 4.5.1.8; 4.5.1.9 of the SLDC (emphasis added).
[9] Sections 4.5.11 and 4.5.12 of the SLDC (emphasis added).
[10] Sections 4.6.1 and 4.6.2, respectively, of the SLDC (emphasis added).
[11] Section 4.2 of the SLDC (emphasis added).

Recommendation: The Santa Fe Association of REALTORS® requests that the County revise Chapter 4 (and any related references in other chapters) to clarify the approval process and use terms consistently throughout the provisions. If there are distinctions between the terms identified above, they should be clearly indicated and any distinctions between approval processes or appeals should be clearly shown.

ISSUES CONCERNING THE WORDING OF CERTAIN PROVISIONS IN THE SLDC

Issue: Purpose and Intent – Provision of Capital Facilities and Services.

- **Section 1.4.2.1.** [The SLDC shall:] Require that no new development approval shall be granted unless there is adequate on and off-site provision of capital facilities and services available to the development at levels of service established in the SGMP, the Capital Improvement and Services Program ("CIP") and the Official Map established pursuant to the SGMP;

Comment: This purpose and intent statement appears to require that capital facilities and services be in place and available to a development prior to a development approval being issued. It overlooks instances in which, through a development agreement, an applicant makes provisions *to provide* the capital facilities and services at the established levels of service as part of a project.

Recommendation: The Santa Fe Association of REALTORS® requests that the City revise the SLDC to modify this purpose and intent statement accordingly.

Issue: Purpose and Intent – Existing Deficiencies.

- **Section 1.4.2.2.** [The SLDC shall:] Utilize a development agreement process, where appropriate, to assure that properties receiving development approvals are granted vested rights to assure completion of the project through all stages and phases under the provisions of the SLDC as they existed at the time of submission of a complete application for development approval, without fear of being overridden by newly adopted regulations, in exchange for commitments to mitigate environmental degradation, advance adequate public facilities and services for needs generated by new development, *to eliminate existing deficiencies* and to proportionally meet county and regional facility and service needs; (emphasis added).

Comment: This italicized language suggests that the County will use development agreements as leverage to eliminate existing deficiencies for public facilities. Typically, a project proponent is not required to eliminate existing deficiencies, particularly in a regulatory system that incorporates an adequate public facilities assessment (the details of the SLDC's adequate public facilities program appear to be scheduled for inclusion in Chapter 13). Even assuming that a project proponent is willing to perform work to eliminate an existing deficiency, the SLDC should provide a mechanism for him or her to recapture these costs from any subsequent developments that will benefit from this work.

Recommendation: The Santa Fe Association of REALTORS® requests that the County remove the language pertaining to the removal of existing deficiencies. At a minimum, the County should incorporate language that would allow a project proponent who agrees to eliminate an existing deficiency to recapture any costs from subsequent developments that will benefit from this work.

Issue: Transitional Provisions

- **Section 1.11.2. Permits and Approvals Without Vested Rights**. Permits and approvals granted by the Board of County Commissioners, County Development Review Committee or the Administrator prior to the effective date of this ordinance for which rights have not vested (approved master plans, special exceptions, recognition of nonconforming uses, development plans, subdivisions, exception plats, and lot line adjustments) shall be henceforth governed by the SLDC.

Comment: This provision is unclear. It appears to create a category of projects for which approvals have been granted, but rights have not vested, and provides that these projects are governed by the provisions of the SLDC. Based on a general review of the County's existing Land Development Code, it does not appear that this code specifically establishes when rights become vested. It will be difficult, therefore, for someone who has received project approval to understand whether or not the rights have vested. Also, the examples provided (in the parentheticals) of approvals for which rights have not vested appear to be addressed in other sections of the SLDC. Specifically, Sections 1.11.4, 1.11.5, and 1.11.6 of the SLDC contain specific details as to the determination of whether the former Land Development Code or the SLDC apply to approved master plans, development plans, and subdivisions, respectively. Therefore, Section 1.11.2 appears to be unnecessary. Lastly, it is not clear why the "recognition of nonconforming uses" would not automatically become vested when issued.

Recommendation: The Santa Fe Association of REALTORS® requests that the County eliminate this section entirely, as it is unclear how vested rights are established by the County's current code, and vesting rights for certain of the examples in this section appear to be addressed elsewhere in the SLDC.

Issue: Concurrent Processing

- **Section 1.12 CONCURRENT PROCESSING**. One of the principal purposes of the SLDC is to encourage applicants to concurrently submit an application for multiple development approvals on a single project in order to facilitate, speed up and make more efficient the development approval process. Any application which includes requests for two or more development approvals cumulatively comply with the requirements of the SLDC for each type of development approval applied for prior to engaging in that type of development. The County may issue a development order denying, approving, approving with conditions and mitigation requirements, approving any part of an application and approving other parts in phases or denying other parts. This section shall not apply to applications seeking approval but that do not comply with the applicable zoning. (emphasis added).

Comment: The two underlined sentences above are either poorly written or missing necessary words. Presumably, the first underlined sentence should contain a "must" prior to the word "cumulatively" (i.e. "Any application which includes requests for two or more development approvals must cumulatively comply..."). It is not clear what type of situation the second underlined sentence is directed. The County may be suggesting that a project that requires a zoning change needs to undertake separate processes – one for the zoning change and one for the development approval(s). If so, that would suggest that the County would permit an applicant to seek a development approval prior to seeking a zoning change, or while a zoning change is pending. If this is the intent, it would be useful for the County to include more explicit details to explain how the processing of such applications would be managed.

Recommendation: The Santa Fe Association of REALTORS® requests that the County address the apparent error in the first underlined sentence and to revise the second underlined sentence to more clearly address the intent and effect of this provision.

Issue: SLDC Map or Text Amendment Criteria

- **Section 1.15.7.2.1 Public Policy**. ...Important public policies in favor of the SLDC text or map amendment shall be considered, including but not limited to:
  - .1 the provision of a greater amount of affordable housing;
  - .2 economic, non-residential and renewable energy development;
  - .3 advancement of public facilities and services and elimination of deficiencies through use of development agreements;
  - .4 traditional neighborhood, transit oriented, infill, opportunity center and compact mixed-use development;
  - .5 substantial preservation of open space;
  - .6 sustainable energy efficient construction and neighborhood design; and
  - .7 consistency with the SGMP, Area, District, Specific or Community Plan goals, policies and strategies applicable to the property.

Comment: The majority of the "important public policies" listed in this section are not properly worded to establish a policy. For example, it is not clear if the policy in #4 is *to encourage or support* this type of development or to *discourage or prevent* this type of development. We assume that the County intends the former policy; however for purposes of clarity, each policy should be more clearly drafted.

Recommendation: The Santa Fe Association of REALTORS® requests that the County revise the public policies accordingly to ensure that they are phrased more clearly.

Issue: Consistency Requirements

- **Section 2.1.7.1** The SLDC shall be consistent with the SGMP and applicable Area, Specific, District or Community Plans, the CIP and the Official Map. An amendment to the text or zoning map of the SLDC is consistent and in accordance and complies with the goals, policies, and strategies contained in the SGMP, Area, Specific, District or Community Plan, the CIP and the Official Map. Any amendments to the SLDC, including but not limited to development approvals, shall be consistent with the following.... (emphasis added).

Comment: The second sentence of the section above appears to suggest that any amendment to the SLDC is automatically considered consistent with the SGMP and the other referenced documents. This automatic consistency is problematic in that it would give the County far too much flexibility in adopting amendments to the SLDC without the proper evaluation of consistency.

In the last sentence, it appears that the phrase "including but not limited to development approvals" is misplaced. A development approval is not an amendment to the SLDC – the procedural provisions of the SLDC clearly establish that this is so.

Recommendation: The Santa Fe Association of REALTORS® requests that the County revise this section by eliminating the underlined wording shown above.

Issue: Staff Support of COs and ROs

- **Section 2.2.3.4** In order to preserve the autonomy and independence of COs and ROs, staff support will be limited to administrative functions in support of CO and RO rights, including providing notice, scheduling meetings and receiving comments.

Comment: This provision falls under the hierarchical section specifically regulating Registered Organizations ("ROs"), as opposed to a section regulating both Community Organizations ("COs") and ROs.

Recommendation: The Santa Fe Association of REALTORS® requests that the County revise the SLDC to move this section to a stand-alone section (2.2.4) or to make duplicative sections addressing COs and ROs in each of their respective places.

Issue: Review Timeframes

- **Section 4.5.6.2** The Administrator shall issue a determination on completeness after review of application and attachments *within a reasonable period of time* (emphasis added).

Comment: Requiring that the Administer act within a "reasonable" time period is too open-ended and subjective a standard. It does not provide owners and developers, as well as their investors and lenders, with a predictable time frame for obtaining the zoning relief needed for a proposed development. Similarly, we note that several other sections of the SLDC fail to impose certain timeframes by which the County is to act during the review of a development proposal. For example, the County's scheduling of a public hearing and the County's issuance of a notice of decision also lack fixed timeframes.

Recommendation: The Santa Fe Association of REALTORS® urges the County to provide definite timeframes for this Administrator action, as well as any other open-ended County review period.

Issue: Mediation of Neighborhood Pre-Application Concerns

- **Section 4.5.4.8** The applicant may hold a mediation to address concerns from the neighborhood pre-application meeting.

Comment: This provision suggests the use of "mediation" to address concerns raised at a neighborhood pre-construction meeting. The SLDC does not provide any further insight into the scope or procedural provisions of the proposed mediation, the scope of concerns that could be addressed, or the potential for resolution thereof. As such, the provision is far too vague. And while the language does not mandate the use of mediation, the suggestion of this possibility will likely be an issue raised by neighborhood groups in opposition of projects.

Recommendation: The Santa Fe Association of REALTORS® while supportive of mediation in resolving disputes without appropriate clarity or procedures, requests that the County remove this vague provision relating to the use of mediation.

Issue: Minor Amendments

- **Section 4.711 Minor Amendments Not Requiring Re-notification.** The Administrator, Hearing Officer, Planning Commission or Board may allow minor amendments to the application without re-submittal of the entire application. For purposes of this section, "minor amendments" are amendments that do not:

  4.7.11.1. Increase the number of dwelling units, floor area, height, impervious surface development, or require any additional land-use disturbance;
  4.7.11.2. Introduce different land uses than that requested in the application;
  4.7.11.3. Request consideration of a larger land area than indicated in the original application;
  4.7.11.4. Request a greater variance than that requested in the application;
  4.7.11.5. Request any diminution in buffer or transition area dimensions, floor area ratios (FAR), reduction in required yards, setbacks or landscaping, increase of maximum allowed height, or any change in the design characteristics or materials used in construction of the structures; or
  4.7.11.6. Reduce or eliminate conditions attached to a legislative or quasi-judicial development order unless a new application is filed.

Comment: The inclusion of a section providing procedural exemptions for minor project changes is useful. However, as currently proposed, it is likely that this section would never be applicable, as the list of the exclusions from this section would likely encompass almost any project change. Most notably, a project change that does nothing more than reduce the overall amount of development would fail to qualify for a "minor amendment" if it resulted in a reduction in the floor area ratio.

Recommendation: The Santa Fe Association of REALTORS® requests that the County revise this section to make it more broadly applicable to project changes that do not result in new or increased impacts. The current list of "exclusions" from the "minor amendment" provisions should be revised so that it provides a set of criteria for consideration in determining whether a

change is "minor." In particular, the reference to a reduced FAR disqualifying a change as "minor" should be removed.

Issue: Requirement for Verbatim Minutes

- **Section 4.8.1.4 Minutes.** Written minutes shall be prepared and retained with the evidence submitted at the Planning Commission hearing. Verbatim minutes shall be prepared for all applications for which the Planning Commission has final authority. (emphasis added).

Comment: Verbatim minutes are likely to be costly, and are not necessarily useful for the review of proceedings. The requirement for verbatim minutes would therefore appear to be excessive, and would likely be a burden for the County to provide. It is also likely that the County would shift the costs of providing verbatim minutes to an applicant, thereby increasing the costs of development in the County. It would be more reasonable if the County required that "detailed "minutes be prepared.

Recommendation: The Santa Fe Association of REALTORS® requests that the County remove the requirement for "verbatim" minutes and substitute it with a requirement for "detailed" minutes, perhaps with the additional requirement for making and preserving an audio recording of each hearing.