

**PRELIMINARY REVIEW OF THE DRAFT SANTA FE COUNTY
SUSTAINABLE LAND USE CODE**

PREPARED BY THE UNITED COMMUNITIES OF SANTA FE COUNTY

Delivered to the County Development Review Committee on JULY 7, 2009

EXECUTIVE SUMMARY

The United Communities of Santa Fe County is in the process of analyzing the Public review draft of the first five chapters of the proposed Santa Fe County Sustainable Land Use Code. Thus far, a series of eight “preliminary review papers” have been forwarded to County Staff, for consideration. In general, the review papers identify trends whereby the draft appears to be: 1) very inconsiderate of current County Residents, their current properties, needs and visions, 2) inconsistent in structure, 3) incompatible with current district plans, and 4) poorly aligned with those portions of the draft Sustainable Growth Plan that have been made available to the public. There are various portions of the draft code; especially those dealing with structure and funding that are likely to cause the project to fail unless they are modified.

At this point the UCSFC has looked at the draft with the “eyes” of the current resident of Santa Fe County, rather than with the “eyes” of a land developer whose interest is in commercial exploitation.

The review has been greatly hampered by the omission in the draft of consistently referenced appendices, necessary to the interpretation of the document, and to the omission of equally important definitions.

The UCSFC recognizes that this document is an early draft of the Code and it is for this very reason that its member organizations are placing so much effort in this preliminary review. We all recognize that the County Sustainable Growth Plan and the Sustainable Growth Code need to be updated and we all sincerely believe that it has to “done right”. The UCSFC plans to continue to provide its reviews to the County Planners, as they become available, and as the draft matures.

CURRENT REVIEWS

Because the Santa Fe County Sustainable Land Use Code Draft is such a comprehensive document, the United Communities of Santa Fe County has decided to present its review in a series of review papers, rather than in a single all encompassing assessment. This will permit a staged response that will permit the originators of the plan to evaluate our response as quickly as possible. We believe that our formally organized “Review Committee” can best work side-by-side with the County staff and consultant to expedite this review process

The 'Ordinary' Home Improvement Project

Our first evaluation looks at consistency and applicability of the proposed Land Use Code to what might be considered "ordinary" home improvement projects. For purposes of this review, an applicant requesting county permission to conduct an "ordinary home improvement project" is generally not doing so for immediate financial gain, but is doing so to either improve his/her lifestyle, accommodate a growing family, or otherwise carry-on with improving his/her quality of living at a place they call "home."

We have asked our reviewers to focus on tracing the steps required for an average homeowner to move through the process that would successfully and legally permit one of the following:

- a) build a self standing garage
- b) build a guesthouse with a bathroom
- c) build an addition on his/her home
- d) place a manufactured home on a piece of vacant property
- e) Build a house on a piece of property that was subdivided prior to 1980.
- f) Build a house that is proposed for a property subdivided prior to 2009.
- g) Build a kennel.
- h) Subdivide a property to a size less than "minimum lot sized"
- i) Do a family transfer.
- j) Identify a non-conforming compound of three houses on 40 acres as a legitimate "cluster" development.
- k) Build a "cluster" of four houses in a compound, three of which are for relatives.
- l) Build a fence
- m) Expand a septic system
- n) Drill a well for domestic use
- o) Build a greenhouse
- p) Install a water capture system with a 2,000 gallon below ground cistern.

Some of the questions that need to be asked are:

- a) What documents need to be prepared?
- b) What is the flow of this document stream?
- c) Where does the information come from?
- d) Can the homeowner conduct this process or need an advocate?
- e) Will a lawyer or land use consultant need to be consulted or retained?
- f) Will the homeowner need the advocacy of a neighborhood association?
- g) What is the cost to comply?
- h) Approximately how much time will it take?
- i) Will the process require professional assistance?
- j) What is the specific process that each action requires?

We had hoped that by tracing the flow, it would become evident that this process would be both viable and economical for the average homeowner. What we found was neither.

Assumption: Applicant to submit for a building permit for a 24' by 36' free standing garage on a properly platted property (an "ordinary two car garage"). Applicant lives in a house on the property that was built prior to the SDLC approval.

Action: Applicant goes to 3.19 Building Permits, Grading Permits, and Certificates of Occupancy.

3.19.1 Requirements: Applicant determines that he must apply to the Administrator for approval of a building permit. He is introduced to the term "discretionary development approval", and it would appear that once he applies for the building permit, discretionary development approval" must be obtained.

3.19.1.1 Applicant determines that he must file a building and grading permit application. The form for the application can be found in Appendix B of the SDLC. The applicant must pay:

- a. Administrative fees
- b. Inspection fees
- c. Application fees.

3.19.1.2 The applicant waits for a review of the application by the Administrator. The Administer reviews the application for completeness and conformance with the zoning and other design and improvement standards of the SDLC, the New Mexico Building Code, the New Mexico Fire Code, and the Urban Wildlands Interface Code

3.19.1.2.1 Since no prior development order granting discretionary development approval has ever been granted, the applicant is informed that a major or minor site plan, the required SRAs, and consultant fees to cover the costs of preparing SRAs, must be completed. The applicant is told that the Planning Commission pursuant to 3.22 of the SLDC must approve the site plan.

The applicant goes back to the SLDC to determine what a discretionary development approval is. He finds Section 3.8 Categories of Development Approvals and discovers that Section 3.8.2 Quasi-Judicial development Approvals, defines discretionary development approval. He sees that he will be required to participate in a public hearing as defined in 3.10 and 3.12.

He reads on to section 3.8.3 Ministerial Development Approval, and sees that this is the approval that directly addresses building permits. Since the applicant's property pre-dates the SLDC, and discretionary development approvals were not granted prior to the SLDC, he speculates that the SLDC might "grandfather" pre-existing lots and dwellings.

He turns to Section 3.23 Nonconforming Uses.

The Applicant sees that his lot qualifies as a "nonconforming use", as it was legally in existence prior to the adoption of the SLDC and conforms to section 3.23.3. The applicant sees that under section 3.23.4, he must prove this nonconforming status, which

he can do by presenting a legal plat of the property on which his house was built prior to the adoption of the SLDC. He adds the plat to his “packet”.

The applicant sees that section 3.23.7.2.1 specifically permits the “construction of any use that is accessory to a dwelling unit”.

There is no reference to Section 3.19.1.2.1 in the non-conforming use section, so the administrator has no choice but to insist that a major or minor site plan, the required SRA’s and the consultant fees be produced , and the Quasi-Judicial Development Approval process be followed. Discretionary Development Approval has never been granted.

3.19.1.2.1. The applicant now turns to what he must do under this section of the code. He must produce a major or minor site plan, produce the required SRAs, pay the consultant fees, and obtain approval of a required site plan from the Planning Commission “pursuant to the procedures set forth in 3.22 of the SLDC.

3.20 Site Plan:

The applicant turns to 3:20 and thinks that surely, “for me to build a garage, I must be talking about a “Minor Site Plan”.” He turns to 3.22.3 and finds that “minor site plans are only for applications seeking “ministerial development approval (3.22.3.1). For a building permit (3.22.3.1.3). He must seek a non-discretionary approval. He must produce a “major site plan”. He finds that none of the circumstances described in 3.22.4 apply.

The applicant determines that he must comply with the recommendations of the SRAs required under Chapter 5 of the SLDC (3.22.7.1) and all design, improvement, environment, and water availability and sustainability standards required under Chapter 7 of the SDLC.

He sees that regardless of whether or not the Administrator asks for a major or a minor site plan, he will have to have SRAs prepared by the County...

“for a fee as set in Appendix C equal to its pro-rata share of County staff and consultant costs as represented by the applicants’ number of dwelling units divided by the annual number of dwelling units permitted by the County during the average of the immediately preceding five year period”.

Turing to 3.22.3 Minor Site Plan, the applicant finds that there is no description of what a “Minor Site Plan” consists of.

The applicant sees in 3.22.7 “Approval Criteria” that the site plan shall be subject to all of the requirements of the SLDC for the development approval being sought... that would be a quasi-judicial development approval, implementation and compliance with the recommendations of the SRAs required in chapter 5 (3.22.7.1), and those standards described in Chapter 7., and all requirements of the base zoning district, including

minimum lot size, area and yard minimums, and maximum height restrictions as set forth in Chapter 9 (3.22.7.3) The applicant must also comply with all affordable housing requirements set forth in Chapter 9, adequate public facilities and services pursuant to the CIP, impact fees, exactions, dedications, public and private utility fees, charges and rates, and assessments, fees, and taxes of assessment and public improvement district fees (3.22.7.4).

For a Minor Site Plan he must allow and pay for the County to produce all SRAs.

The Applicant turns to Chapter 5, “Studies, Reports and Assessments (SRA)”

In 5.1 the applicant sees that he will have to comply with elements of Chapter 2, the “pre-application meeting”, and will have to gain approval for a “concept plan PRIOR to getting any SRAs produced by the County.

He also notes that 5.3.3 states that SRAs are not required for the “registration of a non conforming use”. He looks under section 3.23 for any reference to “registration of a non-conforming use” and finds none.

He turns to Chapter 2 for information on “pre-application meetings”, as directed in Chapter 5

The applicant sees that meetings will have to be conducted at least two weeks before a formal application is submitted and an effort must be made to resolve issues concerns or recommendations made during the meeting. Since none of the studies have been performed as yet by the County, the applicant wonders how he can present basically non-existent information for consideration or mitigation.

The meeting takes place; the applicant tells his neighbors that he would like to build a garage. He dutifully records the dates and locations of the meeting.

NOTE: This review was terminated before all necessary actions were fully described in the interest of time. What was clear in this partial review was that draft code appears to make it almost impossible for the current resident to easily and economically get a building permit to enhance a current property. Many members of our Review Committee made one singular comment: “to understand this Land Use Code you better be a lawyer.” The ‘guy building a garage’ is most likely going to do the work himself and isn’t going to do it through the legal process if he has to hire a lawyer to get the paperwork done. So that if this happens you suddenly got one of three problems: one, is that he won’t do the work and the money won’t be spent in our local economy; two, if he doesn’t build the tax base stays stagnant and the County loses out; and three, he may try to do it illegally and then your costs of enforcement are going to skyrocket. The ‘guy building a garage’ isn’t going to be selling his place anytime soon and this is the guy most needing a strong Land Use Code that will protect him from the pressures that speculative development and sprawl put on the county as a whole. The very problems we are trying to fix with a Growth Management Plan rewrite.

4.4 “Antiquated Subdivision”

Our second evaluation looks at consistency and applicability of the proposed code to “antiquated subdivision as described in section 4.4:

Example: A resident holds two five acre lots of vacant land adjacent to a five acre lot with their principle dwelling contained upon it. The minimum lot size is currently 12 acres, and the subdivision of the property was done prior to 1980.

The proposed Plan states in 4.4.4:

“No ministerial or discretionary development approval shall be issued for any building, structure or use on any tract, parcel or lot shown on an antiquated subdivision plat, map, or plan that was created prior to the effective date of subdivision regulation by Santa Fe County, or that was created prior to the adoption of the SLDC, which contains contiguous tracts, parcels or lots in common ownership where two or more of the contiguous tracts, parcels or lots are undeveloped unless:

4.4.4.1. The contiguous tracts, parcels or lots are merged to meet the minimum lot size and dimensional requirements of the base zoning district in which the land is located, and

4.4.4.2. Studies, Reports and assessments (SRAs) prepared pursuant to Chapter 5 of the SLDC demonstrate that the merged tracts, parcels or lots meet the adequate public facilities and services, environmental protection, traffic, water availability, fiscal emergency response requirements of the SLDC and are consistent with the goals, objectives, policies and standards of the General Plan or any area, specific or traditional community plan.”

If an applicant wishes to build a barn on one of the vacant tracts, would the applicant have to replat the entire 15 acres into a single parcel, and go through the SRA procedures to do so?

If the applicant wishes to add an addition to his home, would the applicant have to first replat the three parcels into a single parcel?

Is there a conflict between 4.4.4 and 3.23 “Nonconforming uses”?

If the applicant sells one of the vacant five acre “nonconforming” tracts to a family member, leaving the applicant with only one contiguous “vacant” tract, section 4.4.4 would no longer apply, or is a “family member” considered “common ownership”?

If this is the case, the rule might cause applicants to sell off nonconforming parcels in order to avoid the requirement of 4.4.4. This might defeat the intent of the rule.

4.4.5. Sec. 4.4.4 of this Chapter shall apply whether the tracts, parcels or lots are owned by the original sub divider or assignees or grantees from the original sub divider....”

Can section 4.4.5 be interpreted to mean that if the applicant had done a legal family transfer of two of the five acre lots to children, and wished to get a building permit to build a house on one of the three parcels, the three “owners” would have to combine the tracts under one ownership? Webster’s defines and “assignee” as “a person to whom a right or property is legally transferred”. We doubt whether this rule would stand a court challenge.

Can 4.4.4 be interpreted to mean that three contiguous non-conforming and vacant lots, if sold in their entirety, would have to be recombined by the new owner in order to get a building permit? It would appear that the same buyer, if purchasing two lots, could retain both lots nonconforming status, and sell one of them at a later date?

Buy forcing an owner of three or more contiguous vacant lots to recombine them for a building permit, would that not be construed as a “taking”? Smaller lots are always valued higher than larger lots.

If SLRs show that the merged property does not meet the SLUCs current standards, how does this match up with Section 3.23 “non-conforming” use section that permits standards that were in place prior to the date of subdivision.

Section 3.21 Conditional Use Permits (Cup)

Our first evaluation looks at consistency and applicability of the proposed code to conditional Use Permits.

There are two instances where conditional use permits may be requested that are discussed here. First, where an applicant requests a conditional use permit to build a non-residential structure outside of a designated and zoned commercial district and (2) a nonconforming Conditional use permit for a business to continue operating in an area that it is not zoned for.

In the first instance, the applicant requests permission to place a church in an area zoned residential. A preliminary meeting finds that the community supports this endeavor. The applicant applies for a CUP, and supplies all major site plans, SRAs, and pays all the fees.

According to Section 3.9, the administrator reviews the application for completeness. Section 3.21.5”Completeness Review” states that once the administrator reviews the application for completeness, the application would be made available for a pre-application neighborhood meeting. Section 5.1, “Studies, Reports and Assessments” (SRAs), states that “the pre-application meeting required by Chapter 2 of the SLDC, and approval of a concept plan shall be held prior to the preparation of the SRAs. This rule then is inconsistent.

In the second example, the operator of a nonconforming movie set which has been at the same location for upwards of 50 years, is found to be within a residentially zoned district. The owners determine that in order to continue operations, they must apply for a “nonconforming CUP” (3.21.12). However, there is some confusion since no CUP existed in the past. The operation pre-dated the first land use code in 1980.

Does the business have to apply for a new Conditional Use Permit? Is there another method that could be pursued to permit a continuance of the business? A new CUP would involve considerable expense. Is this legally justifiable?

Section 3.24.5.5.2 Substandard Lots Under “Variances”

Our first evaluation looks at consistency and applicability of the proposed code

Section 3.24.5.5.2 “Substandard Lot(s)” states that the proposed project involving the utilization of an existing legal non-conforming lot(s) is in fact a circumstance that must be considered for variance (3.24.5.4).

Section 3.24.5.22 states that when the application is complete the Administrator will set up a quasi-judicial public hearing for the applicant’s variance. Since a “Quasi-judicial public hearing requires the development of all SRAs, does the applicant have to:

- a. complete the SRA’s prior to submission of the request for variance
- b. have to have a variance awarded in order to build on a “substandard” lot that is legally non-conforming.
- c. Have to have variance “approved” prior to requesting a building permit.

Is the County placing restrictions on the use of legally non-conforming lots with Section 3.24.5.5.2, which are assured under section 3.23.7?

Section 3.20 The Quasi-Judicial Hearing

Section 3.20.8; Starting with the sentence “The Board...”. This sentence is an opinion or value judgment that may not be universally shared by members of the Board. It is the only such “opinion” in the document and should be deleted for consistency sake.

3.20.11.4 The term “new urbanism” has not been introduced in the document and should either be referenced by a section that does or a definition. Otherwise, the term should be struck.

3.20.11.5 The term LEED gold... either needs a reference or a definition. Otherwise the term should be struck.

Section 3.15.1 Family Transfer

Applications for a family transfer must have a major or minor site plan, and must have SLAs prepared. Consequently, family transfer requests must go through the “quasi judicial hearing process.

The “Quasi-Judicial Hearing

Since preparation for a “quasi-judicial hearing” is essentially a legal discovery period where protestants, the County, and the applicant must trade interrogatories, create prospective witness lists, and challenge the admissibility of evidence, most applicants will require legal assistance in order to prepare for a hearing. As SLAs become one of the most vital set of documents prepared to either support or refuse an application for a

family transfer, the probability of a “negative” SLA prepared by the County being challenged – is very probable. Who then, in the process, will defend the SLAs prepared by the County? Will the County Legal staff be called upon to attend every “quasi-judicial” hearing? The applicant, in the attempt to gain a fair hearing, will doubtless ask in discovery, for documents relating to all similar requests and actions for family transfer. Will the administrator have the staff and resources to fulfill the requests, or, is the applicant expected to pay for not only his own legal expenses, but those incurred by the county as well. This seems to be built into the proposed plan. The costs, therefore, of preparing for and conducting a “quasi-judicial” hearing will only be affordable by the very rich, or corporations with deep pockets.

Section 2.2.2 Specific Plans

It is difficult to understand how a “specific plan” provides a **bridge between the General plan and a traditional community plan or neighborhood or district plan**, unless the “specific plan” conforms to all of the criteria described in the traditional, neighborhood, or district plan. Or unless the Specific Plan can invalidate or override the Community Plan with impunity. It would appear to us that a “specific plan” is another name for the opportunity for speculative developers to apply to rezone any land parcel within any portion of the County – every six months.

Despite the roadblocks put in place in adopting “specific plans” by holding quasi-judicial hearings, the need to prepare SRAs, and the requirement of a legislative hearing, the possibility of a complete logjam every six months is almost a certainty. If multiple rezoning applications are heard by the Planning Commission starting on January 1, for example, they would probably continue to be heard well into the following six month period. Those opposing the re-zoning requests would have to attend and “defend” existing zoning at both the Quasi-Judicial hearings as they are scheduled (3.20.3) and before the planning commission in a second quasi-judicial hearing (3.20.4.2). This constitutes a tremendous burden for volunteer CPOs, who are the most likely bodies wishing to defend existing zoning .

This section, along with Section 3.20 “Rezoning through SLDC Map or text Amendments” would appear to open a huge hole for speculative developers to run through, simply because no-one will have the energy to oppose them.

Zoning has been implemented for a reason. Generally it has been carefully studied, and planned, and implemented with great thought. It should not be tampered with for either speculative development or for individual desire. We believe, therefore, that zoning should be fixed within both the Plan, the Code, and any neighborhood plan or code, to a set interval of at least three to five years (perhaps dependent upon a traditional or regional Plan). This extended period would allow neighborhoods some degree of stability. During the period of stability, zoning changes could be recommended by the Planning Commission upon recommendation from CPOs. The outlined process would then apply. Six months prior to the end of a “stable zoning” period, developers and others who wish to have a specific parcel of land re-zoned could make application. Once a deadline date

has passed, these applications would be first considered as a whole. This , so that general zoning impacts to a neighborhood or community might be ascertained prior to the consideration of any parcel specific plan. If the general zoning impacts are acceptable, a schedule to hear the merits of any parcel specific zoning case would be established and published by the administrator.

Section 2.4 Neighborhood Participation

NOTE: This section of the land use code appears to be at odds with the only section of the Sustainable Growth Plan Draft that has been presented to the public. We find it odd that the draft code has been released prior to any public release of a corresponding Plan. How can the code writers prepare a document that should codify a plan in the absence of such a plan, or do the plan writers expect to take their queue from the code writers – an odd situation indeed. That said, any formal analysis of the code must wait the appearance of the 2009 Sustainable Growth Management Plan.

2.4.1 This paragraph is contrary to the *Sustainable Growth Plan Draft for CPOs*. 2.4.1 appears to eliminate all areas that did not have an LDRC. There is no provision in the code to create new CPOs.

2.4.1 puts the entire creation and management of CPOs in the hands of “the administrator” (we assume the Land Use Administrator as is now designated). This includes rules covering structure, membership, method and term of appointment, and method and term of officers. It is completely at odds with the Charrette Report, and the draft section of the *Sustainable Growth Plan* presented by the County Planning Division at the June 8 BCC meeting.

The “administrator, under 3.5 of the code, could delegate the responsibility of organizing CPOs to any other official, employee or consultant of the County. This is contrary to the draft section of the *Sustainable Growth Plan* presented to the BCC.

2.4.2.1. There is a question here. Will all CPOs have “(legal) standing” in all hearings? If so, will applicants be required to send copies of all interrogatories, witness lists,, pre-hearing correspondence, etc. to all CPO’s? Will all CPO’s be expected to send representatives to each quasi-judicial hearing? Will the considerable expense of reproducing reports, and other SRAs have to be born by the applicant?

2.4.2.3 There does not appear to be any mechanism for a CPO to request a “re-hearing” or to appeal a quasi-judicial hearing in a similar context except to bring the application to court. While a CPO could technically request a re-hearing from the Board under section under Section 3.3.2, there is no direction in the code as to when such appeal would be applicable.

2.4.2.4 What happens if “timely notice” does not occur. What is the definition of “timely notice”. “Timely Notice” is critical should a CPO wish to file an administrative appeal opposing a development order approving an application, or to maintain “standing” by attending a pre-application neighborhood meeting. However,

“timely notice” for these critical phases of an application, appear to only require that an association name (or CPO) appear on a certified list of notifications filed by the applicant with the administrator. (2.5.4.2). Is it the responsibility of the administrator to supply a complete list of CPO’s “with standing” to each applicant so that they may provide them with “Timely notice? Since pre-application meetings are supposed to take place two weeks PRIOR to submission of the application, how is an applicant to know who to send notice to?

“Timely Notice” requires at least a week of lead time for a CPO to schedule a person or persons to attend a pre-application neighborhood meeting. Mail delivery requires a minimum of 4 days, assuming that the mail is posted in Santa Fe. Therefore, “timely notice” should specify that notification should occur at least twelve days prior to any proposed meeting date. Further, since attendance is mandatory to retain standing, a CPO should be able to request a continuance from the administrator should they be unable to attend such a meeting. The request should be revived prior to the date of the scheduled meeting. This language should be inserted in the code.

2.4.2.5 Is the right specified here abrogated by non-attendance at the pre-application neighborhood meeting as specified in 2.5? This raises a serious point. Since the pre-application meeting must occur two weeks prior to an application being submitted to the administrator, and since no “studies, reports, or assessments (SRAs), often both required and produced by the County, have been produced, it must be assumed that vital information concerning the proposed project will not be available at a pre-application meeting. If, at a later date, these reports indicate problems that might lead to a CPO objection, it does not appear reasonable to exclude quasi-judicial participation of a CPO based on Section 2.5.

2.4.2.6 The term “deemed appropriate” is too broad for the land use code. The clause should be clearly defined. 2.4.2.6 is a crucial right to grant to a CPO, as it is the only clause that gives authority to a CPO to create, recommend, and apply for modifications of a previously created area, specific, or traditional community plan. The fact that the terms ‘contemporary’ and “District” have been left out is a serious flaw in the code. It means that there is no authority for a CPO, operating under a previously enacted contemporary or district plan – to alter a plan.

The code must list what the County officials and staff “deem as appropriate”. Otherwise, this clause could be interpreted differently at the whim of an official in the future.

2.4.2.7 The right to prepare recommendations appears to be negated under section 2.5.4. Also any recommendations that are made to the administrator or to a hearing officer must follow the application to any subsequent appeal. Language to this affect must be inserted in the code.

It is important to understand that a CPO could technically appear at a “quasi-judicial” hearing as either an advocate or as a “protestant”. In either case, it must be made clear whether or not the CPO or CPOs will have access to County data (under rules of discovery) , and when, or if, the CPOs would have access to County legal opinions, reports, consultants, and staff. Is an applicant responsible for the costs of a CPOs involvement in a quasi-judicial hearing? If not, then who is? The code needs to spell out when or if a CPO is “on its own”.

If a CPO wishes to participate in a “Quasi-Judicial” hearing, and its opinions do not coincide with the County in terms of recommendations, report conclusions, etc., what will the CPOs status become. Will it become a protestant against the County? If so, who pays the CPOs legal bills, consultant fees, etc. What would be the mechanism for a hearing officer to determine this opposing view. Is there a mechanism to settle differences between CPO and County staff recommendations prior to the inauguration of legal proceedings?

We predict that County produced SRAs may become the biggest source of Quasi-Judicial discord between County Staff, consultants, and CPOs and that a mechanism must be included in the code to mediate such discord.

Should a CPO appeal to COCO (which appears in the draft Sustainable Growth Plan, but not the draft Code) for assistance, or support? Should a “second opinion”, produced by COCO be admissible evidence in a “Quasi-Judicial hearing” or an appeal? Could COCO request a “second, independent opinion” with regard to the recommendations of an SRA, as a form of mediation between Staff and CPO?

Will the CPOs be forever involved in Semi-Judicial hearings either “for” or “against”? Will CPO delegates, since they would be expected to attend pre-application meetings to maintain “status” be constantly called as “witnesses” by one side or another. Will this seriously interfere with the desire to become involved with a CPO, or in the neighborhood participation process?

An example of a “problem” case for a quasi-judicial” hearing is as follows:

The El Dorado CPO discovers that the SRAs produced for an application for a subdivision in Galisteo indicate that water use might impact the El Dorado well fields. It did not send a delegate to the pre-application meeting. The El Dorado CPO now wishes to participate in the Quasi-Judicial” process of reviewing the application, as does the Galisteo CPO. The hearing Officer refuses to grant Status to El Dorado based on Section 2.5 of the Code. The El Dorado CPO must appeal to the BCC. There is no mechanism in the code to facilitate such a technical appeal. An appeal of this nature would surely require a delay in the scheduling of any quasi-judicial hearing

3.9 Completeness Reviews

Our first evaluation looks at the consistency and applicability of the proposed “Completeness Reviews”:

3.9.4.1 Is ten days sufficient to determine if an application is complete?

Knowing what the Santa Fe postal service is like and likewise knowing that not all mailboxes are checked daily, having an administrator send out and receive back a notice, and giving a reviewing party the opportunity to deliver the application, read it review it and approve any recommendations, is probably not timely. Stating that non compliance with this 10 day turn around results in a “deemed complete” acceptance, is creating a loop hole that you could drive a truck through.

This ten day period is culturally insensitive to Native American and Hispanic populations because they very often don’t get involved until three or so meetings until they can figure out what the controversy is all about and how it will affect them. In all our Community Planning meetings people didn’t come out until a certain level of trust was developed with County staff and word of mouth was passed around through the community.

Since some reviews may include SLRs, where independent verification of expert views might be warranted, a four day opportunity for comment is not viable.

3.24 Variance

Section 3.7.2 lists a “major variance” as opposed to a “minor variance” Section 3.24 does not define either.

3.24.2. Determining costs of improvements for events occurring 30 or 40 years in the past is very “iffy.” The information collected is of questionable use, difficult to prove. Determining an estimated current value of improvements, perhaps based on assessors rates, might be more useful.

3.6 Technical Advisory Committee

There does not appear to be any provision for the creation of a “body” to prepare SRAs for the County, even though SRA creation would be a function of the County Staff. Will the technical Advisory Committee review this work? If not, who will, and how will the review be accommodated in the scheduling of quasi-judicial hearings.

If the County staff and their consultants are to create the SRA, then there needs to be a body to evaluate the “completeness” of the SRA’s. Perhaps the CPOs should “approve” these reports and findings.

During a “quasi-judicial” hearing, protestants will be quick to question the accuracy and validity of County produced SRAs and will more than likely motion for inadmissibility of

specific SRAs as evidence. How will the applicant respond to such determinations. Will the County legal staff have to defend the admission of County produced reports? Will the technical Advisory committee be called upon to vouch for the accuracy of the County's consultants? How will an applicant, who is required to utilize County Produced SRAs, react to SRAs that plainly discredit the applicant's position?

3.4.4.5 Planning Commission

The Planning Commission "shall take no action" without first obtaining a recommendation from 1) Administrator and Planning staff, 2) hearing Officer where applicable, 3) an association specified in _____, and 4) the report of a pre-planning meeting with a CPO.

If action is required, and SRAs are not started until after a preliminary meeting is conducted, the CPOs will have no information from which to base a report or a recommendation.

3.25 Enforcement

Would like to see requests by CPOs included here.

3.25.1.1 authorizes the administrator to enter properties with two day written notice. This may be in conflict with section 3.4.26, which requires 72 hours and a County Planning Commission resolution.

3.25.1.5 may require some form of longer "staged" clean up order rather than a 10 day ultimatum. Removal of structures, for example, may simply take longer to set up. Further, if removal is called for, there needs to be some formal determination that the structure is neither historic or significant to the community – prior to its removal or condemnation.

Enforcement requires organization, money and manpower. Will there be a section describing both the requirements for enforcement and the expected source of funding. Will there be funds drawn from penalties, for example?

3.24.4.4.5 Recommendations

If the findings of a quasi-judicial hearing find that the denial of an application is not cause for a "taking" on the grounds of a) cause a public nuisance and b) create adverse public nuisance effects or impacts, why can't the hearing officer determine that c) there is no merit to the claim at all?

3.24.4.5.3.1 indicates that if an applicant makes good on a claim to "taking" the County can add uses to the original application, add density, or provide "relief" (which one would assume to be financial compensation). One would think that the land

consolidation clauses in the “Antique Subdivision” Section would lead to a real rush for the submission of Value Determinations (BUDS).

Section 5: Studies, Reports, and Assessments (SRA)

In general, this section would appear to be written expressly for the purpose of insuring that adequate information is provided to the County for any large scale “tract” development. The moment that the scale of a project drops below “very large” it becomes unwieldy and unmanageable.

Section 5.3.3 states that SRAs shall not be required for... the registration of a non-conforming use”. What does “registration” mean in this context? Does it mean that when an application is made for any development that is deemed non-conforming, no SRAs are required? This is unclear. At what stage and by whom is this determination made? Section 4.4.4 and 4.4.5, antiquated subdivisions, require SRAs and a semi-judicial hearing. Section 3.19.1.21 requires a public hearing and SRAs for building a house on a non-conforming lot. Section 3.1.5 “Family transfer” requires a major/minor site plan and SRA’s.

If any of these sections require SRAs, then they must also require a semi-judicial hearing since SRA’s require a public hearing to accept them (5.6.1.3).

Possible Costs of SRAs:

While the idea of mandatory SRAs is excellent, and reflects a similar requirement found in the *Oil and Gas Plan*, the concept is aimed at profit making enterprise. If for example, a single EIA or water report would take two weeks for the County to prepare and making the assumption that all of the needed information was provided by the applicant beforehand, the report could cost the applicant \$4,000. The figure is derived from 80 billable hours at fifty dollars an hour. Fifty dollars an hour averages research, compilation, consultant fees, writing time, drafting, and report preparation costs. Multiply this figure by four reports, plus the costs to review and the costs to produce the first quasi-judicial hearing, and you could easily wind up with a \$20,000 bill for every Application that requires an SRA.

Fees such as this are completely unreasonable for applications involving homeowners, i.e., the “little guy.”

Locating the required Information for SRAs

The average homeowner does not have any of the information required for the production of SRAs, nor does the average resident have the technical ability to locate these sets of information. Unless the County expects to create a cottage industry of “certified SRA specialists”, both the level and accuracy of supplied information will be bogus for all but the commercial developer. The County’s cost to separate “real” from “bogus” information could become excessive.

Since the County is responsible for writing all of the SRAs, the County staff should be responsible for maintaining all of the GIS overlays necessary to produce a “General EIR” for any area of the County. These general EIRs might serve as a basis for producing the EIRs and other SRA’s for a specific locality. A local resident needing such a set of information to produce SRAs would request the information set, pay the roughly \$100 fee, and present the materials to the County Officials charged with producing the report. Of course, the fee could be subsumed under the County’s charge for SRA production. As the County is responsible for maintaining the Overlay database, who pays for its maintenance, updating and support?

There is a very real concern that since the County will be in charge of producing SRA’s AND is responsible for evaluating the same documents, that challenges could be made concerning accuracy, interpretation, and recommendation. There is need for separate, independent review commissions.

In view of the complexities inherent in the reporting requirements, the document needs to be far more specific in stipulating the structure, organization, and costs of any public entity set up to create SRAs.

5.6.10 Fiscal Impact Assessment

The fiscal impact assessment involves a study of the fiscal implications of development in the County. Development will be permitted only after a determination of the adequacy and financial provision for public facilities and services including but not limited to public works and operational costs for additional public works, park, police, fire and emergency response service full time employees and technicians to construct, operate, service and maintain roads, storm water management systems, fire, police, emergency response trails, parks, open space, scenic vista sites, environmentally sensitive areas and historic, cultural and archeological artifacts and sites.

The assessment shall estimate the threshold minimum number of full time paid public service workers necessary to provide fire, police, emergency response service, road, drainage, environmentally sensitive areas and historic, cultural and archaeological artifacts and site necessary for maintenance and operation of the facilities and services.

A real analysis of all of these factors would probably kill most projects. Yet, we have a feeling that the developers will develop an inside knack for creating winning proposals and will use this section to get their way and defeat the neighborhood groups.

The Fiscal Impact Assessment can only apply to, or be done for, those really big projects. It would be impossible to be done for Joe Blow’s barn; and why would we want it to be done?

Fees. The applicant shall deposit, as determined in Appendix “C” of the SLDC, cash, a certified check, bank check or letter of credit, to cover all of the County’s expenses in reviewing the Fiscal Impact Assessment, engaging consultants, and for a Hearing Officer to conduct the first public hearing on the Fiscal Impact Assessment.

We know that the County's consultant is setting the "fee" based on a chart but it would be very difficult to accurately identify all the costs associated with the analysis. We would like to see how these calculations will be arrived at. Further, this Hearing Officer procedure is intimidating to the average citizen.

The fiscal impact assessment shall determine whether, and to the extent, a development project is fiscally and economically positive, meaning forthcoming revenues (operating and capital) exceed the forthcoming costs (operating and capital) of the development project.

So it is a classic Cost-Benefit Analysis (CBA) or Benefit-Cost Analysis (depending on which discipline you come from):

costs-revenues= net positive revenues

This is hard to do; once again, we would like to see how these calculations will be arrived at.

We have a feeling that utilities like Electric and Gas need to be added into this CBA. Even cable, telephone and fiber-optics. They cannot be simply passed on to the greater community (the consumer base) as a rate increase through the Public Regulation Commission as they currently are---surcharges for underground projects. Agua Fria recently filed a protest at the PRC against a \$1.69 underground surcharge when our community put in overhead lines to hold the price down at PNM's request. They insisted we have a lawyer in their quasi-judicial hearing.

One neighbor just put in a well and was looking to hook up to electricity. The adjoining neighbor extended the electric line several years earlier and was scheduled to get a \$600 rebate from PNM when anyone hooked up. PNM says they no longer honor those contracts. The neighbor asked if they get the "free" pole and PNM said that is no longer the policy as it was for the last 50 years. It is now \$1,500 plus \$5,000 for a transformer.

Upgrades to the overall grid are borne by existing customers, yet the capacity shortage is caused by the major developers' new projects. They get off Scot-free.

Roads are another issue. We keep turning planned long term arterial roads into residential streets and with speed humps and jutting out curbs---we are effectively turning city streets into parking lots. Developers get the "ambiance" of traffic control devices that are limiting through traffic and the rest of us must buy a bypass road in the future. St. Francis, Osage, Camino Carlos Rey.....

Sure, developers are tasked with putting in a turning bay and a stop light but the highway planners "bend the road" to make the turning bay instead of laying down another lane. So that a Highway 14 takes a jog that at 55 MPH is a dangerous thing to a nighttime driver. Everyone who uses Highway 14 is put at risk when a San Marcos Loop turnout is put in, not just the new people or potential future people.

At what point does that last straw break the camel's back? That one more subdivision that adds more capacity....

5.6.10.5. "No project" alternative.

The "no-action alternative" is a really important component of any realistic analysis. It is a standard analysis used by highway planners.

5.7.11 Financing of Adequate Public Utilities.

This section could derail the entire plan, if not carefully explained. For example: A resident wishes to build a house on a property that he owns as a result of a family transfer. It is in a very rural area. The resident agrees to pay into an 'assessment district' to cover the costs associated with such rural living.

Along comes a commercial developer who wishes to build a large development complete with paved roads, waterlines, sewer, and utilities. Will the "little guy" suddenly be faced with a large, unanticipated, and unwanted assessment on his home? Section 5.7.11 appears to encourage such reassessment. Secretly, we all know that another 'hidden' assessment hits us when a big developer comes in and that is Property Tax reassessments and valuations based on the new higher averages of land sales and house prices.

A second example: A resident wishes to build a house on his 4,000 acres in the County. Would he be required to pay a huge LOS figure? Would the resident only be compensated for this large LOS if the population nearby grows? Obviously, the resident does not wish the population to grow. Is it the intent that an "isolated" home owner should be penalized by LOS requirements for living in the country?

Clearly the LOS mechanism needs to be fully and clearly explained. So that the public will understand its intent and process.

<End>