

# SANTA FE ASSOCIATION OF REALTORS®

## MEMORANDUM

### **Santa Fe County Sustainable Land Development Code**

**October 2009**

Chapters 1 through 5 of the Sustainable Land Development Code (SLDC) primarily address administrative matters: the authority and administration of the code, the goals and objectives, approval of plans and code amendments, the common procedures associated with development review, and report requirements. Chapters 1 through 5 contain the provisions that will implement the more substantive provisions of the SLDC that will be in other chapters that the County has not yet released.

This analysis is divided into two sections. The first section addresses issues of primary, overarching significance that are raised by the SLDC. The second section addresses more specific issues associated with the wording of particular provisions of the SLDC.

#### PRIMARY ISSUES OF CONCERN WITH THE SLDC

**Issue: The County should prioritize the updating and adoption of its General Plan over any further efforts on the SLDC.**

The SLDC is a regulatory tool that the County will use to implement its General Plan. However, it appears that the County has released the first five chapters of the SLDC prior to the release of any updates to its General Plan. The first draft of the County's revised General Plan, entitled the "Sustainable Land Development Plan" (the "SLDP"), was released on October 1, 2009.

Proper planning practice would call for the preparation and adoption of the new General Plan (the SLDP), and only then the preparation and adoption of the implementing regulations (the SLDC). By releasing the first five chapters of the SLDC, which create the administrative process for development review, the County is instead establishing a regime for development review without first having documented the County's development goals and strategies on which this regime is to be based and measured. The flaw in the County's approach is evident wherever the SLDC makes reference to the "General Plan."

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County undertake the appropriate planning analysis and review as the formulation for the SLDP before further advancing the drafting and adoption of the SLDC. This will ensure that the SLDC is properly aligned with the County's growth and development goals, objectives and policies.

**Issue: The piecemeal release of the SLDC in phases does not allow a complete and thorough review.**

The County has only released Chapters 1 through 5 of the SLDC for review. It has also provided a schedule for the release of additional chapters of the SLDC and its Appendices, which will occur in phases over the next several months. 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 the information that is not yet available.

The County has indicated that all of the chapters of the SLDC will be released for public review prior to its adoption. The phased release of the SLDC chapters may therefore be based on a good faith effort to make the information available for review by the public as it is drafted. While it is unclear why the County is pursuing the phased approach, 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. There are chapters currently available for review that include references to future chapters that are not available for review. For example, Section 3.21.12 references standards in Chapter 9 and Section 3.22.7.4 references requirements of Chapters 9 and 10. Until the entire document is available and there has been adequate time provided for comprehensive review of the SLDC as a whole, the public comment period should remain open and no portion of the SLDC should be adopted in isolation. This phased approach is particularly troubling for those in the regulated community that need to see the full proposal in order to provide a thorough and critical review.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully 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 the SLDC as a whole or in any part, to a vote. We believe that any comments provided 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 5 of the SLDC. Furthermore, any absence of comments on a particular portion of these chapters at this time does not indicate the Association’s approval or acceptance of the provisions in question.

**Issue: The SLDC imposes consistency review requirements that are too burdensome.**

Upon adopting the SLDC, the Board of County Commissioners will make a finding that the SLDC “Requires vertical and horizontal consistency of the SLDC and related land use, building, housing; public and private utility and environmental codes, with the General Plan, area, specific, and traditional community plans; the Capital Improvement and Services Program; the Official Map; and related regional, state and federal plans and programs...”<sup>1</sup> The SLDC requires that an applicant for a discretionary development approval demonstrate consistency with the General Plan and area or specific plans through the submission of a Consistency Report.<sup>2</sup>

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<sup>1</sup> Section 1.9.4 of the SLDC.

<sup>2</sup> Section 5.5.10.7 of the SLDC.

The consistency analysis should be unnecessary in most cases, assuming that the County has implemented a truly vertical consistency program. In such a case, a proposed development that meets the use and dimensional and other standards of a zoning district should already be consistent with the General Plan, subject only to, perhaps, site plan review.

There is also the issue of how consistency can be maintained at all levels all the time.<sup>3</sup> It may be advantageous to the County to provide greater flexibility, which could then allow the SLDC to adapt to growth trends in the County.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the County reconsider the requirement that development proposals submit a Consistency Report, given the SLDC’s inherent requirements for consistency. At the very least, the County should provide greater detail as to how the report should be written.

**Issue:** **The SLDC is inconsistent in its treatment of smart growth and New Urbanist projects—it purports to promote such projects, yet it also imposes additional, burdensome procedural requirements that will tend to discourage developers from proposing smart growth and New Urbanist projects.**

The County has indicated that one of the goals of the SLDC is to promote sustainability, green development, and new urbanism and to incentivize mixed-use walkable development.<sup>4</sup> This goal is incorporated into the purpose and intent of the SLDC, which specifies that the SLDC shall “create zoning districts that reflect development patterns that promote walk-able mixed use sustainable traditional neighborhood communities as conditional uses without the need for multiple variances or waivers from area, height or use requirements.”<sup>5</sup>

However, the SLDC also requires that a “specific plan” be approved to permit “mixed-use or higher density infill development, traditional neighborhood development, transit-oriented development at major transportation corridor intersections and development of rural, community, regional or opportunity centers.”<sup>6</sup> As described in the SLDC, a specific plan is an amendment to the County’s General Plan and to the SLDC. To obtain approval of a specific plan, a project proponent would need to undertake a completely separate process from development approval and would be subject to the discretion of the Planning Commission and the Board of County Commissioners.<sup>7</sup> It is not clear why the County would want to impose an additional process tantamount to an amendment of the general plan for projects that it otherwise seeks to promote. The additional process and discretionary nature of approval would likely act as a disincentive to private developers who may contemplate this type of development.

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<sup>3</sup> See, e.g., Section 3.20.7 of the SLDC, requiring that a text or map amendment to the SLDC be consistent with the General Plan, any applicable area, specific or community plan, the Official Map and the CIP.

<sup>4</sup> Presentation: “County of Santa Fe Land Development Code,” presented by Freilich & Popowitz LLP, dated July 7, 2009.

<sup>5</sup> Section 1.8.2.19 of the SLDC.

<sup>6</sup> Section 2.2.2 of the SLDC.

<sup>7</sup> Sections 2.2.9 and 2.2.8 of the SLDC, respectively.

The SLDC makes additional exceptions for “new urbanism” projects that appear to be unnecessary. It specifically identifies the “creation of a new urbanism planned development (PD) district” as a project that requires legislative development approval<sup>8</sup> and requires the appointment of a hearing officer for quasi-judicial review of “new urbanism planned development districts.”<sup>9</sup> It remains unclear why such projects would be specifically identified as subject to additional review processes if the County truly means to promote and encourage, and even “incentivize” such developments.

The requirement for specific plans further calls into question the adequacy of the County’s planning process. If the County is fully engaged in creating and adopting its new General Plan, it should be able to address opportunities for “mixed-use or higher density infill development, traditional neighborhood development, transit-oriented development at major transportation corridor intersections and development of rural, community, regional or opportunity centers.” Adequately addressing this type of development in the General Plan would then set the stage for adoption of the SLDC, including the zoning classifications, without having to call for the adoption of a specific plan for each development proposal of this type. The County, through the SLDC, appears to be relying upon the development community to “amend” the General Plan through specific plans as a substitute for properly planning to accommodate for the desired growth.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County revise the SLDC to reduce the procedural burdens for projects that it seeks to encourage. In particular, the County should eliminate the need for adoption of a specific plan for mixed-use or higher density infill development, traditional neighborhood development, transit-oriented development and development of rural, community, regional or opportunity centers. The County has the opportunity through the updating of the General Plan to explicitly promote the preferred types of development in desired locations. It does not need to place the onus on the development community to seek discretionary approvals, including what amount to ad hoc proposals for General Plan amendments in the form of “specific plans”.

**Issue:** **The SLDC creates a complex administrative process for development review and approval that will increase the cost of development and may be difficult for the County to implement.**

The SLDC creates a very elaborate process for development approvals, particularly for discretionary development approvals such as plan amendments, map and text amendments to the code, major and minor subdivisions, conditional use permits, site plans, development agreements, area variances, and beneficial use and value determinations.<sup>10</sup> The process for many development projects will involve review by the Administrator of the Planning Commission, preparation of studies, reports, and assessments, review by a Technical Advisory Committee, appointment of a hearing officer and review through a quasi-judicial hearing process, and review by the Planning Commission during a legislative public hearing.<sup>11</sup> While the

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<sup>8</sup> Section 3.8.1 of the SLDC.

<sup>9</sup> Section 3.7.2 of the SLDC.

<sup>10</sup> Appendix A (Definitions), Section A.2.230, of the SLDC.

<sup>11</sup> See, generally, Chapter 3 of the SLDC.

process is well documented in the SLDC and contains appropriate provisions for review timeframes and due process, it is nonetheless imposing, costly and time-consuming for a developer.

The level of detail associated with the process also raises questions as to the County's ability to administer the SLDC. Does the County have the necessary level of staffing to fill the various roles in the development review process created by the SLDC and, if additional staff is required, have funding sources have been identified to fund these positions.

In addition, to assist the public in understanding the implications of the SLDC's process, it would be helpful if, prior to the adoption of the SLDC, the County or its consultant would prepare exhibits, such as flowcharts or timelines, that would demonstrate the full extent of the contemplated review process, using hypothetical development projects. The exhibits should note the SLDC's timeframes and indicate if there are any open-ended review periods. It is not clear how or if the SLDC makes any distinction between large and small projects, and the exhibits should therefore include several examples to highlight differing levels of project complexity.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County consider and document the likely implications of the SLDC on the cost and timing of development approvals in the County. The County needs to address the level of staffing and additional revenues that would be needed to properly administer the SLDC. If additional staff will be needed to oversee the review process required by the SLDC, the County should identify the source of funding for the staff, particularly if the funding is anticipated from development review application fees, which can be an unreliable source during economic downturns. It would be helpful if the County would provide exhibits to demonstrate how the County will administer the SLDC for development approvals.

**Issue: The SLDC should include additional requirements for Community Planning Organizations as conditions for standing in administrative appeals.**

The SLDC creates a role for community input into the development approval process through the creation of Community Planning Organizations ("CPOs").<sup>12</sup> The SLDC imposes certain requirements for the establishment and management of CPOs, and then allows for their input during the development approval process through public notice requirements and inclusion at pre-application meetings. In addition, the CPOs are afforded standing rights during administrative appeals of development approvals.<sup>13</sup>

The provisions for public notice to CPOs and attendance at pre-application meetings should tend to facilitate community involvement in the application review process.<sup>14</sup> However, giving the CPOs standing to appeal a development approval could allow an organization to unjustifiably delay a project even if it does not participate in the review process or have any particularized interest in the project. The County should require that a CPO demonstrate a meaningful level of

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<sup>12</sup> Sections 2.4.1 and 2.4.3 of the SLDC.

<sup>13</sup> See Sections 1.8.2.9, 2.4.2.1, 2.4.2.3, and 3.3.2 of the SLDC.

<sup>14</sup> Below, we note a concern about the specific wording of the pre-application meeting requirements of Section 2.5.2 of the SLDC.

involvement in a development review process as a prerequisite for being able to initiate or take part in an appeal of a development approval. For example, the SLDC could require that a CPO have submitted substantive written comments during the review process. Such a measure could help to ensure that the appeal process is not used as financial leverage against a developer or otherwise abused by organizations that were not even interested enough in the development to get involved in the review process in a constructive way.

In addition, the SLDC should include a requirement that CPOs demonstrate a particularized interest in any matter as another prerequisite to initiating an appeal. The CPO's interest should be distinguishable from the general public's interest in a development approval to sustain an appeal, as the general public's rights are represented by the County.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County limit the right of CPOs to initiate appeals of development approvals by incorporating minimum requirements for demonstrating participation during the approval process and for asserting a particularized interest in the matter. The Association suggests that a requirement for the submission of substantive written comments should be incorporated as a minimum standard for participation.

**Issue: The SLDC's requirements for Studies, Reports, and Assessments are too expansive and burdensome.**

Chapter 5 of the SLDC establishes the requirements for Studies, Reports, and Assessments (SRAs) that are required as part of the review of discretionary development approvals. The SRAs consist of the following: “(1) an Environmental Impact Report (EIR); (2) an Adequate Public Facilities and Services Assessment; (3) a Water Availability Report (WAR); (4) a Traffic Impact Assessment (TIA); (5) a Fiscal Impact Study (FIS); (6) an Emergency Service Study (ESS) (for DCIs only); and (7) a General Plan, area, specific plan and traditional community plan Consistency Report.”<sup>15</sup> In addition, the County may require information as to “all other application requirements set out in this SLDC; and such other information as the Administrator may require, including any additional information necessary to determine compliance with the SLDC.”<sup>16</sup>

The SLDC's requirements for SRAs raise several issues. First, there does not appear to be any minimum project size requirements for the submission of SRAs. With the exception of very limited circumstances, any project requiring a discretionary development approval requires the preparation of SRAs.<sup>17</sup> Even a minor site plan review application or subdivision concept plan requires the preparation of SRAs.<sup>18</sup> This requirement does help to ensure that all development projects are treated equally, but the costs associated with preparing the SRAs may have a disproportionate effect on the economic feasibility of small projects in particular. It is not uncommon for there to be certain “economies of scale” associated with the preparation of studies or reports—the cost of analyzing a small project may not be significantly different than the cost

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<sup>15</sup> Sections 5.5.10.1 through 5.5.10.7 of the SLDC.

<sup>16</sup> Sections 5.5.10.8 through 5.5.10.9 of the SLDC.

<sup>17</sup> Section 5.2 and 5.3 of the SLDC.

<sup>18</sup> Sections 3.22.10 and 4.6.3 of the SLDC.

of analyzing a large one. Appendix C, to be released later this year, will contain the fee schedule for SRAs prepared by the County and for County review of SRAs submitted by a developer. It is therefore not clear at this time how the County will address the costs for small project SRAs.

To address the potential burden of SRAs on small development projects, it may be advisable for the County to consider exempting small projects from some of the SRA requirements or at least reducing the scope of those requirements for smaller projects. The County could also scale back the SRA requirements as an incentive for infill projects or those located in areas where infrastructure exists or where significant planning studies have been undertaken that would obviate the need for further study. Such an approach would be consistent with the County's goals of promoting infill development and avoiding sprawl.<sup>19</sup>

In addition, the scope of potential impacts covered by the SRAs appears very broad. Section 4.6.3 of the SLDC provides that the SRAs for Subdivision Concept Plans shall evaluate "the impacts and effects that development of the property will have on the site itself as well as on adjacent properties, the County and region with respect to: global warming; sustainability; green construction and neighborhood design and improvement standards; renewable energy; air and water pollution; protection of environmentally sensitive land; public infrastructure and service systems; and all other impacts and effects upon the public health, safety and welfare."<sup>20</sup> This list is quite expansive, and without the inclusion of some limits on the scope of these studies, or guidance as to how impacts and mitigation are to be balanced, this requirement could be used to block much of the development in the County. Furthermore, aspects of this analysis may be better suited for review at the federal or state level, rather than through the County development approval process.

Lastly, the County does not provide any timeframes for preparation of the SRAs, when the County is preparing them, or for review by the County when a project proponent is preparing them. The County should incorporate appropriate timelines for preparation or review, or more affirmatively state that the timelines will be coincident with the development review schedule outlined in the SLDC (i.e., the SRAs will not postpone or delay review processes). It is also noteworthy that the EIR process involves what appears to be a completely separate hearing process.<sup>21</sup> Given the level of review already afforded to development projects, including the quasi-judicial hearings, TAC meetings, and legislative hearings, it does not appear that a separate process with separate hearings is necessary for review of an EIR.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the County consider incorporating some exemptions (partial or full) from the SRA requirements for small developments and for developments that the County particularly wishes to encourage such as infill projects and those located in areas where there is adequate existing infrastructure. We encourage the County to ensure that the review of the SRAs will not delay the development approval process, and that it will provide additional documentation to help demonstrate how the technical analysis of impacts and mitigation will be conducted.

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<sup>19</sup> Section 1.8.2.23 of the SLDC.

<sup>20</sup> Section 4.6.3 and §§ 4.6.3.1 – 4.6.3.8 of the SLDC.

<sup>21</sup> Section 5.6.13 of the SLDC.

**Issue: The SLDC fails to adequately address opportunities for cluster/conservation subdivision or transfers of development rights.**

The SLDC provides a very minimal discussion on cluster or conservation subdivision and transfer of development rights within an otherwise detailed chapter addressing subdivisions.<sup>22</sup> It appears to grant the Board of County Commissioners the authority to require cluster or conservation subdivisions when a development project would “prove to be inconsistent with the growth management, new urbanism and sustainability goals, objectives, policies and standards of the General Plan,”<sup>23</sup> or “where protection of designated official map areas, agricultural and ranch lands, acequias, rural open space, environmentally sensitive lands, habitats and habitat corridors, hillsides, wetlands, floodplains and floodways, archaeological, cultural and historical resources, and unique scenic vistas, can be best accomplished by the use of mandatory cluster and conservation subdivision.”<sup>24</sup> Where clustering or conservation subdivision is not feasible, the Planning Commission may allow “transfers of development rights (TDRs) of the owner’s land to other lands in zoning districts authorized to receive TDRs, or to a County Land Bank.”<sup>25</sup>

The use of these tools only when a development project proves to be inconsistent with the General Plan again calls into question the adequacy of the County’s planning efforts. If the County, through the General Plan, adequately addresses opportunities for clustering or conservation subdivision or transfer of development rights, the use of these tools would not be restricted to the “exception” situation.

This language would appear to broadly grant the Board of County Commissioners with the discretion to direct where and when cluster or conservation subdivisions are to be utilized. While a property owner can request use of these tools,<sup>26</sup> there does not appear to be any “as-of-right” opportunity for a property owner to use cluster or conservation subdivisions. In addition, there are no standards or guidelines contained within the SLDC to guide an applicant in examining the use of these tools. It may be the case that such standards or guidelines will be made available in later chapters of the SLDC. If so, a reference to this information may be appropriate.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County provide additional information relative to the intended use of cluster/conservation subdivisions and transfer of development rights. The County should eliminate the discretionary authority of the Board of County Commissioners to mandate cluster/conservation subdivision or transfer of development rights, and at the same time, grant greater opportunities for willing property owners to elect the use of these techniques for development of their land.

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<sup>22</sup> Chapter 4, Subdivisions; Section 4.13, Cluster or Conservation Subdivision; Transfers of Development Rights, of the SLDC.

<sup>23</sup> Section 4.13.1 of the SLDC.

<sup>24</sup> Id.

<sup>25</sup> Sections 4.13.1 and 4.13.3 of the SLDC.

<sup>26</sup> Section 4.13.2 of the SLDC.

## ISSUES OF CONCERN WITH PARTICULAR WORDING OF THE SLDC

### **Issue: Transition provisions.**

#### **Code Section(s): Section 1.7.5**

**Discussion:** This section of the SLDC allows a project that applied for development approval prior to the first reading of the SLDC to be approved and completed in conformance with the terms and conditions of the Land Development Code applicable at the time of submittal, provided that it is completed within the time allowed by the original approval. The SLDC does not specify what constitutes completion of the project and it does not appear to allow for any extension of time to complete a project. The current economic recession has resulted in delays in the development schedules for many projects. This has occurred to the great financial detriment of developers and property owners. In many cases, substantial investments in the pre-construction design and entitlement process have been set aside to await improved markets for funding and consumer demand. In other cases, partially completed projects have been acquired by lending institutions. The inability to get extensions to the time for completion of previously approved projects, and the potential that such developments may have to be halted, redesigned and further delayed to comply with new substantive requirements and new procedures under the SLDC will be a further blow to the affected developers and lenders. Depending on the number and size of the developments affected, this policy could also affect the region's economic recovery. It is advisable to allow for greater flexibility with respect to projects that are now underway or in the pipeline for approval so that they can be completed under the current regime and not subjected to the new requirements of the SLDC.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the County broaden the transition requirements to allow for greater flexibility for project approval extensions, and not subject projects that are partially completed, or even well along in the pre-construction pipeline, to the requirements of the SLDC.

### **Issue: Concurrent processing.**

#### **Code Section(s): Section 1.7.6**

**Discussion:** The SLDC encourages applicants to submit multiple development approval applications for single projects concurrently. However, it states that "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." We question how the concurrent processing would really "speed up" the process if the County approves a project in part and denies it in part.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the County clarify its requirements for concurrent processing, and relocate the language from this section relating to partial approvals to the section of the SLDC addressing project approvals, denials, and administrative appeals (Chapter 3).

**Issue: Development agreements.**

**Code Section(s): Section 1.8.2.2**

**Discussion:** The SLDC indicates that development agreements can be used to help “eliminate existing deficiencies.” 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 8). However, 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® respectfully requests that the County remove the language pertaining to the removal of existing deficiencies. At the least, 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: Minimizing adverse global warming impacts.**

**Code Section(s): Section 1.8.2.21**

**Discussion:** The SLDC will “[e]nsure that building projects are planned, designed, constructed, and managed to minimize adverse global warming, environmental impacts; to conserve natural resources; to promote sustainable development; and to enhance the quality of life in the County of Santa Fe.” It is unclear how the County will review global warming impacts from buildings.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the County clarify its expectations with respect to the review of global warming impacts from buildings. If the County intends to address this review in future chapters, it should be certain to include technical information establishing the legitimacy of its methods for reviewing and assessing such impacts.

**Issue: Capital improvements financing.**

**Code Section(s): Section 1.8.2.27**

**Discussion:** The SLDC will “[c]ondition development upon the establishment of an improvement or assessment district and 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.” This language does not reflect any County obligations under the Capital Improvement and Services Program (CIP).

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the language be revised to add “in coordination with County obligations under the Capital Improvement and Services Program (CIP)” to the end of this section.

**Issue: County’s policy on pre-application meetings.**

**Code Section(s): Section 2.5.2**

**Discussion:** The SLDC states: “It is the policy of the County to require owners to meet with the CPO, any organization registered pursuant to §2.4 of the SLDC and all property owners entitled to statutory notice, prior to filing an application for a discretionary development approval.”<sup>27</sup> This language is too broad and should be rephrased to say that “It is the policy of the County to require owners to *make a reasonable attempt to meet with....*”. An owner should not be restrained from proceeding with a development approval application if other parties refuse to meet or accommodate a reasonable schedule. Alternatively, the County could require that a project proponent submit plans and provide pre-application meeting notice to the applicable entities. Failure to attend by the CPO, Registered Organizations, or noticed property owners would not deter a project proponent from moving forward with an application.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the language of this section be revised to say that “It is the policy of the County to require owners to *make a reasonable attempt to meet with....*” or, alternatively, require that a project proponent provide plans and notice of a pre-application to the applicable entities and not mandate their attendance.

**Issue: Requirement for reporting on pre-application meeting.**

**Code Section(s): 2.5.3.4**

**Discussion:** The SLDC requires that a property owner submit a detailed report summarizing the pre-application meeting results as part of a development approval application. The level of detail specified for this requirement appears to be unnecessary. A short statement summarizing the results of the pre-application meeting may be more appropriate.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the detailed requirements for reporting on a pre-application meeting be amended.

**Issue: Technical Advisory Committee meetings.**

**Code Section(s): 3.6.2**

**Discussion:** The SLDC creates a Technical Advisory Committee (TAC) that is responsible for reviewing technical data as part of development project approvals. The TAC meets regularly for this purpose and the SLDC specifies that “an owner/applicant may be invited to attend meetings of the TAC only at the discretion of the Administrator.”<sup>28</sup>

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<sup>27</sup> Section 2.5.2 of the SLDC.

<sup>28</sup> Section 3.6.3 of the SLDC.

It is unclear why the SLDC would limit participation of an applicant at TAC meetings. If a meeting is discussing a specific development approval, it may be very useful to have the proponent and its representatives in attendance to avoid potential confusion or misunderstandings about project proposals or submissions.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the County should consider whether this restriction on TAC meeting attendance is appropriate and comment accordingly.

**Issue: Planning Commission recommendation.**

**Code Section(s): Section 3.11.2**

**Discussion:** The SLDC states: “If an application for a legislative development approval 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 consecutive meetings, such action, at the option of the owner/applicant, shall be deemed to be a negative recommendation.”<sup>29</sup> It is unfair to a project proponent to treat the inaction by the Planning Commission as a negative recommendation, and thereby place the proponent at a disadvantage when going before the Board.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the language be revised to state that the inaction of the Planning Commission for two consecutive meetings shall allow the owner/applicant to proceed to the Board, but shall *not* be treated as a negative recommendation or create any negative inference with respect to the proposal.

**Issue: Review by Administrator.**

**Code Section(s): 3.9.4.1**

**Discussion:** The SLDC states that: “If a development order deeming an application incomplete is not made within the applicable time period, set forth in §3.9.4.1.3 of this Chapter, after receipt of the application, the application shall be deemed complete for purposes of the SLDC.”<sup>30</sup> However, no applicable timeframe is provided in the reference (§3.9.4.1.3). Presumably, the correct reference would be to §§3.9.4.1.1 and 2, depending upon the details of the application.

***Recommendation:*** The Santa Fe Association of REALTORS® respectfully requests that the reference be clarified.

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<sup>29</sup> Section 3.11.2 of the SLDC.

<sup>30</sup> Section 3.9.4.1 of the SLDC.

**Issue: Development agreement duration.**

**Code Section(s): 3.17.3.2**

**Discussion:** This section of the SLDC provides that “The term of a development agreement shall not exceed ten (10) years, except where the development order approving the application for development approval authorizes phased development, in which case the duration of the agreement shall not exceed fifteen (15) years.”<sup>31</sup> This term may not be a sufficient minimum length to allow for projects to proceed to completion. Such a restriction would therefore be inconsistent with Section 1.8.2.2, which states that the SLDC shall “[u]tilize a development agreement process, where appropriate, to assure that properties receiving development approvals are granted vested rights to completion of the project through all stages and phases....”

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the minimum duration for development agreements be lengthened, to ensure that all development projects are granted the appropriate vested rights to completion of the project.

**Issue: SLDC Zoning Map or Text Amendment.**

**Code Section(s): 3.20.2.5**

**Discussion:** The SLDC states that: “No amendment to the SLDC text or zoning map requiring a quasi-judicial hearing shall be granted unless the Board, Planning Commission, Administrator, CPO, **and** owner/applicant demonstrates that there has been: a substantial change in the conditions of the area surrounding the owner’s property; a clerical error or mistake in the SLDC text or zoning map; or the amendment is consistent with the applicable General, Area or Community Plans for the property” (emphasis added).<sup>32</sup> This requirement should be changed to allow for just one of the parties to demonstrate the need for the amendment, and not require all parties to support it (i.e., the “and” should be changed to an “or”).

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that the language be revised to replace “and” with “or.”

**Issue: Conditional Use Permits.**

**Code Section(s): 3.21.1 – 3.21.3; 3.21.9**

**Discussion:** These sections of the SLDC are inconsistent in their treatment of conditional uses. Sections 3.21.1 and 3.21.3 would seem to suggest a standard approach to conditional uses—they are uses that are generally permitted, but require review by the County to address potential impacts. However, Section 3.21.2 suggests that even if the applicant complies with the SLDC’s standards for the use in question, the application can be denied. This provision gives too much discretion to the Planning Commission and is contrary to the customary view of conditional uses

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<sup>31</sup> Section 3.17.3.2 of the SLDC.

<sup>32</sup> Section 3.20.2.5 of the SLDC.

as ones that are appropriate for the location as planned and zoned, but have potential impacts given the nature of the use that require review and appropriate operational and other conditions.

Also, Section 3.21.9.2 states that: “The development order granting a CUP shall be void after two (2) years, but may be renewed by the Planning Commission for up to one (1) additional year, unless substantial construction or operation of the building, structure or use authorized by the CUP has commenced. No further extension shall be granted under any circumstances, and any changes in the requirements of the SLDC, or federal or state law shall apply to any new CUP development approval application.” The first sentence of this section would be clearer if the last clause, beginning with the word “unless” were placed at the beginning of the sentence.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that conditional use permits be treated as a use where the County’s discretion to deny approval is limited to those applications that do not satisfy applicable review standards, and that the Planning Commission not be given broader discretion to determine whether a CUP is granted to a project that otherwise qualifies for one. We further suggest that the language of Section 3.21.9.2 be revised as indicated, and request that the County remove the restriction on granting more than one extension to a permit.

**Issue: Minor site plan.**

**Code Section(s): 3.22.3**

**Discussion:** The SLDC requires minor site plan approval for a principal residence. It is not clear that such review is necessary for a project of limited scope such as a new residence on a previously approved subdivision lot. Moreover, considering that the application for minor site plan approval necessitates the preparation of SRAs, such a requirement could be unduly burdensome and could result in a significant percentage increase in the cost of the home.

**Recommendation:** The Santa Fe Association of REALTORS® respectfully requests that even if minor site plan approval is required for the construction of a principal residence such a project should be exempt from the SRA requirements.