Sustainable Land Development Code (SLDC)

Comments Received February 2012

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From: William Mee [williamhenrymee@aol.com]
Sent: Monday, February 06, 2012 11:43 AM
To: Robert Griego; dave@nets.com
Cc: EFHirsch@gmail.com; cedickens2@yahoo.com; White@grappawireless.com; vicente.roybal@gmail.com; WaltWait@q.com; murlock@raintreecounty.com; r.n.olson@att.net; hamonyank@cybermesa.com; johnmilessmith@q.com; tocino8@cnsp.com; tortuga@cnsp.com; LynneNambe@cybermesa.com; spontasue@gmail.com; ellen@newmexico.com; drillingsantafe@earthlink.net; AmeliaJacona@aol.com; bill.baker@prodigy.net; RTaylor503@aol.com
Subject: Transmission of Code Comments from Agua Fria Village

Robert Griego
Santa Fe County Planning

Dear Robert,

Please find attached the "Comments" on the Santa Fe County Code chapters 1-4 from the Agua Fria Village Association.

Whew!

Thank you for your work in this process.

William H. Mee, President
Agua Fria Village Association
473-3160

Comments on Chapter 1-4 of the Santa Fe County Land Use Code
By William Mee and the Agua Fria Village Association February 6, 2012.

Chapter citation; placement; changed wording by ~~strikeout~~ or replacement; or
COMMENT: :

1.2 last sentence:
…….for the health, safety and general welfare of the County and its residents and applies….

1.4 first sentence:
…..time limited and concise land development ~~approvals~~. Substitute: application process.

COMMENT: The term "approvals" implies that all applications result in a approval. This therefore should be changed to "application process."

Last sentence:
The SLDC is designed to specifically provide protection of cultural, historical, wildlife, environmental, and archaeological resources, …….

1.4.2.2
In regards to the term: "vested rights":

COMMENT: The first five chapters of the Code released in 2009 talked in detail of subdivisions/developments built prior to the 1980 Code and the legal process of grandfathering them in.

Such situations as the Santa Fe Opera would have been illegal under the five chapter Code. Is this Code NOT addressing anything prior to 1980?

1.4.3 Studies, Reports and Assessments (SRA) are not defined in the first four chapters released---however, they are mentioned. From having worked with the first five chapters in 2009 we know what they are.

1.4.2.7
add "wildlife"

1.4.2.8 implies that "mediation" might be another process.

1.4.2.9 last sentence:
pre-application meetings with applicants for development ~~approvals~~.

1.4.2.13 first sentence:
include "wildlife corridors"

1.4.2.15
COMMENT: Will local area Development Review Committee's continue?
Then report to the Planning Commission with a recommendation.

1.4.2.18 change the word "certain" development projects to "most"

1.4.2.21 to encourage priority infill development.
…..in SDA 1 areas with a high degree of completed infrastructure.

1.4.2.22 Respect historical patterns and boundaries, and traditional communities in the development ~~approval a~~application process for new development and redevelopment.

14.2.26 and community gardens within neighborhoods.
……..or pay assessments to complete such facilities in the immediate area.

1.4.2.27.1 ……Community Plan Consistency Report…….
COMMENT: is the definition of "consistency" "adherence"? if not, it should be.

1.4.2.27.3 …….such facility and service costs.
Add: "including projections of future costs and costs and impacts at full build-out."
COMMENT: Not just the costs of Phase One for example.

1.5.1…….effects upon surrounding property, the surrounding community, the County and the region;

1.5.3 …….flora and fauna habits and habitat/wildlife corridors, …..
……cultural, and historic resources; and traditional communities;

1.7
COMMENT: How does this affect the Community Planning Ordinance #2002-3? Does this then have the legal effect of "removing" the approvals made under these various Ordinances that now might not fully comply with the new Code? Although their may be a protection under some form of "grandfathering" and the constitutional provisions of passing Ex Post Facto laws/ordinances it is not indicated here. What happens when a structure/business built under these repealed ordinances burns to the ground and the owners come to the County to rebuild it and it doesn't quite comply with the new?
Many ranches and agricultural operations over 160 acres fall into this category.

1.8 Same question as above.

1.9
COMMENT: What is the process to "update" the Community Plans?
Do we as communities need to start building a schedule with County Planning?

1.10.2
COMMENT: What if there is a capricious amendment to the SLDC to approve only one development then does it negate the normally controlling community plan? Amendments to the SLDC should not be made which pertain to only one property.

1.11.1….amendment to an area, specific, district or community plan….
COMMENT: This seems to undermine the authority of community plans by allowing developers to change community plans to cover their one time application process thus affecting the due process rights of all others in the community.

1.11.6.2 (see Walt Wait's comment)

1.12 (see Ross Lockridge's comment)

1.15.3
COMMENT: This should state that this is done on an annual basis.

1.15.5.1
COMMENT: Should this be a "mediation" paragraph?

2.1.2.2.2
COMMENT: Then the Specific Plan describes how it is consistent with a Community Plan when in a community planning area?

2.2.2.6.8 (see previous comment)

2.1.4.2….and any Area or Community Plan. Contained therein.
COMMENT: for example, San Marcos and Cerrillos

2.1.5.1….thru the zoning map or thru creation of a ~~planned district~~ community planning boundary.

2.1.5.2…. directed by county planning staff~~.~~, and the Community Planning Ordinance #2002-3.

2.1.5.5.5….All participants shall be recognized in the final planning document

2.1.5.5.6
COMMENT: #2002-3 says every five years.

2.1.5.5.10
.3 develop community profile….plan area; including a history of the area and a need for the preservation of cultural and historic resources.

2.5.6.7….approve with amendments, or deny. With the recommendations for improvement.

2.1.5.9 (see Walt Wait's comment)

2.1.6.2 (see Ross Lockridge's comment)

2.2.2.3.2….Geographical interest;
COMMENT: Geographical interest to include regional resources past their boundaries; roads and rivers. Thinking of roads impacting a regional traffic network or water resources.

2.2.2.4
COMMENT: When is this done?

2.2.3.3.2
COMMENT: In Agua Fria, this would include our "historic" boundaries and including present land-owner holdings past the THC boundary (say across SR599 or Rufina Street).

2.2.3.3.4….e-mail addresses of the ~~members~~. Officers?
COMMENT: The County doesn't need to see everyone's email but just need a verifiable and quick email address to use. Often websites have a generic one; in this case the CO or RO would need to check routinely for messages from the County.

2.2.3.5
COMMENT: Where is the "appeal process" is this section?

3.2.1.10….Hearing Officers, Community Planning Committees other boards and committees…
COMMENT: The Community Planning Committee is a County authorized and supported entity, and under oath in hearings. They are recognized in BCC Ordinance. They are capable of having a board that submits to the County's Code of Conduct. By utilizing them, you will free up some County staff time.

3.3.2.5
COMMENT: Use the term: "site visit"?

3.3.4.3
COMMENT: Where is "public testimony" here?

3.3.4.5
COMMENT: Where are RO's and CO's?

3.4.2
COMMENT: Here, we need to restrict administrative decision approvals.

3.4.3.2…acequia associations, mutual domestic water associations, regional…

COMMENT: Why area CO's and RO's not included?
Why not Community Planning Committees? Look back at my comment at 3.2.1.10.

3.5.4
COMMENT: A Hearing Officer shall not hold a "position in Government"?
I think that this may be overly broad and should maybe say "City and County Government"---who will undoubtedly be in the middle of many cases.
But why the federal government?
I could see saying "state government" since it may overrule the County at say the Environment Department or OSE. But even a school board member or board officer at an Acequia Association or Mutual Domestic Water Association could be considered as a "quasi-state official."

4.5.1.4
COMMENT: How about the posting of the yellow "Signs"?

4.5.3.1
COMMENT: Also the TAC should discuss how the applicant will conduct the pre-application neighborhood meeting. What is expected of the applicant? Who to contact, etc.

4.5.4 Pre-application Neighborhood/Community Meeting

4.5.4.1.2
COMMENT: Is this 4.5.14?

4.5.4.4
COMMENT: If the applicant is proposing a DCI, it will be much more labor intensive for county, applicant and neighborhood and so it should be a stand alone process, i.e.: more meetings, more time between meetings, etc.

COMMENT: Unless the CO/RO are invited into the TAC process, or immediately notified of it after its conclusion by email (with some concrete details), there is not enough time to prepare for the neighborhood meeting. We publish a monthly newsletter in Agua Fria called the *Community Update* and it takes time to issue it (couple of days) and then it takes readers a couple of days to read it. We are not like the Massachusetts militia, the Minutemen, being called out by Paul Reverre. We might even require a pre-meeting before the neighborhood meeting. In fact, it has been the practice of the Agua Fria Village Association to formally take a vote for or against a development at our monthly meeting before a City of Santa Fe Early Neighborhood Notification meeting.

4.5.5
COMMENT: "completeness" is an issue. Perhaps define a step-by-step process as follows:

1. Application form

2. TAC meeting report
3. TAC meeting compliance by the applicant
4. ….etc.

4.5.6.1
COMMENT: Designees?--- then he/she signs off? Can the Administrator actually review all these in sufficient detail? We appreciate that he should be a good part of the overall process, but maybe he meets with the assigned County staff and they brief him.

4.5.6.3
COMMENT: If an appeal is filed by an applicant, then there should be a notice to the CO and any RO involved in a neighborhood meeting.

4.5.6.4 (see Walt Wait's comment)

4.5.6.7 (see Walt Wait's comment)

4.6.2
COMMENT: Why not five days? In all reality, they already have a letter of engagement with legal council, and it is just a matter of price to continue the representation.

4.6.3
COMMENT: Planning Commission calendar issues; often it is on a six week schedule by the time the 10 day public notice requirement is met?

4.6.4
COMMENT: In all mentions of appeals, in NM statutes, perhaps over 100, the time period is always thirty (30) days.

4.7.3.1 Newspaper.
COMMENT: County Planning Staff has been very good about doing it in the Rio Grande Sun for things by Espanola; the Edgewood paper for things there; and the New Mexican for everything else.

4.7.3.3
COMMENT: Post it at local community centers? Newsletters of neighborhood associations?

4.7.4.2
COMMENT: "within 100 feet of subject property" is too small in rural areas and should be the 500 feet mentioned earlier or 300 feet required by state regulated liquor license transfers.

4.7.6 (see Walt Wait's comment)

4.7.8.1 (see Walt Wait's comment)

4.8.1.2
COMMENT: This notification of within 100 feet might not work. New owners might be on the first four phases of the applicant's development (overall Master Plan) and completely surround the last fifth phase. Additionally, the new owners might have an inherent conflict of interest/inability to protest the applicant who could hold a note on their property or control their HOA/warranties to their houses/access road/well. You need to go back to original boundaries. Also the 20% requirement might be made impossible if you counted the hundreds of new people in this subdivision; compared to the five people there before it existed.

4.8.2.1.2
COMMENT: "Reasonable" time limits have been two to three minutes in BCC meetings when 100 people are present as determined by a Chairman who had an inherent conflict of interest with the developer and did not disclose it (I have been doing this neighborhood activism 32-33 years and could name names of some Commissioners—but I digress). Neighborhood associations have had to limit each speaker to one topic (i.e., water, traffic, trash, etc.) and practice ahead of time to stay within the three minutes. Yet, opposing counsel often orchestrates their expert testimony with easily over one hour of his own speaking time aside from the witnesses (I could name names here also). This is inherently unfair and unreasonable. Need to refer back to *Albuquerque Commons versus City of Alb.* lawsuit.

4.8.2.1.6
COMMENT: What about a delay in the proceedings to obtain additional information or expert testimony?
Then who is this available to: County, applicant, neighborhood?

4.8.2.2 (see Walt Wait's comment)

COMMENT: Need to explain what is an Overlay Zone?
Is it a complete change of the SDA area?
Or of the zoning map?

In general, this is a legal process, but is should not be overly burdensome to the lay person in a community to participate. The problem with the old 1980 Code was that it had 384 amending Ordinances that only a few people knew about and a few code writers that went to work as Planning Consultants for developers made a killing on because no one could handle the process; least of all the neighborhood groups and traditional communities.

OVERALL COMMENTS:

This process of review is flawed because we don't have the entire Code document in hand. The review of chapters 1-4 on a potential 15 chapter code is inadequate. The full Code review is necessary to see if the Land Use Code as a proposed "system" will actually work or not. We need much more information on the "processes" to be put in place. The nitty-gritty details. Walt Wait had put together a series of flowcharts for the *Sustainable Growth Management Plan*, and has recently prepared one for the Code. You know the old adage that "a picture is worth a thousand words"; this plus some 'role playing' by County staff, an "applicant" and a "neighborhood" might be best able to see how this all works together. Then short circuits can be isolated and rewritten. Often the people closest to the writing are the least able to see the faults in a system.

Additionally, on the County website there aren't a lot of other comments to see what resonates. What are others focusing on? Have we missed the mark, or hit it? Developers, real estate agents have differing views and needs than communities.

I know that there are almost no water references in Chapters 1-4 and the Critical Decision Point for water has been relegated to a "Water Summit." This puts a lot of pressure on the County and the Communities to get this thing right. Then it must be translated correctly into Code.

The Agua Fria Village Association (AFVA) is the neighborhood association for the Traditional Historic Community as allowed for by our Agua Fria Community Plan. We appreciate everything the Board of County Commissioners, Manager, County Attorney, Land Use Administrator and County Planning staff has done for us. We feel that the vision of the Plan about Community Plans and their supporting organizations like COs, ROs and the COCO; represent a tremendous opportunity for communities. We look forward to formalizing this vision in the Code.

United Communities of Santa Fe County (UCSFC), of which AFVA is a member, is trying to work within the review process provided by the County and is approaching it with community by community reviews until we can pull together an overall review. One of the goals of the UCSFC is to protect the County from litigation from all players. Having a well thought out and well-written Code will meet this goal.

<end>

From: RIII [mailto:murlock@raintreecounty.com]
Sent: Wednesday, February 08, 2012 3:21 PM
To: Robert Griego
Cc: Penny Ellis-Green; William Mee; Todd Brown; WaltWait@q.com
Subject: Comments on SLDC Draft-chapters 1-4 from Cerrillos
Importance: High

Robert Griego
Santa Fe County Planning

Dear Robert and Staff,

Attached are comments on the draft SLDC chapters 1-4, from ourselves and Las Candelas de Los Cerrillos.

There's some good strong statements in these draft chapters, but other things of concern which we hope to bring to your attention.

In general, what we wish for in the code is fairness, fairness for citizens & communities regarding their participation, as well as for applicants, whether they be "the little guy" or a larger corporate enterprise.

Sometimes things reappear in this draft code that we'd all agreed to remove in the SGMP. For instance staff had agreed to fix this language problem: a *framing* of development applications as "development approvals", thus rendering the process non-neutral.

Another thing we've been concerned about is the fast-tracking of applications. Removed from the SGMP were directives regarding concepts of "concurrent" application and amendment processing un-related to Level of Service (LOS). We see these directives in the draft chapters. We are not convinced that safeguards are adequate to allow time for community coordination for review.

We will likely have other observations on these and future draft chapters.

Thank you for the opportunity to review & comment.

Ross Lockridge
Ann Murray
Members, Las Candelas
471-9182

Comments on Draft of SLDC 12.13.11, First 4 Chapters
By Ross Lockridge, Ann Murray and Las Candelas de Los Cerrillos
2/8/12

COMMENTS

1.2. AUTHORITY: The SLDC constitutes an exercise of the County's independent and separate but related police, zoning, planning, environmental, fiscal and public nuisance powers for the health, safety and general welfare of the County . . . .

Comment: Although public welfare appears covered in 1.4., 2nd sentence, under Purpose & Intent, should it also be included here? The last sentence (1.1) alludes to the County's "general welfare", not the public's welfare. People might assume that the public is covered here, but is it? As the County is a legal entity, is the public being intentionally left out here for sound reason?

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~~ application process.

Comment: there are no time "limits" (or suggestions that such be implemented) to be found or encouraged in the SGMP associated with development applications. Placing time limits on the processing of applications could have unintended consequences, for example, resulting in the approval of applications that might bring with them detrimental impacts to the public welfare.

Also, sometimes things reappear in this draft code that we'd all agreed to removed in the SGMP. Some language is a case in point. Staff had agreed to fix this language problem: a *framing* of development applications as "development approvals", thus rendering the process non-neutral.

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 ("CIP") and the Official Map established pursuant to the SGMP;

Comment: Should read as agreed with citizens in the past: "Require that no new development application shall be granted unless there is adequate...."

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 development 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;

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

1.4.2.15. Reconstitute the County Development Review Committee ("CDRC") as the County's 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~~;

1.4.2.27. 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;

Comment: could this be used to undermine Community Plans? Somewhere in the code, developments targeting Community Districts should have a Report demonstrating Consistency with Community Plans.

1.4.2.27.7. In the case of developments of county-wide impact ("DCI"), . . .
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 made or rendered unavailable for public or private water supplies.

1.5.4. Requires vertical and horizontal consistency of the SLDC and related land use....

Comment: could "vertical and horizontal consistency" be explained for laymen?

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

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. (emphasis added)

Comment: *"If the development approval is not completed"* What does the phrase mean? Does it mean If the application is not completed or approved within the time allowed...? or if the Development has not yet been built?

Should DCIs be listed under this provision?

1.12. CONCURRENT PROCESSING. One of the principal purposes of the SLDC is to encourage applicants to concurrently submit an application for multiple developments ~~approvals~~ on a single project in order to facilitate, speed up and make more efficient the development ~~approval~~ application process. Any application which includes requests for two or more developments ~~approvals~~ cumulatively must 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.

Comment: Here there is no mention of combining development applications with amendment applications which might be OK. But shouldn't there be a provision that if 2 or more applications on a single project are dependent on each other, but one does not get approved, then the project would be denied? A problem with concurrent applications could be that if one is approved, that might be used as argument to approve the other applications when they perhaps should not be approved. How guard against that possible abuse of concurrent applications? What are the unintended consequences of such fast-tracking?

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

1.15.2. 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~~. (emphasis added)

Comment: Such combined applications might remove incentive for developments to comply with existing community plans/ordinances. What are possible unintended consequences?

Note that contrary to the assumption expressed, the SGMP does not contain or address this "principal" of concurrent applications as expressed here and in 1.12. CONCURRENT PROCESSING. The SGMP does not use the word *concurrent* in this manner but clearly only in relationship with levels of service (LOS) as follows:

> "Adequate Public Facilities" and "concurrency" are two similar techniques that tie development pace and location to the availability of public facilities and services. Both terms refer to land use regulations that are designed to ensure that the necessary public facilities and services, at adopted levels of service required to support new development, are available and adequate at the time that development occurs." *--1 2 .2 .6 ADEQUACY AND CONCURRENCY [P. 104]*

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.

Comment: Here, it appears that *text* amendments can occur *any* time, rather than annually or biannually. But can't amendments to text & maps also happen at any time through the fast track device of concurrent development applications? See related 1.15.2.1.

1.15.3. Legislative Hearings.
[clip]
1.15.6. Decision. After receipt of the Planning Commission's 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. (emphasis added)

Comment: we remain concerned about concurrent applications especially were they are not connected with Level Of Service as in the SGMP.

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.

Comment: only 2 years? Note that elsewhere (1.5.13.) Reapplication is inconsistent with this.

CHAPTER TWO - PLANNING

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.

Comment: is this clear to anyone? Perhaps this should be redrafted, as follows (if this is the intention): "…and accompanies formerly approved developments 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.

Comment: *"not a component of the SGMP"* implies it's apart from the "constitution". Specific plans are mentioned in the SGMP under "14.4.5.2 OTHER PLANS: Specific plans process and procedures to create specific plans may be established through the SLDC. ...."

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.

Comment: if this (we underlined) is meant to or could result in giving an application for a Specific Plan type development authority over existing plans, such as Community Plans, this does not seem right. Such is not encouraged under the SGMP. Examples of Specific Plans might be useful.

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.

Comment: Is this (along with 2.1.2.2.2.) directing that, for example, a subdivision can then preempt, or undermine a community plan within or near the boundaries of a community district? Are they redefining the master plan process?

2.1.6. PLAN AMENDMENTS.

Comment: under this section, 2.1.6.1. ("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**."), with this kind of concurrent amendment ability, a developer would perhaps have less incentive to meet the zoning or other requirements of a Community Plan.

2.1.6.2. [1st paragraph clipped]

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.

Comment: Concerning applications "to amend any plan described in this Chapter" & "All such applications shall be considered twice a year." how does this square with the SGMP, as follows:

> 14.4.1.1 BOARD OF COUNTY COMMISSIONERS [p. 247]
> The Board of County Commissioners (Board), in addition to other powers and responsibilities, will have the following powers and duties in relation to the SLDC:
> -Initiate amendments to the SGMP for annual consideration.
> -Initiate amendments to the text and map of the SLDC after a recommendation from the Planning Commission; (emphasis added)

If the Board has such constraints, it seem counter intuitive that the PC would be working away on this 2 times a year. Arguments for a yearly rather than biyearly opportunity for amendments were persuasive during the drafting of the SGMP, but here they reappear but under the PC. Again, this use of the PC is not suggested under the SGMP as far as we have found.

Elsewhere in the SLDC applications for development & applications for amendments are to be concurrently processed. Are the applications being discussed here (2.1.6.2.) separate from those "concurrent" applications?

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.

Comment: often times a new application draws with it a new assemblage of people with pointed concerns about the application. Considering the fast-tracking intentions of processing applications, how are ad hoc organizations to be recognized in a timely manner?

A citizen should be able to request to be on a county public notice list.

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.

Comment: Membership of organizations often overlap. Some organizations are better equipped to deal with certain issues. As memberships will overlap, more than one organization should be allowed to represent the same or overlapping areas. We could have a situation where the County is empowering one organization and disenfranchising others. Under such stringent rules, the County, or corporate applicants might find it easier to cynically challenge the standing of organizations critical of their applications.

There should be a sentence that notes that all COs & ROs are not restricted from standing in cases that are outside their "boundaries" if they can show that the case would effect, or be of interest to them.

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

Comment: Don't we as US citizens, & citizens of the State already have many of the rights listed under 2.2.2.5.?

What if an ideologically or politically freighted BCC denies approval of a CO or RO because of, for example, overlapping geographical areas, is there any recourse besides appealing to District Court? See Comment, 2.2.2.2.

2.2.3. Registered Organizations.

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~~;

Comment: after discussion, this requirement (the strikethrough) was removed from the SGMP. Hopefully this is just a mistake. It's data mining and unethical considering that many ROs membership lists are held in confidence with the understanding that lists will not be shared or placed in the public record. Would the same be ask of a corporate applicant to list the e-mail addresses of all the owners & stockholders?

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.

Comment: If there isn't one, there needs to be an appeal process included.

CHAPTER THREE - DECISION-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.

[clip]

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.

Comment: this sounds good. One thing this may relate to is the restricting of Commissioners (representatives) to receive opinions, persuasions from their constituents from the moment a discretionary application is submitted. If this is the case, this is especially of concern if citizens are not notified that pre-application meeting are underway with the county. During this time, an applicant is presumably free to associate with and lobby commissioners directly. How in the code is this inequity to be balanced especially considering the fast-tracking processes that are being considered? [This comment might also be reflected upon in the citizen participation & applicant sections of the code.]

3.3. PLANNING COMMISSION

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

Comment: "To make decisions...."? Not *recommendations* on appeals to the BCC? Or is the thinking that the PC would make a decision on an appeal, that then could be appealed to the BCC authorized under a different statute? We would encourage this.

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. (emphasis added)

Comment: "other persons with standing" What feels missing in 3.3.4.5. is the general public who speaks before the PC during a hearing. It's as if to say that the general public has no standing.

3.4.3. Technical Advisory Committee.

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.

Comment: "[S]tate or federal agencies" "and persons possessing necessary technical expertise." Yes, persons with knowledge and concerns for ecology could be brought into the TAC as needed, but considering its importance, shouldn't such representation be listed in this SLDC statute that highlights that often needed representation?

"[A]cequia associations" Why not "acequia associations and Mutual Domestic Water Associations"?

Perhaps a member, advocate for the public should also be present, depending on what is decided regarding public notice which is lacking in 3.4.3.3.

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 Administrator.

Comment: Short of researching the Open Meetings Act, in the pre-application process it appears that an applicant can appear before a TAC behind closed doors & without any public notice. If this is true, this should be regarded as a mistake and addressed in the SLDC.

It's understandable that an applicant could greatly benefit knowing of technical considerations, requirements before investing in an application or a final application, but the public should have the opportunity to view the agenda in a timely manner and to sit in on these TAC meetings. Also, the public should be able to read any package materials, if any, that the applicant might provide to the TAC before or at the meeting. It seems that the TAC members, to do their job well, would need some such materials.

"...as provided by the Administrator". This seems confusing. What is being provided by the Administrator?

Perhaps a citizen representative should be included in the TAC.

4. CHAPTER FOUR - PROCEDURES

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~~ Required.

Comment: "Approval Process"? This appears to be just a mistake, as 4.2 is titled "Approval Required". As elsewhere and repeatedly, the first use in 4.3 of the word "approval" is also redundant if not freighted.

4.5. PROCEDURAL REQUIREMENTS.

Comment: Shouldn't there first be instructions for an applicant on who they should first contact at the County? As the Administrator will perhaps need to adjust or add to the TAC the necessary expertise for a particular application, what could aid him/her in making that determination short of a pre-application draft?

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.

Comment: See comment with 3.4.3.3. regarding transparency.

4.5.4. Pre-Application Neighborhood Meeting.

Comment: "Neighborhood" seems limited in scope. "Neighborhood" might be fine for many applications, but if an application could have more than "Neighborhood" impacts, perhaps the title should include Community, ie. "Neighborhood or Community 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:

Comment: There must also be included a requirement for public notice posted where it is visible for reading along the property. Where is the required CONTENT of the public notices to be listed; or have we just missed it?

4.5.4.1.1. The applicable CO and/or RO.

Comment: It's not mentioned who is responsible for notifications of pre-application meetings and there is no time line, like "notifications shall be posted not less than one month before the meeting date". Such phrases as "giving reasonable time" are too vague. Concerning COs & ROs, there should be several notices sent to each organization to cover in case one person is on vacation.

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

Comment: We don't find 4.14?

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.

Comment: concerning the sequence of events, this may seem reasonable, however minimal time frames should also be considered especially between the pre-application meeting and the submitting of the application. Again (as in comments for 3.2.3. Conflict of Interest) citizens could be barred unduly from speaking of their concerns with their elected representatives; whereas, an applicant could have all the time they want to lobby these representatives through the TAC period and prior to submitting the application. How can fairness, balance be woven into the code?

4.5.4.4. Materials for the Pre-Application Neighborhood Meeting. The applicant shall prepare an adequate number of the plans for distribution described below of the proposed development in rough format to present during the meeting. Plans should include....

Comment: "to present during the meeting" There could be little or no time for the public to review materials, to ask enlightened questions. Any prior knowledge would have to have been sent or posted with the public notice and afforded by needed transparency provisions, or the press, etc.

What if the proposal is a DCI?

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:

[clip]

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

Comment: Copies of larger displays shown to the public, but not distributed at the meeting, should also be included with the Report.

4.5.5. Application

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

Comment: this implies that the public could be restricted from seeing materials submitted by an applicant for perhaps lengthy periods. This could greatly reduce the time that the public could have for review of an application. It could be withheld due to slight incompleteness. Meanwhile, the public is held at a distance.

Is it fair that the Administrator be set apart from any public input regarding completeness of an application? 4.5.5.3. suggests that even if an applicant appeals a final determination to the Planning Commission, the public could still be blocked from seeing the application until the PC rules it "complete".

With transparency in mind, applications and related materials should be open to public review at any stage in the application process.

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

Comment: Where should borrow areas be located in this table?

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 Administrator's discretion, refer an Application that is committed to the Administrator's authority for review and final action to the Planning Commission or the Board of County Commissioners.

Comment: Suggested addition, "The Administrator may, in the Administrator's discretion, in accordance with Table 4-2, refer an Application that is committed to the Administrator's authority for review and final action to the Planning Commission or the Board of County Commissioners."

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).

Comment: This seems inconsistent with 1.15.7.3.3. that calls for a 2 year gap. Two years is more reasonable and might lend an applicant to take more seriously a first application.

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.

Comment: "... within five (5) working days of the date of the decision" is too short a time period. How are the decisions by the Administrator to be made public? Given the answer to that, then reconsider the time frame to file an appeal. There was abuse of that kind of invisible decision making coupled with a 5 day appeal period in Cerrillos years ago that have had long-term repercussions.

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.

Comment: Again, a 5 day deadline for an appeal here seems meaningless and overly protective. See William Mee's comment, 2/6/12

4.7. NOTICE.

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.

Comment: Is this a generally used and accepted time frame for notice of public hearings? Likewise, 15 days for 4.7.3.2., 4.7.3.3., 4.7.4.1., 4.7.4.4. Twenty-one days for 4.7.5.1., and back to 15 days for 4.7.5.2. These time periods seem only marginally adequate.

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.

Comment: "Reasonable effort"? Considering all the detailed requirements placed upon being COs and ROs to be recognized by the County, an undefined "reasonable effort" seems a thin return. There needs to be better defined what's reasonable. Also Notice would be more likely to happen if this responsibility was clearly delegated in the code. We're pleased to see "all persons" included in this statute.

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

Comment: in both 4.7.4.2. Certified Mail, and 4.7.4.3. First Class Mail, notice of the public hearing shall be mailed by whom?

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.

Comment: in this scenario there is no meaningful mailing verification. The larger the project, the less effective becomes verification of the notice. To make this notice credible, perhaps the applicant could prepare the first class mailing along with a check-list and hand these in to the Administrator to check & post.

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.

Comment: Again, as in 4.7.3.4., the phrase, "Reasonable effort shall be made to give notice" should be strengthened with perhaps "not less than ___?___ weeks before hearing" and the responsibility should be clearly delegated in the code. The same comments would apply to 4.7.5.3. Supplemental Notice. See William Mee's comment, 2/6/12

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. ....

Comment: "subject" (type of land use) and "land use" should be added to the list, "In all cases...."

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.

Comment: No under oath testimony? Time limits for testimony completely discretionary?

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.

Comment: this shows again a misuse of the word *approval*. Should read "requiring final action" in both instances highlighted above. We ask that staff search the word "approval" through all chapters and make the necessary and agreed-to clarifications.

Apparently the Planning Commission can't table an application to a 3rd PC meeting. Hopefully the BCC will continue to have discretion.

4.8.2. Quasi-Judicial Public Hearings / 4.8.2.1. Conduct of Hearing.
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.

Comment: is this last sentence really fair under all circumstances? It seems inconsistent with the preceding directives. Also what is the meaning of the phrase, "where all such opinions are favorable"? If an agency issues an unfavorable opinion, why should that be reason to postpone a hearing?

Thanks for the opportunity for review and comments.

From: William Mee [mailto:williamhenrymee@aol.com]
Sent: Monday, February 13, 2012 9:55 PM
To: Robert Griego; MANAGERS OFFICE; Penny Ellis-Green; Stephen C. Ross
Cc: EFHirsch@gmail.com; cedickens2@yahoo.com; White@grappawireless.com; vicente.roybal@gmail.com; WaltWait@q.com; murlock@raintreecounty.com; r.n.olson@att.net; hamonyank@cybermesa.com; tocino8@cnsp.com; tortuga@cnsp.com; LynneNambe@cybermesa.com; spontasue@gmail.com; ellen@newmexico.com; drillingsantafe@earthlink.net; AmeliaJacona@aol.com; bill.baker@prodigy.net; duncancam@comcast.net
Subject: Review of drfat Chapters 1-4 of the SLDC

United Communities of Santa Fe County
P.O. Box 102
Tesuque, N.M. 87574

Mr. Robert Griego
Santa Fe County Planning

February 13, 2012

RE: Draft Chapters 1-4 of the SLDC

Dear Robert,

Attached is a summary matrix of comments from the United Communities of Santa Fe County (UCSFC) in reference to the draft Chapters 1-4 of the proposed *Sustainable Land Development Code*. As we approached the task of reviewing these Draft Chapters, we kept in mind that our aim was to assist the County in terms of identifying any areas that might be further strengthened – both for fairness of citizens and for protection and ease of use by the Board of County Commissioners and Staff. To that end, we have organized our comments into three (3) categories:

- Clarity (**C**): phrases which may need to be re-worded to promote clarity of meaning, or phrases or sentences which may need a different word choice to promote clarity of meaning;
- Timelines (**T**): areas where timelines or deadlines may be unclear, absent, or might be re-thought in terms of realistic achievement or fairness to citizens involved in the zoning process; and
- Process (**P**): areas which may need to be expanded upon to explain how a step or activity actually gets done or is performed, and/or by whom. There are a number of Process questions, and perhaps a separate Operations Manual needs to be written to support sections of the Code that need more detail.

Re-calling our in-depth participation during the development of the *Sustainable Growth Management Plan*, and the meetings and discussion between Staff and the United Communities representatives, we would like to suggest a similar process for reviewing these comments. We do believe our prior discussions were quite helpful in finalizing the Plan, and believe we should continue this dialogue in forming the Code component of the Plan. We certainly recognize the pressure Staff must be under to complete these Draft Chapters, and are very willing to work around your schedule. We are also

available for any quick clarifications or questions you may have about any of the comments on the attached document.

Additionally, we have included three Flowcharts prepared by Walt Wait of the San Marcos Association. These are drawn based on the exact wording in the Code and show: the duplication of efforts, gaps in procedures and the lack of oversight in the processes outlined for each flowchart.

We look forward to discussing how we might go forward with this process of Code Review. Our designated Points of Contact are: Roger Taylor for the matrix and Walt Wait for the flowcharts.

Best Regards,

William H. Mee for the Steering Committee
United Communities of Santa Fe County
(505) 473-3160

UCSFC Steering Committee:
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UCSFC Leadership Team:
Is the UCSFC Steering Committee
Plus
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Energy Committee Chairperson:
David Bacon, San Marcos District, tocino8@cnsp.com,
Sustainability Committee Chairperson:
Eduardo Krasilovsky, El Dorado Energy Co-Op, tortuga@cnsp.com,
County Review Committee Chairperson:
Lynne Velasco, Nambe, LynneNambe@cybermesa.com,
Local Sustainable Food Committee Chairperson:
Sue Barnum, Tesuque, spontasue@gmail.com

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Bill Baker, San Pedro, bill.baker@prodigy.net,
Cam Duncan, Tesuque, duncancam@comcast.net,

The UCSFC is comprised of representatives of many of the area's community groups, and is dedicated to the advancement of, and protection of the current residents of Santa Fe County.

CATEGORY	CODE REFERENCE	COMMENT
C	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. ….	**Because the Code is "predicated" on the Plan, the code should reference the plan whenever possible.**
C, P	1.4.2. The SLDC Shall: 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**
C, T, P	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?**
C, P	1.4.2.9. Establish rights for communities, community organizations, registered organizations, acequia associationís, Tribal governments, adjoining property owners, neighborhood and homeowner associations	**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**

	and non-profit organizations with respect to attendance at pre-application meetings with applicants for development approval;	**resulting in development order approval.**
C, P	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 (ìEIRî) 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 (ìFIAî) 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 (ìAPFAî) 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 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.**

	1.4.2.27.5. 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 (ìDCIî), 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.	
C, P	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 updates? Does the BCC have to reinstate or in many instances re-create the community planning committees?**
C, P	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 interpreted, 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.**
C	CHAPTER TWO : PLANNING 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.**
C	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	**There is an assumption that original planning committees are on-going and will remain so indefinitely. This is not true.**

Comment [1]:
Walter Wait Jan 8, '12, 3:52 PM

	of County Commissioners.	
P	2.1.6. PLAN AMENDMENTS. 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. 2.2.2.13. The right to participate in CO leadership retreats and training programs which may include an annual Congress of Community Organizations, as applicable.	**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.**
C	2.2.3. Registered Organizations. 2.2.3.1. Registered Organizations (ROs) are hereby established. 2.2.3.2. A Registered Organization (ìROî) is any organization (unincorporated association, partnership, limited liability company,	**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.**

	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. 2.2.3.3.4. 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;	
C	2.2.3.3.5. A signed copy of the relevant organizing documents of the RO;	**"Relevant Organization Documents" - could this be a one page statement from an individual announcing his or her intention of advocating a specific land use position whereby notification of an applicant's intent is desired?**
C	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.**
C, T, P	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	**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 the agenda. How long will anyone have to prepare a response?**
T. P	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	**Are there time limits to this?** **Are there procedures**?

	specified in County Code of Conduct. 3.3. PLANNING COMMISSION. 3.3.1. Creation and Responsibilities. There is hereby created a County Planning Commission (ìPlanning Commissionî) 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: 3.3.2.6. To make decisions on appeals from final decisions of the Administrator.	
C	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.**
C, P	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 the County Manager" and APPROVED by the CC.** **Can the Administrator delegate responsibility to a contractor/consultant? This would not be good and would probably be struck down in the courts.**
C, P	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,	**There is discomfort with such a brief description of the administrator responsibilities**

	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.	**Is there a process identified in the code that refers to just how the administrtaor shall ' hold and determine the adequacy of security instruments? Are "security instruments" defined in the appendix?.** **What is the relationship between the administrtaor and the County Clerk's office – assuming this person 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? Is there a process?**
C	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/**
C, P	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 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?
T	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: 3.5.2.1.1. a major subdivision;	Are **there any time limits to this process?**
C	4. CHAPTER FOUR - PROCEDURES 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 ß 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	**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.**

	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.	
C, T	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**
C, P	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?**
C, P	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**
C, P	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	**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?**

	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;	
C, P	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 requests 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.
C, P	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** **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**
C	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.
C, P	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.	T**here 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".**
C, P	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.**
C, P	4.5.5.2. Attachments. Before an application will be considered or processed it must contain all attachments required by the SLDC.	**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**
C, T, P	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.**
C, P	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.**
C, P	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?**

C, P	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	**Concers here 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.**
C, T, P	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 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 for appeal except through the courts. Is this what is intended?
C, T, P	4.5.6.7.1. Office of the New Mexico State Engineer (OSE); 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	**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.**

	authority for review and final action to the Planning Commission or the Board of County Commissioners.	
C, P	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?**
C, P	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 that the development order be mailed to any entity with standing. How else would these organizations gain knowledge of the development order.**

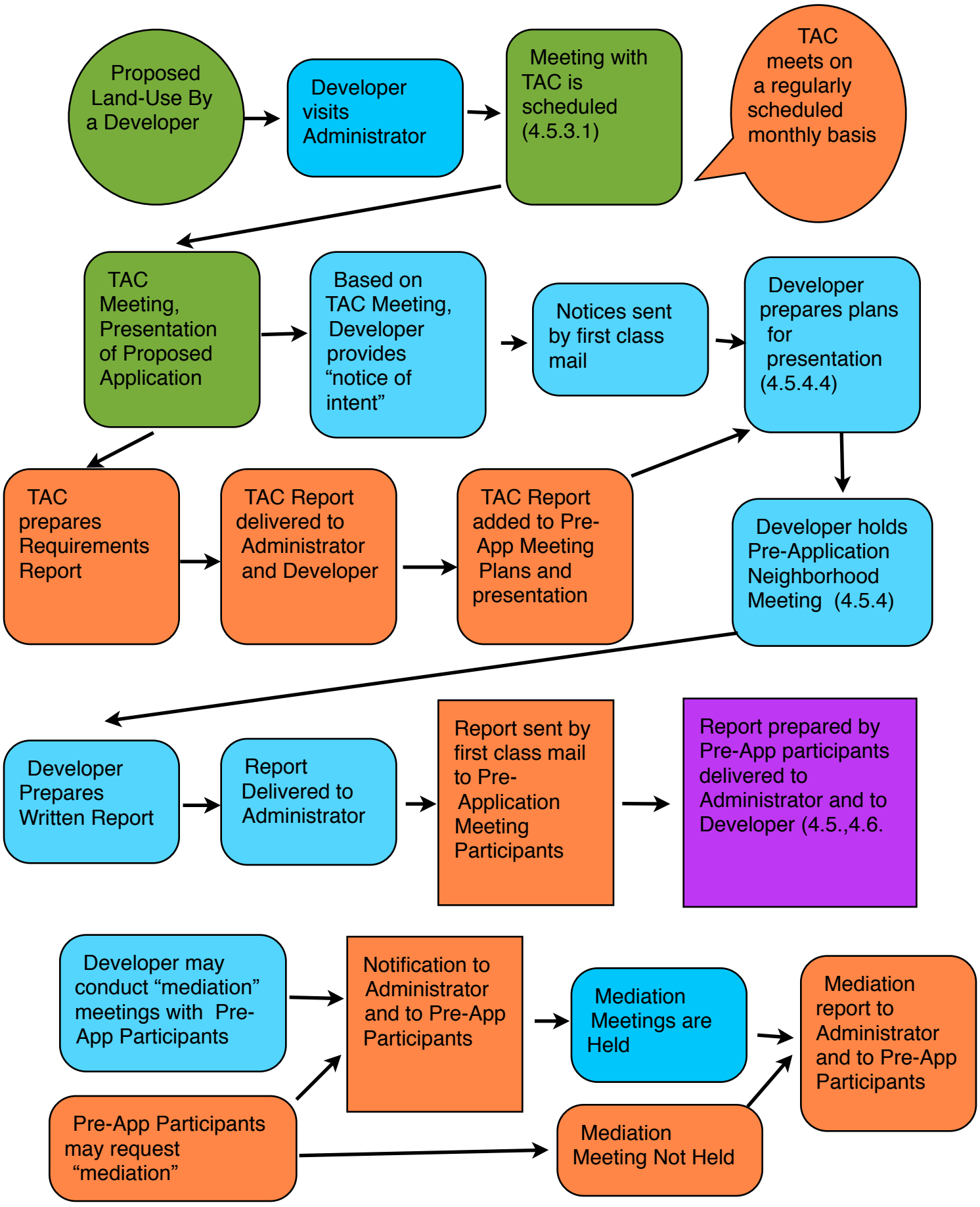
C, T, P	4.6.3. Time Limit. Consistent with notice, the Board or Planning Commission shall place the appeal on the next available agenda. Any appeal to the Board shall be decided within thirty (30) days from the time the appeal is filed with the Administrator.	**what happens if the Board or Planning Commission does not set the appeal for the next session. Is it reasonable to expect that the Planning Commission could place an appeal on their agenda within thirty days?**
C, T, P	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.**
T	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**
C, T, P	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.	**4.7.3.4** **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".**

	4.7.3.3. 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.	
T	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.** **Reasonable effort needs to be defined clearly**
C	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**
C	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
C, T, P	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). 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	**If the 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".** **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, interogatories, 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.**

	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; 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.	


Proposed Land-Use By a Developer
Developer visits Administrator
Meeting with TAC is scheduled (4.5.3.1)
TAC meets on a regularly scheduled monthly basis
TAC Meeting, Presentation of Proposed Application
Based on TAC Meeting, Developer provides "notice of intent"
Notices sent by first class mail
Developer prepares plans for presentation (4.5.4.4)
TAC prepares Requirements Report
TAC Report delivered to Administrator and Developer
TAC Report added to Pre-App Meeting Plans and presentation
Developer holds Pre-Application Neighborhood Meeting (4.5.4)
Developer Prepares Written Report
Report Delivered to Administrator
Report sent by first class mail to Pre-Application Meeting Participants
Report prepared by Pre-App participants delivered to Administrator and to Developer (4.5.,4.6.
Developer may conduct "mediation" meetings with Pre-App Participants
Notification to Administrator and to Pre-App Participants
Mediation Meetings are Held
Mediation report to Administrator and to Pre-App Participants
Pre-App Participants may request "mediation"
Mediation Meeting Not Held

The Flow Chart is drawn from the Santa Fe County Sustainable Land Development Code Draft 12/13/11. It is designed to illustrate potential processual flaws that might lead to unnecessary confusion in implementation. Color coding is as follows:

Green = County Process
Blue = Land Use Applicant Process
Orange = Procedure not covered in the draft
Purple = Person or Organization with Standing

The first procedural flaw concerns the notion that TAC is either (1) a standing body that meets regularly) or (2) a body that is convened by the Administrator, when needed. Since TAC plays an important role in providing direction to the applicant in terms of what reports, assessments, and meeting reports will be required in order for the administrator to process an application, it is important to clarify TAC's role.

If TAC meets at the discretion of the Administrator, it could easily become a vehicle to delay an application's process.

A second procedural step, missing from the draft code, would require TAC to deliver a report that details any requirements that the meeting spells out. It would be this report that would follow the application and permit the administrator to determine if all "completeness"requirements have been met.

The second procedural flaw in this example is that review of the reports and Assessments does not clearly include Community Organizations in the review process (4.5.6.7) unless "CO"s are defined as a "public Agency" (4.5.6.7.7). If this is the case, then Public input is limited to the BCC quasi-judicial public meeting.

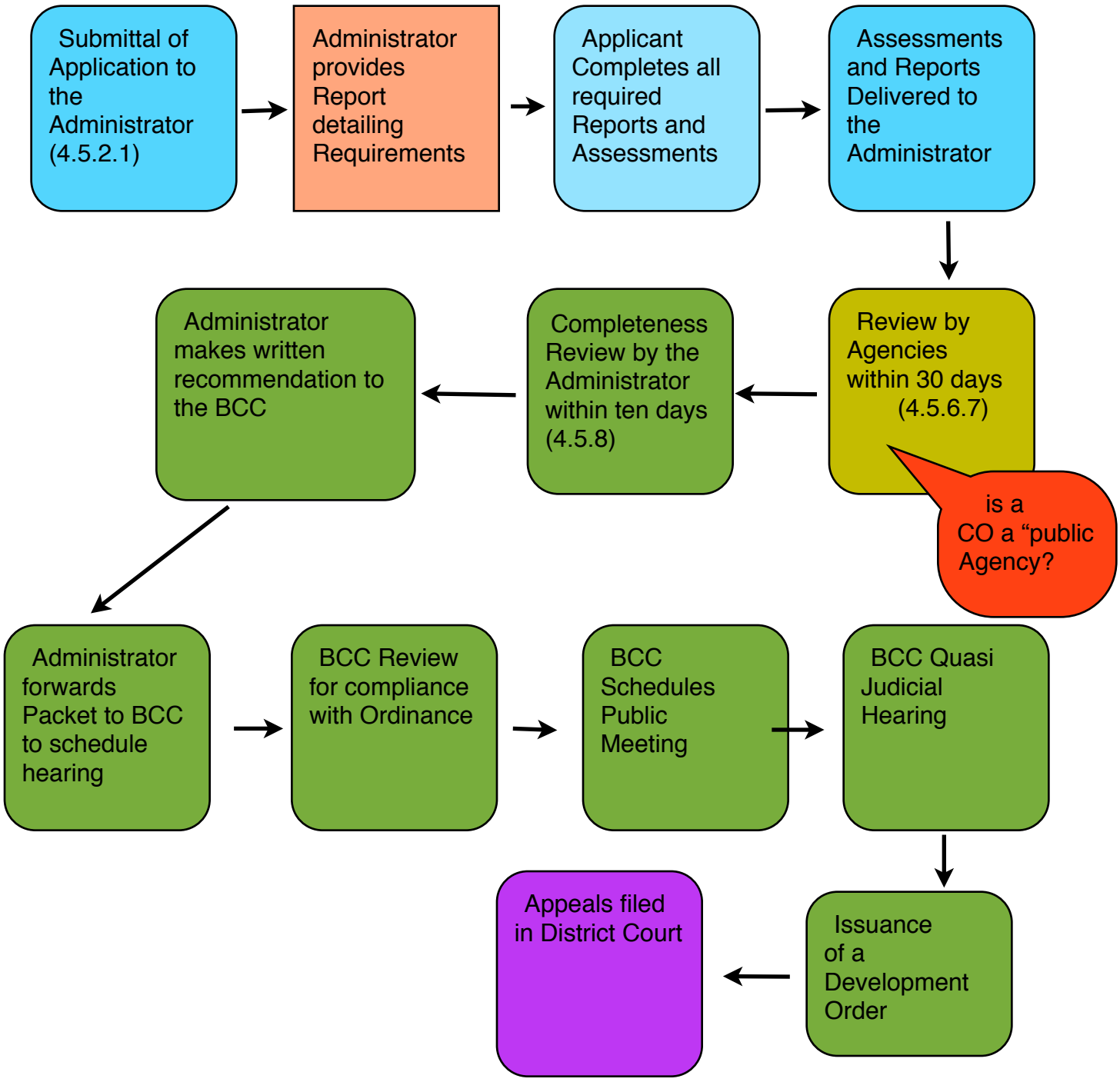
The report should also be a required addition to any "packet" supplied at the required pre-application Neighborhood meeting. This meeting would be the time for any person or group with standing to challenge the TAC's requirements and to petition the applicant for additional reports.

There is no requirement in the draft for the report produced by the applicant detailing the results of the Pre-Application Neighborhood Meeting to be sent to the persons or groups with standing. By making this a requirement, interested parties could judge the accuracy of statements made by the applicant and would then have the opportunity to provide their own report.

Should "mediation meetings occur, no requirement can be found in the draft code to report the results to the Administrator. Neither is there any requirement for notification of persons with standing. There is no process identified for persons with standing to

request arbitration. Refusal to agree to agree to an arbitration meeting should play a part in later decisions regarding the issuance of a development order.

Minor Sub-Division Plat



The Flow Chart is drawn from the Santa Fe County Sustainable Land Development Code Draft 12/13/11. It is designed to illustrate potential processual flaws that might lead to unnecessary confusion in implementation. Color coding is as follows:

Green = County Process
Blue = Land Use Applicant Process
Orange = Procedure not covered in the draft
Yellow = Outside Agency
Red = Interpretation Question

The first procedural flaw in this example is that the elimination of the TAC conference also eliminates a clear process that would instruct the applicant as to what Reports and Assessments would be required for a successful submission. There is an assumption that the Administrator would provide such written instruction, but it is not detailed in the Code. Giving the Administrator the license to direct which reports and assessments need to be provided means that there would be no administrative appeal process to follow. The applicant would have to appeal to the Planning Commission, which would probably result in the need for a hearing.

It is recommended that any Land-Use application that follows procedures outlined in 4.5.7 Table 4.2 that specifically states that a quasi-judicial hearing is required also require a TAC meeting.

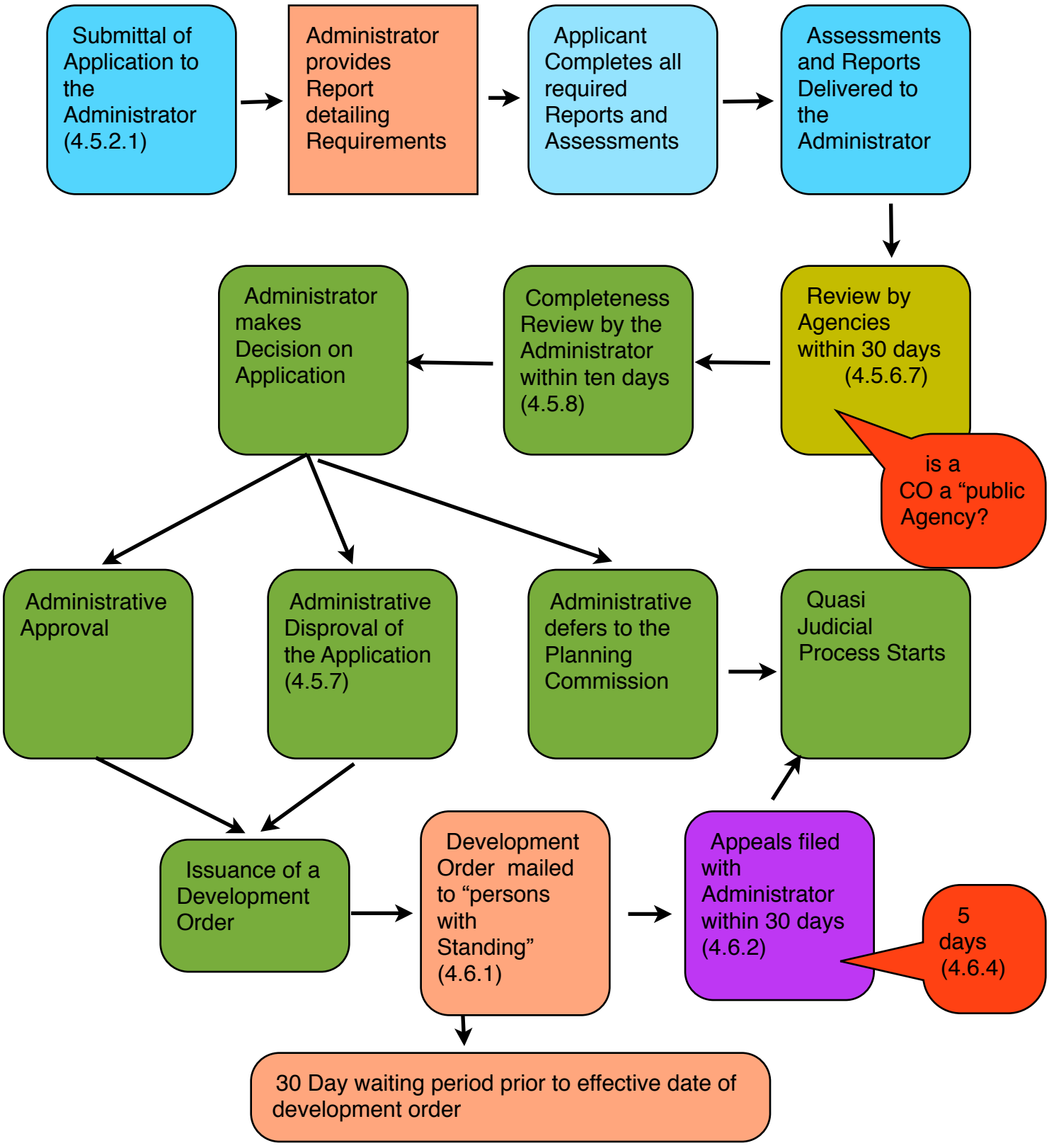
The second procedural flaw in this example is that review of the reports and Assessments does not clearly include Community Organizations in the review process (4.5.6.7) unless “CO”s are defined as a “public Agency” (4.5.6.7.7). If this is the case, then Public input is limited to the BCC quasi-judicial public meeting.

It is recommended that CO’s that have “standing” be included in any review of submitted reports and assessments.

By having the administrator by-pass Hearing Officer, and Planning Commission Recommendations, the process leaves no County Based appeal process for either the applicant or the community. Any differences of opinion must be settled in court. This is not good governance.

It is recommended that any process outlined in 4.5.7. Table 4.2 be first heard either by the Administrator, a hearing Officer, or by the Planning Commission. This would leave the BCC as “appeals court”.

Family Transfer Application



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Yellow = Outside Agency
Red = Interpretation Question

The first procedural flaw in this example is that the elimination of the TAC conference also eliminates a clear process that would instruct the applicant as to what Reports and Assessments would be required for a successful submission. There is an assumption that the Administrator would provide such written instruction, but it is not detailed in the Code. Giving the Administrator the license to direct which reports and assessments need to be provided means that there would be no administrative appeal process to follow. The applicant would have to appeal to the Planning Commission, which would probably result in the need for a hearing.

It is recommended that any Land-Use application that follows procedures outlined in 4.5.7 Table 4.2 that specifically states that an administrative decision is required, require the administrator to provide a written “requirements” list of Reports and Assessments to the applicant and to any organization “with standing”.

The second procedural flaw in this example is that review of the reports and Assessments does not clearly include Community Organizations in the review process (4.5.6.7) unless “CO”s are defined as a “public Agency” (4.5.6.7.7). If this is the case, then Public input is limited to the appeals process.

It is recommended that “organizations with standing” be added to 4.5.6.7.7.

The third procedural flaw is that once a development order is produced by the administrator, there is no “waiting period” required even though 4.6.2 allows a thirty day filing period for appeals. 4.6.4 only allows a five day appeal period and this discrepancy will cause confusion. adjunct to this, there is no requirement for the development order notification to be sent to any party with standing. How then, would appeals be considered?

All of Family Transfer requirement hinges on the State Requirement that (I believe) allows transfers to take place only if the transfer is above half the zoned requirement. If the Code is actually going to provide zoning, then this requirement surely must be included in any administrative finding of fact.

From: walter wait [mailto:waltwait@q.com]
Sent: Monday, February 27, 2012 12:11 PM
To: sma-board
Cc: Robert Griego
Subject: example problems with Code Process

Enclosed is an example of weaknesses in the proposed 2011 county code draft. It's just one example.but it's illustrative.

An example of "Process" problems with the 2011 Draft Code

10.9.12 of the 2005 code draft states that "all subdivisions that do not qualify as a summary subdivision, family subdivision, vacation plat, subdivision of plat amendment require application and processing in accordance with the major subdivision requirements..." A "Summary subdivision" is described in 10.9.8 as a type 3 subdivision with five or fewer lots and all type 5 subdivisions with 5 or fewer ,lots.

Section 47-6-2, New Mexico State Statues, Definitions, describes a a type 3 subdivision as " any subdivision containing not more than twenty four parcels, any one of which is less than ten acres in size". A type five subdivision means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size.

If we assume that the 2005 code draft is based on existing County ordinance, then the term "minor subdivision plat" found in table 4-1 under 4.5.2.1 of the 2011 code draft refers to Type 3 subdivisions with five or fewer lots at least one of which is under ten acres,and type 5 subdivisions with 5 or fewer lots, where the parcels are all ten acres or more in size. Neither the 2009 code draft or the 2011 code draft define "minor subdivision".

The 2011 draft requires that minor subdivision applications go through a quasi-judicial procedure as part of any approval process (4.5.7. Table 4.2). However, that same table indicates that such an application would not be subject to any of the requirements outlined in Table 4.1 as listed below:

Approval by an administrator
Hearing before a hearing officer
Hearing before the planning commission
Pre-application TAC meeting
Pre-application Neighborhood meeting

The 2011 draft indicates that a minor subdivision application would be required to have a completeness review, agency review, required studies and reports, and a quasi-judicial hearing before the Board of County Commissioners.

The approved 2010 County Plan States the following in 14.4.3.3:

The Quasi Judicial process will be detailed in the SDLC to ensure that both the applicant and any protestant will have sufficient opportunity for discovery and have equal opportunity to present their case before a hearing officer. The quasi-judicial process will:

1. afford the applicant with sufficient opportunity to present evidence supporting the application;
2. Afford potential protestants with timely notification of the quasi-judicial process;

3. afford both applicant and protestants sufficient time for discovery and other aspects of due-process;
4. Insure that the County shall provide a Hearing Officer, hearing date or dates and sufficient time to hear arguments for and against the application; and insure that the hearing officer shall prepare a written "recommended development order" for consideration by the Planning Commission"

The guidance provided by the approved plan clearly indicates that Quasi-Judicial Development Applications should be heard by a hearing officer first, who would then make a "recommended development order" to the Planning Commission- not the Board of County Commissioners.

By eliminating the TAC and Pre-Application Meetings as required under draft code 2011 4.5.1.1, the code would make it difficult for a protestant or an applicant to conduct discovery or to provide input into a packet that an administrator could declare "complete".

Tables 4.1 and 4.2 clouds and confuses the approval process found in 4.5.1., eliminates any procedures for non-judicial challenges to a County Decision. This appears to contradict the intent of 4.6, APPEALS in draft Code 2011

Draft 2011 Code 4.8.2. entitled Quasi-Judicial Public Hearings, does not allow either a protestant or an applicant to review materials submitted as evidence at the hearing. There does not appear to be any structure in the draft code that would permit such discovery or time to respond to such discovery. This is clearly directed in the approved County Plan. There is a hint in Draft 2011 code 4.8.2.2 where it states " For an application for approval of a preliminary plat, the first public meeting must take place within thirty days from the receipt of all requested public agency opinions...." The operative word "first" implies that there would be more than one public hearing. However, this statement only appears to relate to preliminary plats and not to "minor subdivision plats", and there is no other reference to multiple hearings in the draft.

The process outlined for "minor subdivision plats, would require that the Board of County Commissioners to prepare written findings describing and supporting their action for every minor sub-division application, would prevent an administrator or hearing officer or the Planning Commission from conducting hearings and making recommendations to the Board and would otherwise completely confuse the County, the applicant, and the public.

Finally, as to definition. Based on the definition provided in this paper, "minor subdivision plats will probably form the bulk of the applications processed by the County. These types of subdivision, along with family transfer, are generally of great interest to neighborhoods interested in preserving existing densities. To eliminate the very processes that would permit thorough review of these applications is inappropriate.