

SANTA FE ASSOCIATION OF REALTORS®

MEMORANDUM

Revised County Sustainable Land Development Plan Santa Fe, New Mexico

August 20, 2010

BACKGROUND

Santa Fe County is proposing to revise and update its current General Plan with a new plan entitled “The Sustainable Land Development Plan.” The 2010 SLDP Final Draft is proposed as “a comprehensive revision and update of the Santa Fe County Growth Management Plan (General Plan) adopted in 1999.”¹ As stated in the 2010 SLDP Final Draft:

The SLDP, and all future amendments to the SLDP, including the Official Map and Capital Improvements Plan (“CIP”), which will be separately adopted, will comprise the constitution for, and controlling document over all planning, environmental, public facility and service, fiscal, land use, housing, resource conservation, renewable energy and green development legislation, administrative regulation, and development approvals, financing and fees.²

The 2010 SLDP Final Draft is composed of the following parts:

- Chapter 1: A Sustainable Future for Santa Fe County
- Chapter 2: Land Use Element
- Chapter 3: Economic Development Element
- Chapter 4: Agricultural and Ranching Element
- Chapter 5: Resource Conservation Element
- Chapter 6: Open Space, Trails, Parks and Recreation Areas Element
- Chapter 7: Renewable Energy and Energy Efficiency Element
- Chapter 8: Sustainable Green Design and Development Element
- Chapter 9: Public Safety Element
- Chapter 10: Transportation Element
- Chapter 11: Water, Wastewater and Stormwater Management Element
- Chapter 12: Adequate Public Facilities and Financing Element
- Chapter 13: Housing Element
- Chapter 14: Governance Element
- Chapter 15: Implementation
- Appendix A: Participation and Acknowledgements

Chapters 2 through 14 address the elements of the 2010 SLDP Final Draft. Each chapter contains a list of goals, policies, and strategies. Various figures and maps are incorporated into the plan as well.

¹ 2010 SLDP Final Draft at 1.

² *Id.*

EXECUTIVE SUMMARY

New Issues. In this memorandum, we identify and address four new issues: (1) the 2010 SLDP Final Draft's approach to public facility financing is poorly supported and too burdensome on new development; (2) Policy 40.6 in the 2010 SLDP Final Draft, which requires that the APF assessment "ensure that the cumulative impacts of development are measured and considered," is undefined as to scope and the 2010 SLDP Final Draft does not provide any guidance as to how "cumulative impacts of development" are to be "measured and considered"; (3) Policy 41.1 in the 2010 SLDP Final Draft, which requires that new development provide for and finance improvements consistent with the degree of impact to public services and/or infrastructure *indirectly* attributed to the project, may not be authorized under the New Mexico statutes; and (4) the 2010 SLDP Final Draft's proposed "Binding Principles" concept is unnecessary and questionable as the basis for consistency determinations under the New Mexico statutes.

Previously Identified Issues That Remain Unaddressed. We also re-state the following previously identified issues, with comments adjusted, as appropriate, to reflect the extent to which these issues have been addressed in the 2010 SLDP Final Draft: (1) the 2010 SLDP Final Draft's explanation of levels of service for the Adequate Public Facilities program is inadequate and confusing; (2) the 2010 SLDP Final Draft proposes consistency review requirements that are burdensome; (3) the 2010 SLDP Final Draft's analysis of future growth in the County is based on what appears to be questionable data; (4) the 2010 SLDP Final Draft creates a complex administrative process for development review and approval that will increase the cost of development and may be difficult for the County to implement; (5) the 2010 SLDP Final Draft continues to lack appropriate administrative appeal standing requirements for Community Organizations; and (6) the County has not yet made available larger scale copies of the maps for public review and/or provided a web-based GIS application for viewing the maps in greater detail.

Previously Identified Issues That Have Been Addressed. We also discuss, at the start of the analysis in this memorandum, three issues that have been addressed in the 2010 SLDP Final Draft: (1) the removal of Specific Plans as the primary vehicle for mixed use and transit oriented development; (2) the revision of many of the SLDP's Sustainable and Green Development requirements; and (3) the clarification regarding the use of the Sustainable Land Development Suitability Model.

ANALYSIS

PREVIOUSLY IDENTIFIED ISSUES THAT HAVE BEEN ADEQUATELY ADDRESSED IN THE 2010 SLDP FINAL DRAFT

The 2010 SLDP Final Draft has addressed several issues previously raised in prior Memorandums. Specifically:

Removal of Specific Plans as Vehicle for Mixed Use/TOD. The 2010 SLDP Final Draft has removed the use of specific plans as the primary means by which mixed use and transit oriented development would be proposed in the County.

Instead, the 2010 SLDP Final Draft incorporates the use of mixed use zoning and proposes a host of incentive programs to be incorporated into the Sustainable Land Development Code to encourage mixed use and transit oriented development.

Revision of Sustainable and Green Development Requirements. The 2010 SLDP Final Draft revises several of the potentially burdensome requirements and policies related to sustainable and green development, modifying many of the Minimum Energy Efficiency Requirements that must be fulfilled as part of the site plan approval process.

Clarification Regarding the Use of the Sustainable Land Development Suitability Model. The 2010 SLDP Final Draft amends certain provisions related to the use of the Sustainable Land Development Suitability Model, clarifying that the model is not suitable for use in the evaluation of individual development approvals and discussing an approach for future updates to the model and weighting of the input factors.

However, there are other issues we previously identified that are not adequately addressed by the 2010 SLDP Final Draft. We provide an updated analysis of these issues below, following the discussion of the four new issues.

NEW ISSUES REGARDING THE 2010 SLDP FINAL DRAFT

Issue: The 2010 SLDP Final Draft’s approach to public facility financing is poorly supported and its concepts are insufficiently integrated.

Chapter 12 of the 2010 SLDP Final Draft contains the *Adequate Public Facilities and Financing Element*. As described in the chapter, the 2010 SLDP Final Draft proposes to implement an assortment of regulatory tools designed to maintain adequate levels of public services and to ensure that new development pay for infrastructure and public services needed for the development. The chapter discusses and proposes the use of adequate public facilities (“APF”) and concurrency requirements, special assessments and improvement districts, impacts fees, exactions and dedications, and development agreements as tools for the County to ensure that public facilities are provided for by new development.

One problem with this chapter is that it is disorganized and poorly written. There are several sections that appear to be largely redundant of one another. For example, the discussion of impact fees contained in Section 12.2.8 is almost entirely repeated in Section 12.3.8.2.³ Also, in the middle of the chapter, there is a section on Fiscal Impact Analysis (Section 12.3.4) and a section on the Costs of Sprawl (Section 12.3.5). These provide various cost projections related to growth in the County, but both omit any meaningful data to support the analysis, and any explanation of how the data are related to the regulatory tools proposed in the chapter. The Costs of Sprawl discussion utilizes the “Rutgers Road Model” and the “Rutgers Structure Model”

³ This repetition is similar for the discussions of special assessments and improvement districts (Sections 12.2.7 and 12.3.8.1), exactions and dedications (Sections 12.2.9 and 12.3.8.3) and development agreements (Sections 12.2.10 and 12.3.8.4).

without ever introducing these models or providing supporting data and assumptions to support their validity for use in this context.

A more significant concern is that the general approach to APF financing in this chapter is based upon the imposition of numerous regulatory tools that will impose costs and fees on new development, without any indication that there will be meaningful integration or coordination in the application of these tools. The chapter suggests that the County will utilize all of the regulatory tools — PIDs; Impact Fees; Exactions, Mitigations Fees and Dedications; and Development Agreements — to “ensure” that new development pays its “fair share” of the cost of delivering services. Many of the policies at the end of the chapter reflect this aggressive approach:

Policy 39.4: Ensure the fiscal sustainability of the County through the efficient provision and phasing of public facilities and services, the use of fiscal impact assessments, and the use of the full range of revenue-generating tools.

Policy 39.5: Establish and assess public improvement districts to finance on-site development public facilities construction, operation, maintenance and repair.

Policy 39.7: Establish impact fees for new development for the provision of off-site public facilities and services, including but not limited to law enforcement, fire and emergency medical service, roads, water, sewer and stormwater, open space and trails.

Policy 39.8: Require new development to fund the proportionate share of on- and off-site public facilities and services, the need for which is generated by the development.

Policy 39.9: Use development agreements to encourage the advancement of facilities for projects that would otherwise be denied development approval for lack of adequate public facilities; for design, engineering and installation of on-site facilities for regional use (oversizing) and establish policies for reimbursement of the developer.

Policy 40.4: Require adequate public facilities in a timely manner as a required precondition to development approval in order to assure a positive fiscal impact for the County, provide a high quality of life through infrastructure and service provision and protect the health, safety and general welfare of the County.

Policy 40.5: Require an adequate public facilities and services assessment (APF assessment) for all new development. Use APF assessments to approve or deny applications or to conditionally approve applications by phasing development approval of the project over a period of years but [*sic*] will be available for the initial or subsequent phases of the project for a future year in which the CIP shows adequate public facilities and services to be built and available based on the scheduled availability of public facilities and services as shown in the CIP.

Policy 40.6: Require the adequate public facility assessment for facilities and services to ensure that the cumulative impacts of development are measured and considered.

Policy 40.7: Require every applicant obtaining discretionary development approval to enter into a development agreement with the County, and any other applicable service provider, to implement the conditions of development approval for adequate public facilities and services.

Policy 41.1: New development should provide for and finance improvements consistent with the degree of impact to public services and/or infrastructure directly or indirectly attributed to the project.

Policy 41.2: Require that all costs of upgrading and/or constructing public and community facilities, and basic infrastructure exclusively needed to serve new development be the responsibility of new development and not existing residents.

Several of these policies appear to be inconsistent with other aspects of the 2010 SLDP Final Draft. For example, in Section 12.3.8.4, the 2010 SLDP Final Draft states “A voluntary development agreement may be sought by a developer to avoid denial, or timing and phasing of the project by reason of failure to meet the adequate public facilities requirements of the SLDC.” However, Policy 40.7 (quoted above) suggests that every applicant for a discretionary approval would need to enter into a development agreement, whether or not there is a timing or phasing issue related to the provision of public services. This requirement does not make any sense, particularly if the County has adopted an impact fee to cover the cost of providing the public services.

These policies also do not reflect or require any integration among the different proposed regulatory tools or coordination in how they would be applied to new development. As the 2010 SLDP Final Draft is written, it is conceivable that a development project could be subject to a special assessment (under a PID, for example), an impact fee, an exaction/dedication, and a development agreement as part of the APF review. However, there is significant overlap in the scope of County services potentially covered by impact fees, dedications and development agreements. In fairness to any person seeking approval of a development application, the County’s plan policies and implementing regulations must explicitly ensure that “the use of the full range of revenue generating tools” does not result in charging the same development multiple times for its impact on public facilities and services.

This point is particularly important with regard to the use of impact fees, as New Mexico’s impact fee enabling statute requires a credit for “[a]ny construction of, contributions to or dedications of on-site or off-site facilities, improvements, or real or personal property with off-site benefits not required to serve the new development, in excess of minimum municipal and county standards established by a previously adopted and valid ordinance or regulation and required by a municipality or county as a condition of development approval shall be credited against impact fees otherwise due from the development.”⁴ Therefore, a developer who, through

⁴ NMSA § 5-8-15.

a development agreement, proposes to install a certain public facility should not also be required to pay the impact fee amount that covers the cost of this type of facility. The same concern can be raised with respect to any combination of the proposed revenue generating tools. The 2010 SLDP Final Draft does not provide sufficient recognition and explanation of how these multiple regulatory tools will be coordinated in addressing the APF financing.

While an APF program has the potential to benefit the County by preventing new development from adding demand that strains or exceeds the capacity of existing infrastructure,⁵ it is critical to ensure that such a program is *fair* in how it allocates costs to new development. This allocation must take into consideration in a comprehensive way the cost of new facilities, existing and future revenue sources that will be used to pay for the facilities, and any appropriate credit for public facilities installed by the developer.⁶ The 2010 SLDP Final Draft lacks sufficient explanation of how all of the regulatory tools proposed under the *Adequate Public Facilities and Financing Element* will be coordinated to ensure that they are fairly applied.

Recommendation: The Association requests that the entire Chapter 12 be revised to make it more concise and comprehensible. The Fiscal Impact Analysis and Costs of Sprawl sections should be revised to add better supporting data and documentation (in the form of footnotes or in a references section⁷) and to better integrate them with the rest of the chapter. The discussion of the regulatory tools for APF planning and financing, and the accompanying policies and strategies, should all be revised to demonstrate a more coordinated and integrated approach to APF financing that will ensure that APF financing requirements will be applied equitably to new development in the County.

Issue: Policy 40.6 in the 2010 SLDP Final Draft requiring that the APF assessment “ensure that the cumulative impacts of development are measured and considered,” is undefined as to scope and the 2010 SLDP Final Draft does not provide any guidance as to how “cumulative impacts of development” are to be “measured and considered.”

Policy 40.6 in the 2010 SLDP Final Draft states:

Policy 40.6: Require the adequate public facility assessment for facilities and services to ensure that the cumulative impacts of development are measured and considered.

The consideration of the “cumulative impacts of development” is a very broad-based and potentially far-reaching concept. The SLDP does not contain any limitations on the evaluation of these impacts, nor does it provide any guidance on how they are to be measured and considered. To fully understand a project’s “cumulative impacts,” a person performing an APF assessment may need to look at historical development patterns and data on service and infrastructure conditions, and data from projects that are beyond the control or knowledge of an

⁵ See National Association of Industrial and Office Properties (NAIOP), *Growing to Greatness* [hereinafter *Growing to Greatness*] (1999) at 25.

⁶ Arthur C. Nelson, et al., *A Guide to Impact Fees and Housing Affordability* (Island Press 2008) at 27-28.

⁷ The entire 2010 SLDP Final Draft would benefit from inclusion of a reference section, as many of the sources are not fully documented.

individual property owner or developer. An impact assessment could potentially even require research and evaluation of regional or state-wide factors. Such extensive analysis to support an APF assessment for an individual project appears to be unreasonable.

In addition, the County will presumably have performed a complete assessment of public services and infrastructure to support its proposed use of special assessments and improvement districts, impacts fees, exactions and dedications, and development agreements. The regulatory ordinances adopted pursuant to the SLDP will require future development projects to consider their own impacts to public services and infrastructure. If impact fees are to be used, for example, the County will be assessing a proportionate-share fee that is applied to each development project individually. If each development project is subjected to a reasonably assessed, proportionate-share fee, it does not appear that the measurement and consideration of cumulative impacts for individual projects will be necessary. In short, the County will have addressed the “cumulative impacts of development” through its planning policies and implementing regulations, and “consideration of cumulative impacts of development” for individual projects should not be required.

Recommendation: The Association requests that the requirement to measure and consider the “cumulative impacts of development” be eliminated from the 2010 SLDP Final Draft.

Issue: **Policy 41.1 in the 2010 SLDP Final Draft that requires that new development provide for and finance improvements consistent with the degree of impact to public services and/or infrastructure *indirectly* attributed to the project, may not be authorized under the New Mexico statutes.**

Policy 41.1 in the 2010 SLDP Final Draft states:

Policy 41.1: New development should provide for and finance improvements consistent with the degree of impact to public services and/or infrastructure directly or indirectly attributed to the project. (Emphasis added)

The 2010 SLDP Final Draft provides no additional description of how to assess indirect impacts of a development project or how the cost of such impacts would be calculated. This omission is a concern because it is possible that a particular development project could have indirect impacts that are difficult or impossible to determine or quantify. An individual project could, for example, impact market conditions, which could, in turn, affect population or growth rates in a way that might be inconsistent with the assumptions contained in the SLDP. Population or growth rate changes could affect the level, timing, and location of demand for public services or infrastructure. However, it is highly questionable whether such *indirect* impacts could ever be accurately attributed to the particular development project with the kind of precision that would be necessary if the development is to be charged an impact fee on the basis of such indirect impacts.

With respect to the use of impact fees as means of financing improvements, New Mexico's Development Fees Act (the "Act")⁸ states that impact fees cannot "exceed the cost to pay for a proportionate share of the cost of system improvements, based upon service units, needed to serve new development."⁹ A project of a certain number of service units cannot be subjected to a fee that exceeds the cost of providing the service required for that project. This "proportionate share" requirement is consistent with the "dual rational nexus test," which is used as the standard by many jurisdictions when creating legally defensible impact fee programs.¹⁰ The proportionate share requirement helps to ensure that there is a reasonable connection (or "rational nexus") between the impacts of new development and the fees imposed to finance public services or infrastructure.

Requiring a development project to provide for or finance public services and infrastructure associated with its *direct* impacts is fair because these impacts are reasonably connected to the costs of providing or financing the services and infrastructure. Requiring such provisions or financing for *indirect* impacts, however, appears to be excessive, as there is unlikely to be the same reasonable connection between a particular development of a given size and potential indirect impacts on services or infrastructure. The proportionate share requirements would therefore appear to warrant that only direct impacts to public services or infrastructure be considered when evaluating the impact fee assessed on a particular development project.

Recommendation: The Association requests that the requirement that a developer address impacts that are "indirectly" attributed to a project be removed from Policy 41.1.

Issue: **The 2010 SLDP Final Draft's proposed "Binding Principles" are unnecessary and questionable as the basis for consistency determinations under the New Mexico statutes.**

Chapter 1 of the 2010 SLDP Final Draft introduces a revised set of the so-called "Binding Principles" for the plan and it defines a "binding principle" as "[t]he mandated direction[s] pursuant to which legislation, administrative regulations, resolutions, policies, and action programs should be consistent with the SLDP."¹¹ The concept of the "Binding Principles" was previously included in the February draft of the SLDP, although these Binding Principles were shorter and less specific statements contained within each element of the plan. The 2010 SLDP Final Draft consolidates the Binding Principles into Section 1.4 of the 2010 SLDP Final Draft, which contains approximately 40 of these principles, divided among the following categories and subcategories:

⁸ The Act is codified at Sections 5-8-1 through 5-8-43 of the New Mexico Statutes Annotated (NMSA).

⁹ NMSA § 5-8-7.

¹⁰ Michael A. Zizka et al., State and Local Government Land Use Liability § 18:9 (2009).

¹¹ 2010 SLDP Final Draft at 8.

ENVIRONMENTAL RESPONSIBILITY

How we design and build
How we conserve and protect
How we consume
How we restore

ECONOMIC STRENGTH AND DIVERSITY

How we produce
How we sustain
How we prepare

COMMUNITY LIVABILITY AND QUALITY OF LIFE

How we live and interact
How we enjoy
How we support and maintain
How we evolve

Many of the “Binding Principles” are similar to the goals, policies, and strategies introduced in the later chapters of the plan. For example, the Binding Principle to “[a]llow higher densities in designated priority growth areas to efficiently expand centralized water and wastewater systems”¹² is very similar to policies 2.1 and 2.2, which are:

Policy 2.1: Establish Sustainable Development Areas (SDA) to maintain a balanced, sustainable land use pattern based on the availability, timing, adequacy and equitable funding of necessary infrastructure and services.

Policy 2.2: Establish SDA-1 as priority growth areas to accommodate new compact development that is likely and reasonable to occur within the next 10 years

There are many other examples of similarities between the Binding Principles and the plan policies and it therefore is unclear why the Binding Principles are necessary at all. It appears that the concept of “Binding Principles” is a device designed to create a category above the well-recognized hierarchy of goals, policies and strategies in a comprehensive plan so as to create additional regulatory leverage in the measures adopted to implement the 2010 SLDP. In other words, because the Binding Principles provide the measure for consistency for all “legislation, administrative regulations, resolutions, policies, and action programs,” then, to the extent that a Binding Principle relating to a 2010 SLDP goal and policy is defined more stringently, proof of *consistency* with the 2010 SLDP will likely be more difficult than it would be under the goal/policy language in the SLDP.

We are not aware of any other New Mexico jurisdiction or any other jurisdiction in the United States that has used this overarching “Binding Principle” concept as proposed in the 2010 SLDP Final Draft. Based on a review of the Community Planning Information contained on the New

¹² 2010 SLDP Final Draft at 13.

Mexico Department of Finance and Administration's Local Government Division's website,¹³ it does not appear to be an approach that is recommended by the state in its comprehensive plan template.¹⁴ New Mexico's statutes also do not appear to recognize this distinction between "Binding Principles" and other aspects of a plan, such as the goals, policies and strategies. Therefore it is not clear whether the County has the authority to utilize this new concept as the basis for making consistency determinations.

Several of the Binding Principles are also poorly phrased. For example, the first two Binding Principles under the subheading "How we design and build" are:

Design and build energy efficient structures that incorporate site sensitive planning, green building standards, operate efficiently, economically and require low maintenance.

Design compact, mixed use places in priority growth areas to maximize open space, create service efficiencies, support walkability and multi-modal transportation opportunities.

Obviously, the County is not responsible for the actual design and construction of structures or places. Landowners and developers actually undertake this work. The County is responsible for planning for the desired growth and for accommodating it through its plan and codes. While the drafters of these Binding Principles surely understand this point, if the Binding Principles remain in the 2010 SLDP, these particular Binding Principles should be revised to read:

Promote the design and construction of energy efficient structures that incorporate site sensitive planning, green building standards, operate efficiently, economically and require low maintenance.

Encourage the design of compact, mixed use places in priority growth areas to maximize open space, create service efficiencies, support walkability and multi-modal transportation opportunities.

Several of the other Binding Principles would benefit from similar rephrasing.¹⁵

Recommendation: The Association requests that the County reconsider the need for the Binding Principles as they appear to be redundant with other, more specific, goals and policies within the plan. The Association asks the County on what basis it believes it has the authority to

¹³ See website at:

<http://cpi.nmdfa.state.nm.us/content.asp?CustComKey=202534&CategoryKey=202733&pn=Page&DomName=cpi.nmdfa.state.nm.us>, which contains several presentations and informational documents on community planning in New Mexico, including a Comprehensive Plan template.

¹⁴ See Comprehensive Plan Template, prepared by Steven Burnstein, AICP, available at:

<http://cpi.nmdfa.state.nm.us/cms/kunde/rtscpinmfastatenmus/docs/202764649-06-29-2006-15-56-30.pdf>.

¹⁵ Other Binding Principles that could potentially benefit from rephrasing are: "Utilize local building materials and methods of construction for residential and non-residential development." (2010 SLDP Final Draft at 13); "Produce more food locally and organically." (2010 SLDP Final Draft at 14); "Retrofit and upgrade buildings and infrastructure for energy, water conservation and other sustainability elements." (2010 SLDP Final Draft at 14); "Design community places that are enjoyable, creative and walkable." (2010 SLDP Final Draft at 16).

create and use “Binding Principles” as the basis for consistency determinations. The Association also requests that the Binding Principles identified in this memorandum be appropriately rephrased, if they are going to remain in the SLDP.

PREVIOUSLY IDENTIFIED THAT REMAIN UNADDRESSED IN THE 2010 SLDP FINAL DRAFT

Issue: The 2010 SLDP Final Draft’s explanation of levels of service for the Adequate Public Facilities program is inadequate and confusing.

Chapter 12 of the SLDP describes the existing levels of service for community facilities as well as proposed levels of service the County will adopt to meet the adequacy levels provided in its Capital Improvements Plan (“CIP”) (“adopted levels of service”). **2010 SLDP Final Draft:** The assessment of existing and proposed levels of service in the 2010 SLDP Final Draft is essentially the same as that contained in the February, 2010 draft of the SLDP and therefore many of the issues identified with that draft remain unresolved.

The existing levels of service are discussed in Sections 12.3.6.2 (Transportation), 12.3.6.3 (Law Enforcement, Fire, and EMS), and 12.3.6.4 (Parks, Trails, Trailheads and Open Space). The adopted levels of service are then discussed in Sections 12.3.7.1 (Transportation), 12.3.7.2 (Law Enforcement, Fire, and Emergency Response), and 12.3.7.3 (Water and Sewer Lines, Treatment Plants and Related Facilities) and 12.3.7.4 (Parks, Recreation, Trails, Trailheads and Open Space Areas). We note the following issues, organized by public facility type:

Transportation. The existing levels of service are provided in miles per 1,000 residents and public employees assigned to roads per 1,000 residents. The proposed adopted levels of service are provided in a lettered scale assessment of roadway service capacity (e.g., “D” and “C”). This approach provides no basis for comparing existing levels of service to the adopted levels of service for roads. It is not clear why the existing and adopted levels of service are not presented using common units of measurement. Common units of measurement between existing and adopted standards are necessary to ensure that the adopted standards are appropriate and achievable.¹⁶ **2010 SLDP Final Draft:** Sections 12.3.6.2 and 12.3.7.1 have not been revised since the February Draft, and therefore these same issues with LOS for transportation remain.

Law Enforcement, Fire, and Emergency Response. The existing levels of service for the sheriff’s offices and fire/EMS are 1.44 officers per 1,000 residents and 1.09 officers per 1,000 residents, respectively.¹⁷ However, the discussion of adopted levels of service in the 2010 SLDP Final Draft states that there are currently 0.85 sheriff’s officers and office personnel per 1,000 residents and 0.93 paid employees in the fire department per 1,000 residents (although Figure 12-2 indicates that these values are expressed in “officers per 1,000 residents”).¹⁸ **2010 SLDP Final Draft:** It remains unclear why there is a discrepancy in these numbers and whether the levels should be expressed in terms of “officers per 1,000 residents” or “officers and office personnel per 1,000 residents.” Establishing level of service standards with common units of measurement

¹⁶ James C. Nicholas et al., *A Practitioner’s Guide to Development Impact Fees* (Planners Press 1991) at 82-87.

¹⁷ Figure 12-1, 2010 SLDP Final Draft at 207.

¹⁸ Figure 12-2, 2010 SLDP Final Draft at 210.

is critically important to an adequate public facilities and services program and the lack of such standards may lead to invalidation of regulations.¹⁹

Water and Sewer Lines, Treatment Plans and Related Facilities. There is no separate discussion of water and sewer facilities in the existing conditions subsection of the SLDP. **2010 SLDP Final Draft:** For the adopted levels of service, the 2010 SLDP Final Draft provides information on maximum desired service levels (expressed in acre-feet per dwelling unit per year or acre-feet per 10,000 square feet of development per year), employees per 1,000 residents, and capital improvements per 1,000 residents. While it appears that the County is operating at or near these adopted levels of service, it is not clear whether the adopted service levels are reflective of the 2010 SLDP Final Draft's water conservation goals, which could presumably lower the appropriate service levels in the future. In addition, Figure 12-2 lists stormwater management as a public facility, but the 2010 SLDP Final Draft provides no discussion of levels of service for stormwater.

Parks, Recreation, Trails, Trailheads, and Open Space Areas. The adopted levels of service would increase the existing levels of service for trails and trailheads. **2010 SLDP Final Draft:** There continues to be very little justification or supporting data for the proposed increase.

Recommendation: Given the significant implications that an adequate public facilities program can have for the timing, location, nature and extent of development, the Association requests that the County address these shortcomings in the program and clarify its analysis and discussion of public facilities levels of service, in order to provide a better understanding of the County's existing levels of service and the potential consequences of imposing newly adopted levels of service in the adequate public facilities program.

Issue: The 2010 SLDP Final Draft proposes consistency review requirements that are potentially burdensome.

The February draft of the SLDP stated that:

The SLDP should be the standard against which all development approvals, the SLDC, other applicable ordinances, codes, regulations and decisions are made, requiring consistency with all elements of the SLDP, the CIP, the Official Map and all applicable area, specific or community plans.²⁰

A similar requirement for consistency review was also incorporated into the July draft of the SLDC, which required that an applicant for a discretionary development approval demonstrate consistency with the General Plan and area or specific plans through the submission of a Consistency Report.²¹

We previously expressed concern about the consistency requirements contained in the February draft of the SLDP and the consistency reporting requirement contained in the July SLDC because

¹⁹ Ziegler, Edward H. Jr., *Rathkopf's The Law of Zoning and Planning* § 15:32 (4th ed.).

²⁰ February Draft of the SLDP at 258.

²¹ Section 5.5.10.7 of the SLDC.

these requirements were unnecessary, assuming that the County implements a truly vertical consistency program, in which all ordinances and regulations adopted pursuant to the SLDP are consistent with it. Under a properly designed vertical consistency program, a proposed development that meets the use and dimensional and other standards of a zoning district as outlined in the SLDC should already be consistent with the SLDP, subject, at most, to a limited form of site plan review.²²

2010 SLDP Final Draft: The 2010 SLDP Final Draft revises this statement slightly and incorporates it into Policy 48.2, which is:

The SLDP is the standard against which all development applications, the SLDC, other applicable ordinances, codes, regulations and decisions are made.²³

While the policy proposed in the 2010 SLDP Final Draft has been improved when compared to the February draft, the policy still appears to imply that “development applications” will be measured directly against the SLDP as the “standard” for decision-making. For this reason, we remain concerned about the potential inclusion of a consistency review requirement for “development applications” in light of the vertical consistency system set forth throughout the 2010 SLDP Final Draft. A development application that meets the use, dimensional and other standards of a zoning ordinance adopted pursuant to the SLDP should not be subject to additional review for consistency.

Recommendation: The Association requests that the County eliminate the requirement that decisions on development applications be made subject to individual consistency reviews, given that the 2010 SLDP Final Draft requires consistency for all ordinances, maps and regulations, which obviates the need to re-evaluate a proposed project for consistency with the SLDP.

Issue: **The 2010 SLDP Final Draft’s analysis of future growth in the County is based on what appears to be questionable data.**

Chapter 2 of the SLDP contains the County’s growth trends and projections. The growth projections are divided between the incorporated areas and the unincorporated areas, with a further breakdown of the unincorporated areas projections into projections for the four identified growth management areas. The growth trends and projects appear to be based on a 2009 study by Al Pitts (“Pitts study”). This study, available on the County’s website,²⁴ contains County population and housing unit projections for 2006 through 2050. The Pitts study contains an introductory discussion of the population projections, explaining why its projections are notably higher than those provided by the U.S. Census Bureau and how the study’s author chose between two alternative growth projections for the County. The Pitts study divides the population and housing projections between the “Santa Fe Urban Region” and the remainder of Santa Fe

²² We refer to a “limited” form of site plan review process here, noting that the scope of site plan review described in the July draft of the SLDC is far too expansive. We anticipate making comments on future revisions and additional chapters of the SLDC to emphasize this point.

²³ Policy 48.2, 2010 SLDP Final Draft at 245.

²⁴ Pitts, A. *Regional Housing and Population Projections, Santa Fe County, 2000-2050*, June 15, 2009, available at http://www.santafecounty.org/about_us/documents/Project_Projections.pdf.

County.²⁵ The Santa Fe Urban Region includes the City of Santa Fe and its proposed annexation area.²⁶

We previously expressed concern about the population and housing projections presented in the Pitts study after preparation of the October 2009 draft of the SLDP. These concerns are as follows:

First, the study's selection of a more aggressive growth trend for the County is not sufficiently supported. The aggressive growth trend and the slower growth trend projections that the author uses in his analysis are both based on data prepared by the Bureau of Business and Economic Research (BBER) at the University of New Mexico. The more aggressive growth projections are based on older projections prepared by the BBER in September of 2000, which predict that the County's population will rise to approximately 177,000 by 2020. The slower growth projections are based on more recent projections prepared by the BBER in August of 2008, which predict a more modest rise to approximately 166,000 by 2020. The stated justification for selecting the 2000 data for the basis of these projections is that the projections prepared by the BBER in 2000 proved to be accurate through 2008.²⁷ The study does not explain why it rejects BBER's updated projections even though it acknowledges that the same agency provided reliable predictions in 2000. The study lacks an adequate explanation for why the more recently developed slow growth projections are "less probable" than the older projections of faster growth.

The second problem with the Pitts study is that it does not clearly differentiate between the unincorporated County (i.e., the area for which the SLDP is being prepared and over which the County has regulatory jurisdiction) and incorporated areas other than the City of Santa Fe, such as the City of Espanola and the Town of Edgewood. It also does not address population and housing within the tribal lands in the County, which encompass a sizeable area over which the County's jurisdiction is limited. The Pitts study also fails to provide any description of the methodology used to allocate the population and housing projections between the Santa Fe Urban Region and the remainder of the County. It also does not explain on what basis it allocates the "remainder of the County" projections into the four growth regions. This data overlap and the shortage of methodological information make it difficult to determine whether the study's projections are likely to be reliable for the sub-areas, let alone for the County as a whole.

A third problem with the population and housing projections, and with the SLDP's growth projections section, is that they fail to adequately address the timing of annexation for land around the City of Santa Fe. This omission leaves it unclear how annexation should factor into the County's growth projections.

These problems create legitimate concerns as to whether the County has been using and continues to use accurate population and housing projections in the SLDP. Accurate population

²⁵ *Id.*, See Table A-01, Total Population, and Table A-02, Total Housing Units.

²⁶ *Id.*, Context Map.

²⁷ Pitts at 2. (stating "... the BBER 2000 (Series A) projection correctly foresaw that the County's growth would remain steady through 2008. And it produced a very accurate prediction of the County's cumulative growth rate during that period.")

and housing projections are necessary in order to ensure that the County has the most relevant and reliable bases for projecting the future number of housing units the County needs, and the future demand for County services, such as schools, fire and police services, and infrastructure. The accuracy of the projections is also critical because they will be used as the basis for any impact fee and adequate public facilities programs that are established pursuant to the SLDP.

2010 SLDP Final Draft: The 2010 SLDP Final Draft's data, like the data in the prior drafts, is premised on the Pitts Study data. There has been little modification to this section, and no additional justification for the assumptions used in the Pitts study or by the County when applying the projections in the SLDP. All of the previously identified concerns about the County's use of potentially flawed growth and population projections remain unaddressed. In addition, in the 2010 SLDP Final Draft, the same growth projections are used to support the Fiscal Impact Analysis in Section 12.3.4 in the context of the APF program. The use of the questionable growth projection data calls into question whether the proposed adequate public facilities program is appropriately justified.

Recommendation: The Association requests that the County revisit the population and housing unit projections to ensure that they are as accurate as possible in assessing the future growth of the unincorporated areas of the County and that they also, particularly, account for the annexation of land around the City of Santa Fe. The revised projections should include a description of the methodology used to allocate growth between incorporated and unincorporated areas and within growth regions of the unincorporated County. The revised projections should also account for any issues related to timing of annexation for land around the City of Santa Fe. The County should also incorporate into the 2010 SLDP Final Draft a discussion of the Pitts study and the assumptions which form the basis of the County's population and housing projections. This discussion is essential in the event that the County's actual growth is more consistent with the slower growth projections contained in the Pitt study's slow-growth alternative or with the U.S. Census Bureau estimates, as slower realized growth will factor into the analysis of Levels of Service for public facilities.

Issue: The 2010 SLDP Final Draft creates a complex administrative process for development review and approval that will increase the cost of development and may be difficult for the County to implement.

As discussed in a prior Memorandum with respect to the July 2009 draft of the SLDC, the County proposes an elaborate regulatory structure, with a very extensive and time-consuming process for development approvals, particularly for discretionary development approvals such as plan amendments, map and text amendments to the code, major and minor subdivisions, conditional use permits, site plans, development agreements, area variances, and beneficial use and value determinations. Such a burdensome and time-consuming process for development review will increase development costs, which may stifle opportunities for new development in the County.

The level of detail associated with the development review process also invites questions as to the County's ability to administer the approval process.

2010 SLDP Final Draft: As with the February draft of the SLDP, the regulatory structure proposed in Chapter 14 of the 2010 SLDP Final Draft is very similar to that proposed in the draft chapters of the July SLDC. The 2010 SLDP Final Draft does not contain any new information relating to the County's ability to administer the proposed development approval process and therefore these concerns remain unaddressed. Additional staffing may be necessary to fill the various roles in the review process created by the 2010 SLDP Final Draft, which could further strain the County's resources or, if review costs are shifted to those seeking approvals, further add to the development cost burden.

Recommendation: The Association requests that the County evaluate the likely implications of the 2010 SLDP Final Draft on the cost and timing of development approvals in the County. This evaluation should take the form of a cost-benefit analysis. The Association requests that the County address the level of staffing and additional revenues that the County would need to properly administer the regulatory structure proposed in the 2010 SLDP Final Draft.

Issue: **The 2010 SLDP Final Draft should include additional administrative appeal standing requirements for Community Organizations for standing in administrative appeals.**

The Governance Element contained in Chapter 14 of the SLDP creates a role for community input into the development approval process through the creation of Community Organizations ("COs") and Registered Organizations ("ROs").²⁸ The chapter identifies certain requirements for the establishment and management of COs and ROs, and allows for their input during the development approval process through public notice requirements and inclusion at pre-application meetings. In addition, COs are given standing in administrative appeals of development approvals.²⁹

The provisions for public notice to COs and attendance at pre-application meetings should help to facilitate community involvement in the application review process. However, giving the COs standing to appeal a development approval would potentially allow an organization to unjustifiably delay a project even if it does not participate in the review process or have any particularized interest in the project.

Normally, standing to appeal zoning decisions is limited to persons "aggrieved" by the decision—those who have been or will be adversely affected by the decision.³⁰ This requirement is echoed in the New Mexico statutes, which permit an "aggrieved person" to initiate an appeal to a zoning authority.³¹ However, the SLDP appears to grant COs automatic standing to initiate appeals and does not impose any requirement for them to assert an aggrieved status.

²⁸ 2010 SLDP Final Draft at 232-3.

²⁹ 2010 SLDP Final Draft at 232 ("COs will have the following rights and responsibilities, upon recognition of the CO by the Board ... The right to participate as a party in administrative adjudicatory proceedings pending within the area designated in the resolution of the Board recognizing the CO, and as such will, as appropriate, be permitted to present evidence and witnesses at a quasi-judicial hearing before the Board, Planning Commission, or Hearing Officer.").

³⁰ *Rathkopf's* at § 63:3.

³¹ N. M. S. A. § 3-21-8 (2009).

The County should require that a CO demonstrate a meaningful level of involvement in a development review process as a prerequisite for being able to initiate or take part in an appeal of a development approval. For example, the SLDP could require that a CO have both attended the public hearing and submitted substantive written comments during the review process. Such a requirement would help to ensure that the appeal process is not used to delay the approval process and put financial pressure on a developer. In addition, such a requirement could also be more consistent with New Mexico's requirements for demonstrating aggrieved party status, as the CO's participation and involvement during the review process would help define its potential concerns about a development project, making it more evident whether the CO will potentially be adversely affected by a decision.

2010 SLDP Final Draft: The 2010 SLDP Final Draft contains the same provisions for CO standing as was provided in the previous draft and therefore this concern remains unaddressed.

Recommendation: The Association requests that the County limit the right of COs to initiate administrative appeals of development approvals by requiring that they produce evidence of attendance at hearings and the submittal of written comments during the review process that demonstrates a particularized interest in the development under consideration. The Association believes that in order to establish standing for appeal a CO must have both attended the hearings on the project and submitted written comments.

Issue: **The County should has not yet made available larger scale copies of the maps for public review and/or provided a web-based GIS application for viewing the maps in greater detail.**

In general, the maps contained within the SLDP appear to be well prepared and they encompass a very broad scope of information. The only major flaw in the maps continues to be the scale at which they are drawn and distributed. The portable document format (pdf) version of the maps does not provide sufficient resolution of the maps to zoom into certain areas, such as the more densely developed areas around the City of Santa Fe. This inability to see the specific details of the Sustainable Development Area boundaries, or the Future Land Use designation boundaries could make it difficult for a property owner to understand the specific implications of these maps for its property.

2010 SLDP Final Draft: The 2010 SLDP Final Draft does not contain any new larger-scale copies of maps, nor has the County provided a link to a web-based GIS application for map viewing and therefore this concern remains unaddressed.

Recommendation: The Association requests that the County provide the maps in a format that permits them to be viewed in greater resolution, either by creating large scale versions of the maps, providing expanded sections, or providing a web-based Geographic Information Systems tool that is readily available to the public.