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Deputy *Montoya* County Clerk, Santa Fe, NM

## SANTA FE COUNTY

### BOARD OF COUNTY COMMISSIONERS

#### SPECIAL STUDY SESSION

**December 13, 2005**

Michael Anaya, Chairman  
Harry Montoya, Vice Chair  
Paul Campos  
Jack Sullivan  
Virginia Vigil

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**MINUTES OF THE  
SANTA FE COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AFFORDABLE HOUSING STUDY SESSION**

**December 13, 2005**

This study session on affordable housing of the Santa Fe County Board of Commissioners was called to order on the above-cited date in the Commission Chambers at the County Courthouse at approximately 10:10 a.m., by County Commission Chairman Mike Anaya.

Roll call indicated the presence of a quorum with the following Board members present:

**Members Present:**

Mike Anaya, Chair  
Paul Campos, Commissioner  
Harry Montoya, Commissioner  
Jack Sullivan, Commissioner  
Virginia Vigil, Commissioner

**Member(s) Excused:**

None

**APPROVAL OF AGENDA**

Staff offered no changes to the agenda.

Commissioner Campos moved to approve the agenda as published. His motion was seconded by Commissioner Sullivan and passed by unanimous voice vote.

**CONTINUED DISCUSSION: Proposed Santa Fe County Affordable Housing Ordinance**  
*[Exhibit 1: Draft Proposed Revisions December 13, 2005]*

**CHAIRMAN ANAYA:** Okay, item number four, continued discussion on the proposed Santa Fe County affordable housing ordinance. Diane? And if you could, Diane, let us know what page you're on when you're jumping around so that you don't lose myself.

**DIANE QUARLES (Strategic Planner):** Thank you, Commissioner. What I'll do is I'm going to go in order this time, and I'm going to cover all the changes systematically. I'm going to cover the regulatory and then Robert's going to pick up on the long-term affordability.

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So this is the newest version with all the changes, including all the repealers. It is dated December 13<sup>th</sup>. It is not in your original packet, but it's been passed out [*Exhibit 1*]. So this is the one I'll be working from.

COMMISSIONER CAMPOS: Mr. Chairman, a couple of questions. This is the document we're going to go off today? This is what I found on my table here. I had one in my packet that I marked up already.

MS. QUARLES: Okay.

COMMISSIONER CAMPOS: Are they the same?

MS. QUARLES: They're reasonably the same. You may want to track them side-by-side. The difference is this is actually a complete document. It has all the repealer language and some of the fine-tunes toward the end. So what I can do is draw attention to where this one will be different from that one, if that would help.

COMMISSIONER CAMPOS: That would help, and also your memo that you issued dated November 7<sup>th</sup> concerning the proposed changes; are you going to be going through those?

MS. QUARLES: Yes.

COMMISSIONER CAMPOS: Because I have a lot of questions. There are some things I need to understand about that.

MS. QUARLES: Okay. And what I'll do is when I'm on one of these, I'll draw attention to it and tell you, that this is the area that I refer to in this.

COMMISSIONER CAMPOS: Okay.

MS. QUARLES: Okay, I'm going to begin on page one, section two. There was a correction, some of the omissions in the Santa Fe County Extraterritorial Subdivision regs as amended. That was removed because it does have implications for the five-mile. The ordinance will apply from the two-mile out. So to remove that conflict, we just took out the subdivision regs. It didn't seem applicable anyway we finally agreed.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Campos.

COMMISSIONER CAMPOS: You said this will apply from the two-mile out?

MS. QUARLES: That's correct.

COMMISSIONER CAMPOS: Okay.

MS. QUARLES: Beginning in section three, this actually coincides with staff memo number one, "Modify the percentage distribution within 30 percent affordability requirements to include income-range four." So in this particular instance, what we did - and this was one of the requests made by the development community - was to modify the 30 percent, change the requirements for under 100 percent AMI so that each income range, income range one, two, and three now represent 7.5 percent. It brings in income range four as part of the 30 percent, and includes it as 7.5. So you still have 30 percent affordability: 22.5 percent is under 100 percent area median income (AMI), and then 7.5 percent represents what we call the entry market home category.

So then under section three, we begin modifying the definitions to include both types. Affordably priced housing units will apply to those units under 100 percent AMI, and then the entry market buyer, entry market housing will apply to the 7.5 for that very first niche of market housing.

CHAIRMAN ANAYA: Questions? Go ahead.

MS. QUARLES: I'll skip down. A lot of this is just to accommodate those changes. We had to kind of revise some of the languages in the ordinance. So you'll know why that was done: we need to make a distinction between what was affordable, what was

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market, because the incentive requirements for what we offer as an incentive are different depending on which group you're in. So that's why the distinction between affordably priced housing and then the entry market housing. That's true all the way down. Again, you'll see M and N, inclusion of this new language, on page three. Number four, again, same changes.

So that would put me at section four, under the housing requirements. Under section 4B, this is what I just described, this is where we actually spell it out, where we changed what we call the affordable housing requirements to represent 7.5 percent in each of the four categories.

Again, E, page four, changes the language to accommodate the changes. And then down to section five, again, affordably priced, to make those distinction. Beginning on page five in section six, eligible entry markets, we're recognizing those in number two, same changes. Section seven, again, same changes, eligible or entry market buyers.

Then I'm going to stop on section eight, because here's where we begin to see some of the changes. Let me describe the changes to the incentives, then I'll go back through them individually. There was much discussion based on these two criteria now for the affordably priced housing versus the entry market housing. Where do you provide incentives for what group? The way this ordinance reads, and this will be different from what was in the staff report, the way it reads now under section eight and section nine, that's the water and the density bonus for affordable housing, those two will apply to affordably priced housing units. So at this point, the way this reads, you will be able to take advantage of the water for affordable housing and the density bonus for the affordably priced units only or the 22.5 percent. To reiterate, under section eight, under the water for affordable housing, it still applies to service level one, where there's water and centralized sewers. It does not include service level three.

Going to section nine – and also, stop me at any time, because I'll just keep going. Under the density bonus, again, you can apply for a density bonus for the 22.5 percent for the affordably priced. In order to accommodate the increase that was requested by the development community for more density, what we did is we changed the density requirements. You can now calculate two-thirds of the unit for density according to each affordably priced housing unit, which gives you a total fifteen percent. How that changed was originally it was half of a unit for each affordable unit for 30 percent. Now it says two-thirds of the unit for each affordably priced. So you still can get a density bonus of fifteen percent throughout the project. You got an increase, even though you're providing less affordable units. It still is fifteen percent project-wide, but it would have been less if we hadn't have changed it to two-thirds unit per affordably priced unit. And I got you thoroughly confused.

COMMISSIONER VIGIL: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner.

COMMISSIONER VIGIL: And if there's a fraction that's left over, it seems to me I remember reading you dealt with that. If it's more than 0.5, they're required to do a whole unit. If it's less than 0.5 – could you explain that?

MS. QUARLES: That's correct. What we did is we set in provisions in here about the rounding up, how to treat a fractional unit, and also about fractional fees. The calculations for that would be included in the regs. What we did is we set the criteria for doing that at 0.5. So rounding up under a half a unit, you would lose the half unit.

COMMISSIONER VIGIL: Okay. And is there a requirement to reimburse the County for the value of that 0.5?

MS. QUARLES: Yes, and that's what we call fractional fees. That's what that's meant to pick up.

COMMISSIONER VIGIL: That's my understanding. Thank you.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Campos.

COMMISSIONER CAMPOS: Could you explain it to me by an example, a two-thirds unit for each affordably priced housing unit?

MS. QUARLES: Commissioner, I'll use the standard development of 100. Under the old provisions, at 100 you would have had 30 percent requirement, which would have been thirty units, and you would have gotten a half unit for each one, which would have been a density bonus of fifteen. Now under these requirements, you would be doing 22.5, or in this case, 23 units. And you would get two-thirds of that, which comes out to fifteen units. And I don't have a calculator, but I'm doing it in my head. So it ends up being you didn't lose anything of the density bonus. You got an increase because you're doing less affordable units. Okay?

With no further questions, I'll move on. Under section 9B, B was taken out because we no longer have a voluntary option for doing the 100 to 120 percent. It's now been included as part of the mandate under income range four.

Beginning on section ten, eleven, twelve, thirteen, and fourteen. This is where one of the changes that occurred yesterday, so let me explain this. It wouldn't have been in your packet. What I might do is let Robert explain it, and then I'll go through the semantics of it. Would that be okay with you? I think I just caught you off-guard. Tell you what, let me do it, and then you stop me.

One of the concerns was with the relaxing of the requirements for affordable units. We were still giving the same amount of incentive. So what we did is we created these two criteria, if you will, for incentives. One you get the large incentive, the water and the density bonus, under these requirements. For those smaller subdivisions where you can't take advantage of those large incentive packages, what we did is we changed the language so that you can get relief from fire impact fees, relief from development fees, relief from connection charges, reduction of lot size, and water right transfer reduction, but only in service level three, four, five, or a minor project where you can't take advantage of the other two. So what it does is it no longer allows the developments that can take advantage of the density bonus and the water to be able to take advantage of these. So now there's really two sets of incentives: water and density, and then the relief from the fees, reduction of lot size, and water right transfers.

In this case, this is for the affordably priced units. That's how we have it worded. Now, one change in section fourteen under water right transfer reduction. Again, this is one of the suggestions that came from the development community. Let me just read it. Under water rights transfer, it says: "May be eligible to reduce the water budget for the estimated actual usage attributable to the project as a whole, so long as at the time of application, the County holds adequate water rights to supply the affordably priced housing units and is otherwise capable of supplying the affordably priced housing units." Again, we recognize that in service levels three, four, and five, it's much more difficult to take advantage of the incentives. So this was one of the ways to offer a little more.

CHAIRMAN ANAYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I have a question about this section. What does it mean, "may be eligible to reduce the water budget as a whole"? An applicant brings forward a water budget, a hydrologist reviews it, people review it. I mean, reducing it by some amount or arbitrarily, what's the thinking behind this language? I'm not understanding it.

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MS. QUARLES: It would have to be demonstrated under their estimated water budget that they can actually do it, and they don't need to use [inaudible] La Pradera, they used maximum conservation measures. They introduced gray water re-use. They used all the sort of latest technologies to be able to get a per-lot acre-foot down. If they can demonstrate that throughout the project and it's acceptable to both the BCC and the utility department, this provision would allow that as a possible incentive. But it's "may." It's still discretionary.

COMMISSIONER SULLIVAN: Doesn't that happen already? I mean, we have applicants all the time in here saying that they're going to have 0.18 acre feet or 0.16, whatever they come up with. Don't we do that now?

MS. QUARLES: Commissioner, I really can't answer, because I'm not part of the development review process. I don't know when a development comes in how you actually attach a water budget. I know that 0.25 has been the typical average. And I don't know how far down development process is allowed to go, but this would allow them to look at the estimated actuals, rather than estimated plus line loss - this gets more at the actuals.

COMMISSIONER SULLIVAN: Wait a minute. Is this somehow doing away with the line loss? That's part of the water service agreement.

MS. QUARLES: It wouldn't necessarily get rid of it. They would still have to file a normal water budget. But if they use maximum conservation, rather than say capping it at 0.2 - and again, I'm not part of the development review process. If they could demonstrate like 0.18, this would give them the opportunity to possibly take advantage of that.

COMMISSIONER SULLIVAN: Okay. My understanding is that the Water Department and Mr. Wust consider the water service agreement as being separate. When they talk about water budgets, they simply talk about water budgets. And then when they talk about the water agreement, then they add in the line loss factoring. So I just want to be sure that we're not doing something here that somehow goes contrary to that.

MS. QUARLES: That's correct. And in this particular case, obviously it doesn't apply to the County system. It would be for community wells or whatever. And it only applies to the transfer of water rights. It doesn't apply to actual wet water or whatever. It would be for those units that would be required to transfer, like for a community well, I guess over 24, where water rights would be required. You could look at this provision where the affordable units are being provided.

COMMISSIONER SULLIVAN: Oh, I see. It only applies to three, four, and five.

MS. QUARLES: Right.

COMMISSIONER SULLIVAN: So the County, there wouldn't be a water service agreement involved.

MS. QUARLES: Uh-huh. No.

COMMISSIONER SULLIVAN: Okay. Thank you.

COMMISSIONER CAMPOS: Ms. Quarles, reduce the water budget, I had some questions also, I wasn't quite sure. But when you're talking about reduced water budget, you're talking about the assumed 0.25 standard? Are we going back to the 0.25 standard that we use typically?

MS. QUARLES: That's correct. In a case where development review was coming through, if in this particular case it's a small development type three, four, or five, if they are clearly doing water conservation, maximum conservation, and they really do have an estimated water budget say of 0.18, and you are requiring the water rights transfer as part of that development, you could theoretically reduce that requirement under this provision as an incentive. So instead of say having to provide 25 acre-feet at 0.25, they could reduce it down

to maybe 18 acre-feet at 0.18.

COMMISSIONER CAMPOS: Okay. Does this affect our discussion about going under 0.25 as the standard? Does it or does it not at this point?

MS. QUARLES: Let me defer - because we had some of this discussion - to Steve on the water policy.

STEVE ROSS (County Attorney): The question was, permit us to go below the 0.25 mythical standard that we have?

COMMISSIONER CAMPOS: That's our standard, and it's always been my impression now with all the water-saving requirements that we have that 0.25 is too high, and we really should be looking for something much lower in all developments. How does that play into what's going on right here today?

MR. ROSS: You mean in section fourteen?

COMMISSIONER CAMPOS: Yeah.

MR. ROSS: These are probably mostly rural projects we're talking about that would be subject to hydrologic zoning and all that. And this might permit you to apply techniques we used up here in the urban area in those areas that might not otherwise be permitted by the code. I don't know if they're prohibited by the code, but this gives us a place-holder to consider those types of applications separately in the rural areas, even given any changes that might occur in the code or interpretations of the code, what have you. This gives you the specific ability under the affordable housing umbrella to consider special circumstances of those kinds, three, four, and five subdivisions, a lot split and things like that.

JUDY McGOWAN (Senior Planner): That specifically refers to water rights transfer, so you wouldn't be changing the hydrologic zoning by lowering the required water budget. You would just be changing the amount of water they had to actually dedicate to the project.

MR. ROSS: This section doesn't apply. This is not about water rights transfers. This is where you aren't eligible for a water rights transfer. This is off the County Code: "project that provides--" blah blah blah "--that is not eligible for a water rights transfer."

MS. McGOWAN: This is still clear that you're not changing the number of lots or units you could get in a zone. You're just affecting the water budget for a particular zone.

COMMISSIONER VIGIL: I need a clarification. Steve, are we on section fourteen and you said this does not apply to water rights transfers?

MR. ROSS: That's right.

COMMISSIONER VIGIL: I don't have that in my language - "A project that provides service levels three, four or five, or a minor project that is not eligible for a water rights transfer waiver." So it's a waiver?

MR. ROSS: The waiver is up here in section eight. This provision is intended to apply only in areas where you're not on the County utility and aren't eligible for the waiver under section eight.

COMMISSIONER VIGIL: Okay.

MR. ROSS: It's difficult to provide incentives in areas where we don't provide services. So this is - early on in the development of this ordinance, there was an attempt made to try to find some incentives in the outlying areas that people could rely on.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chairman.

MS. QUARLES: I'm now on page eight, section sixteen, under the alternative means of compliance, section D. There's been a lot of discussion about jurisdictional

questions, and how this applies, if you were to do off-site units, how could you consider off-site units that are not in your jurisdiction, particularly with respect to the Extraterritorial Zone?

So this language was included to allow that to be considered in an extraterritorial zone. But under this provision, you would have to get approval of that project for that off-site project, what we call the sending project. Once that project is approved and authorized to receive those units that you would send from something in your jurisdiction, then you could consider it for off-site units. This was included to allow a project in the Extraterritorial Zone to be considered for off-site units as the alternative means of compliance. But there are constraints to that; the fact that you have to get the approval of the project first, with knowledge that it's going to be the receiving project for those off-site units. So that's what this was meant to include.

Under E2, one of the discussions in line again was the off-site units. The question became how do you calculate off-site units when you're sending it to a project that would have otherwise had its own requirements for affordability? Number two takes this into account. It says you have to consider both projects as independent, and the cumulative total of those has to be taken into account. So if you're sending X number of units to one project, that project generates Y number of units. X plus Y equals -

COMMISSIONER VIGIL: Sixty.

MS. QUARLES: Yeah.

COMMISSIONER VIGIL: Out of 100.

MS. QUARLES: To clarify that, it was the intent, but it wasn't clear. E2 basically spells out how you go about calculating that.

Moving on, number F3, one of the questions that was raised about the dedication of land, the ordinance in the past has been fairly silent on how do you calculate it, what's the value, how do we treat it. This language was added to give it some value in a way that you view a dedication of land based on the appraised value. If it short falls based on the estimated total number of units that you would have had, you may have to do a cash payment to equal that difference. So this gave you the mechanism for bringing those values equal.

I'm going to skip F.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Campos.

COMMISSIONER CAMPOS: Question for Mr. Loftin, I think last time we met, we talked about whether it was a good idea to accept dedicated land or just simply on cash. You expressed the idea, I think, that cash would be cleaner and simpler. What's your position at this point in time?

MR. LOFTIN: You know, cash is good, right, because you know what it's worth. And the alternative means of compliance in terms of building off-site, then you know you've got a certain number of housing units that are not in that particular development, but they're going to be somewhere in the County. So you know what you've got there. The problem with land donations is, you know, is it buildable, who's going to build on it, what do you do with it - you've got this whole process that you've got to figure out what you're going to do with that land, and what's its real value. You can get appraisals and all that, which you need to do, because this is in there, but is still buildable and do you want it? Does the County want it? So basically, by donating land, if the County's intent is going to take that land and build affordable housing, it has not gotten approved yet, right? Because even if the County's intending to do it, they still have to go through some kind of approval process. It just gives you less certainty.

COMMISSIONER CAMPOS: Also, you may wind up with land that's not



ideal for residential development. Some marginal pieces of property. So I'm just curious, Ms. Quarles, Ms. McGowan, Mr. Anaya, what are your thoughts?

MS. QUARLES: Commissioner Campos, I believe, though it's been awhile since I've looked at it, under the test for off-site dedication, the same test basically applies to the receiving of land. So is it appropriate, is it a floodplain, is it appropriate for residential? Does it meet all the criteria you would have applied for off-site? So you do have tests they give you to be able to look at a particular piece of land and say, "Is it developable? Is it appropriate? Do we want affordable housing here?" I agree with Mr. Loftin, there's no guarantee that you're going to get units there. You're just getting the land, but you still do have tests that you do apply to decide, is this land appropriate for development.

MS. MCGOWAN: Mr. Chairman, Commissioners, I think this whole alternative means of compliance section is something that should be used very sparingly in the County. Because you're trying to achieve affordable housing units for residents. And there are certainly circumstances in here where there may be an unmet need that isn't for single family site-built houses. A shelter of some kind, a homeless shelter, something like that, where the County would have a definite need, and this would fill that. But I would say that it needs to be applied very carefully as a matter of course. The more certain option for actually getting the housing is to actually have it built on-site as developments come through.

COMMISSIONER CAMPOS: Mr. Anaya.

MR. ANAYA: Mr. Chairman, Commissioner Campos, I think Mr. Loftin's point is well taken relative to assessing the value of a property. And that process, I think the language does provide, as Ms. Quarles has stated, the mechanism for the County to review and make that determination as to whether or not the land would be a good thing to accept. But I think the cleaner and the simpler at this point the better. I think this particular question ties to what Mr. Ross said earlier. And it goes to alternative means of compliance, and it goes to the difference between what a proposed development gets in service level one and the offsetting difference that we're trying to figure out as incentives for those areas outside of level one areas. Level one areas, it's fairly clear, I think, based on staff's perspective. But when you get outside of area level one, it's not as clear. And that's where it becomes more difficult to have parity, or balance probably would be a better term, between what is being provided as an incentive and what is being required as an affordable housing requirement.

COMMISSIONER CAMPOS: So what I hear from staff is that they do want to have it in as an alternative, but it should not be used often? Is that a fair statement? Or should it be just eliminated?

MR. ANAYA: Mr. Chairman, Commissioner Campos, as one individual, my thought is that if you leave it in, it still provides staff the opportunity to review it, and then provide recommendations to the Commission for their ultimate approval during the development process. I guess my position would be it wouldn't hurt to leave it in. There could be a situation where there's a large tract of land somewhere in the County that the County might want to consider.

COMMISSIONER CAMPOS: If you get cash you can buy it, right?

MR. ANAYA: You could, Mr. Chairman. That's my one thought.

COMMISSIONER CAMPOS: Okay. Any other thoughts? You want to keep it in? You think it's worth keeping it in?

MS. QUARLES: Commissioner Campos, one instance I can see where this might be of some value is one thing the development community has said is that they want to take advantage of some of the NMFA loans for say workforce housing. One of the uses for this is if someone does have a large tract of land and meets the criteria and a developer would

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still save on-site units, the County could theoretically partner with the development community to do say workforce housing or whatever. Because we can dedicate this land. This land is given to us under the changes to the constitution. We now can dedicate that land for purposes for affordable housing. So it gives us a use that we would not have otherwise had. To me, that's the only advantage of keeping it in, is it gives some discretion and opportunity that wouldn't have otherwise been there.

COMMISSIONER CAMPOS: Thank you, Mr. Chairman.

COMMISSIONER VIGIL: This question is for Steve Ross, along the same lines. Steve, just in the some of the evaluations that I've done about affordable housing ordinances and regulations, one of the benefits that I think this particular ordinance provides is it does create those alternatives. Without those alternatives, what I've seen happen is lawsuits that emerge on inclusionary zoning. And if we have an ordinance that provides alternatives, it wouldn't be so focused on inclusionary zoning legal claims. That's my assessment, just from some of the litigation that's emerging. Do you agree with that?

MR. ROSS: Mr. Chairman, Commissioner Vigil, of course I agree with that. The more flexibility we can put into an ordinance like this, the less chance that at some point down the road we might violate somebody's rights. This is a matter of just the art of drafting. We can't anticipate now, sitting here, just like the folks drafting the Constitution 200 years ago couldn't anticipate where things would go. It's always been my philosophy that you draft it as openly and inclusively as you can to anticipate things that you can't anticipate. So that may be another argument for leaving language like this and other things that you'll find in this ordinance in, to permit unexpected events from taking us over in the future and having to hurriedly draft amendments to an ordinance to deal with a particular situation. So yeah, I agree.

COMMISSIONER VIGIL: Thank you. Thank you, Mr. Chairman.

MR. LOFTIN: One thing, just as long as we're on this alternative means of compliance, a policy issue that I think is in here may not have been made explicit enough, in section A1. The ordinance right now applies to the central area, but you can comply with building affordable housing anywhere in the County. So one door that opens is that you could have, given that the affordable housing problem is concentrated in this area, the central area and probably the north, you could have a compliance of affordable housing built in Edgewood to address the obligation in the central, and is that something that you want. You've still got the hour commute. If that workhorse is working in Santa Fe, the affordable housing is 60 miles away as opposed to where the demand for affordable housing is. I just wanted to draw your attention to that. It's an important policy issue to be clear on.

COMMISSIONER MONTOYA: Mr. Chairman, along those lines of flexibility that we're talking about here, and actually going back - I was going to wait until the end, but I think it's appropriate now. Going back to section ten to fourteen, actually as I read this now, restricting or eliminating service levels one and two, can you explain why?

MR. ANAYA: Mr. Chairman, Commissioner Montoya, in the analysis of benefit and balance for what a proposed development is getting within service level one as opposed to three, four, and five, in service level one they are getting the benefit of the size of the unit being reduced from what it currently is. They're getting the benefit of the water allocation. And they're also getting the benefit of the density. And it's the Commission's choice of where the Commission wants to go, whether it stays out or goes back in. But if you take those into consideration and then you piggyback on it the development fees as well and the waiver of those development fees, then there will be an adverse fiscal impact to the County operational budget, by which you would have to figure out where would you take the

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resources from to fill that void. If that's the choice of the Commission, then staff will have to go back and figure out how would we fill that financial void that would be had if those fee waivers are in place. So it was a balance issue relative to what they're getting and what they're required to provide.

And then the opposite of that, I guess, would be that in those other service level areas, in the rural or outlying areas outside of the water area, there was not the benefit of water and sewers. So we were trying to have a balance. But that's how it ended up. But it's up to the Commission as to whether you want to put it back in. And then if you put it back in and provide those waivers, we'll have to go to the drawing board with the manager and the rest of the staff and say, "Okay, how are we going to offset that fiscal impact?"

COMMISSIONER MONTOYA: So we're saying that every service level one and two project is going to get water and sewer?

MR. ANAYA: Mr. Chairman, Commissioner Montoya, as the ordinance is currently written, yes, they would get water. That's correct.

COMMISSIONER MONTOYA: Where is that written?

MS. QUARLES: Maybe I can rephrase it a little bit. Under section eight, you have access to water rights transfers under section eight in service level one where you're on central water and central sewer. Under section nine, density bonus under service level one and two, you can take advantage of the density bonus. Service level two, you wouldn't be able to have water because you're not on the County water system. You are central water, central sewer, but it's not our water. And service level two, you could always do a density bonus. But again, one of the most significant incentives we can give is the density bonus.

COMMISSIONER MONTOYA: So by giving them the density bonus then we're eliminating other options in terms of providing some relief for those impact fees?

MS. QUARLES: That's correct, Commissioner. In this particular scenario, it really kind of is an either/or. Under service level one and two, you have access to these. Under service level three, four, and five, you have access to these.

COMMISSIONER MONTOYA: So I guess going back to the comment Steve Ross that you made, are we then drafting this with those caveats a little restrictive, or are we allowing things to happen as they may happen? Are those your words?

MR. ROSS: Probably. Mr. Chairman, Commissioner Montoya, I guess this is really more of a, rather than being a drafting issue, this is really a menu of what you want to provide as an incentive, given the particular kind of project that's being contemplated. I think what Mr. Anaya's saying is that the projects that are closed in that can take advantage of most of the incentives are going to be well compensated for providing affordable housing. But it gets sketchier as you get farther away from County services. And I think what he was saying is that maybe we should equalize that a little bit, if we can. But that's your decision, that's a suggestion from staff.

COMMISSIONER MONTOYA: Because under the original, one and two were in there, weren't they? Prior to this?

MR. ROSS: Yes, that's right.

COMMISSIONER MONTOYA: That's something for us to think about, Mr. Chairman.

COMMISSIONER CAMPOS: Mr. Chairman. Thank you. Going back to section sixteen A1, the issue raised by Mr. Loftin, the premise of Mr. Loftin's statement is that most of the demand or the need for affordable housing is in the metro area, yet we're going to allow some of the off-sites to go anywhere in the county. And he says that is a major policy issue. Does any Commissioner have any input on that particular issue? Just some

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thoughts?

**CHAIRMAN ANAYA:** Commissioner Sullivan.

**COMMISSIONER SULLIVAN:** Yes, I had tagged that one because I think that the studies that we've done we're not Santa Fe County-wide, they were in the metropolitan area, with the affordable housing taskforce. And so where we know that that 30 percent need is in that area. We don't have any figures on what the affordable housing needs are in Edgewood or Stanley or those areas. I'm sure there's some. I don't know that they're 30 percent, because there are more affordable housing opportunities in those areas than we have in the central Santa Fe core.

So I would be concerned, Mr. Chairman and Commissioner Campos, about being that broad. I think we probably ought to stick with the term, in that sixteen A1 on page eight, and say "central Santa Fe County," just the way we do on page one, where we say, "this ordinance applies to central Santa Fe County, as shown in exhibit A," so that we're still dealing all within the same area. I think it would be very difficult for us to evaluate all these criteria that are properly in here, criteria of need, criteria of availability, commute distance, and so forth, for a project that would be beyond that core area. So I think that's an important discussion item.

Just to mention, on Commissioner Montoya's issue, I think that the rough value of the incentive sheet that the staff passed out in previous meetings I think pretty well indicated that the density bonuses and the water rights bonuses were really just things that developers are looking for. I'm sure they like to have the fire impact fees and development fees and so forth, but those things are of less import. And I guess it could be written one or the other. You could say, "Well, take your pick. Which would you like?" That'd be kind of hard to draft that. I think this makes sense from what I recall seeing in those dollar amounts that were estimated in terms of limiting it to types three, four, and five. Those are my comments on section sixteen.

**COMMISSIONER VIGIL:** Commissioner Campos, in response to your question, I don't think we should limit it to central, because I foresee that perhaps there is a possible alternative for an affordable housing in Edgewood or perhaps even in Pojoaque, whether or not it meets their immediate needs or not. The affordable housing component I think is a central point that we're focusing on. We have practical experience with that. We have many of our residents who are actually moving to Rio Rancho because of the affordability. So I don't think the distance in our community should be limited at all.

**COMMISSIONER CAMPOS:** Commissioner Montoya.

**COMMISSIONER MONTOYA:** I agree.

**COMMISSIONER CAMPOS:** You agree?

**COMMISSIONER MONTOYA:** Yes.

**COMMISSIONER CAMPOS:** What about staff? Should we focus affordable housing in the metro central area, or should we leave it?

**MS. QUARLES:** Commissioner Campos, how this language actually came to be was in the very original discussions, maybe in the first session, was some desire for affordable housing in the northern section that wasn't covered by the ordinance. So this was expanded to include that. Then we added language in here, as one of the tests you have to demonstrate there's actually a need or a market for the affordable housing. So in the case of Edgewood as an example, if someone did a market study, obviously a lot of units down there are already affordable. So it would pass quote-unquote that test for need. That's one reason we included it, to make sure that you're providing affordable where it's actually needed, but not limited to just the central region, so that for instance the north could take advantage if it

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wanted to.

COMMISSIONER CAMPOS: So you just have to pass that test?

MS. QUARLES: That's correct.

COMMISSIONER CAMPOS: Okay.

COMMISSIONER VIGIL: Can I ask a question, Diane, on that? It's foreseeable to me that on the receiving end for the affordable housing, if we have the alternative that the developer actually looks to build on a separate site that it be limited to the central region. We're creating our own limitation if we expand it beyond that. There's only so much affordable housing that can be built within the central region. If we the - is it the sending or the receiving end? Where the new development actually is? Is it the receiving end?

MS. QUARLES: That's correct. It's the receiving.

COMMISSIONER VIGIL: Yes, if we limit that to the central region, then in fact we've limited the amount of property that we actually have within the central region. We need to expand that. Because we will actually have a finite amount of property for that if we create that limitation. Are you following my reasoning?

MS. QUARLES: Yes, I tend to agree. I think that was actually where the very beginning discussions began, and we recognized it was the central region. We've studied it, we know the need, but we don't want to preclude opportunities that might exist outside of that region. I might be wrong, but that's what I recall the very early discussions to be.

COMMISSIONER VIGIL: Okay. Thank you.

COMMISSIONER SULLIVAN: On the same issue, I wonder what happens - and I understand it's nice to have - and I think we have a lot of room for affordable housing in the central region still. But it's nice to give some opportunities up north, where things are getting a little tighter. But let's say I'm a type one or a type two subdivision proposed, that's with water and sewer or just with water alone. And I say, "Okay, I need these thirty units of affordable housing out of my hundred. So here's a piece of land out in Stanley, out in the ranchlands. Has no water, has no sewer, has no good access, and is worth X dollars." So I take that land and then I have to make up some money, because the cost of the thirty units of affordable housing is probably more than that land's worth. So then I put in a cash contribution to the fund. Now what have we got? We've got some cash in the fund, and we've got a piece of land out in Stanley that has no water, no sewer, no access. How are we going to translate that into affordable housing? That's going to put us in a position of being a land baron and not being able to turn that opportunity into quick affordable housing. I'm just not seeing how that really benefits affordable housing just doing that. I don't know. Diane, what would be the circumstance when that option was triggered?

MS. QUARLES: Well, Commissioner Sullivan, given the example you just gave me, I would say it failed every test. I'll start there. So I would deny the request.

COMMISSIONER SULLIVAN: From a staff level.

MS. QUARLES: From a staff level.

COMMISSIONER SULLIVAN: But if I'm a politically connected Commissioner - and we won't use Stanley now, we'll use some other area - it may fail the test of logic and reason, but it may not fail the test of politics, which has very often little to do with logic and reason. So what do we have? We've got land and some money, right?

MS. QUARLES: In that particular instance, where politics prevails, I would say we end up with a piece of land that we can't build on, and we have a lot of cash. And you're right. We probably don't end up with affordable units. So you're correct, the system isn't foolproof, and you could get a scenario very much like yours. But I have faith in the system, and hope.

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COMMISSIONER SULLIVAN: So you feel the test if fairly applied --

MS. QUARLES: If rationally applied.

COMMISSIONER SULLIVAN: If rationally applied, would point out that this doesn't meet first of all a need for affordable housing in that area out in some rural area. Because there's no need there for affordable housing. And so that would be one criteria.

MS. QUARLES: That's correct. And in a case where like you're looking at southern county, I think need and access to services are glaringly the first issue we look at. If you wanted to create a definitive boundary, you could. You could even say central region plus north, if you want to direct it to the north. You could get that specific. But again, the tests are here -- I can't say how they'll necessarily get applied, but the tests are here to take into account a scenario like you just described.

COMMISSIONER SULLIVAN: I think I'd go along with the flexibility, but I like drafting the language to where it applies in the majority of the cases to what you're focusing on. So I can see drafting it to say: "Within the unincorporated area of central Santa Fe County, subject to revisions of section 16 D, but the Commission may consider other areas." Do you know what I'm saying? Give them that flexibility, but draft the ordinance to say, "This is where we're focusing," but not eliminating the possibility that it can be brought up. That's one more alternative. Thanks.

COMMISSIONER VIGIL: I had a few things to say. I trust in the menu here also Diane, and I appreciate it. Because what in fact I read into this ordinance is that there's going to have to be an appraisal value that's equal to what the development would have been able to build within the development, so that even if it is a piece of property in Stanley, through the menu process, that appraisal value has to be the equivalent of what a development would have been built. So we're not getting a piece of property that's at least appraisal value worthless.

MS. QUARLES: That's correct in assuming that if say a piece of property in the far south part of the county could actually survive the test, the value of the land would be significantly lowered, so you can expect a large cash payment with the land. And that kind of creates that marriage, if you will.

COMMISSIONER VIGIL: Thank you.

MR. ANAYA: Mr. Chairman, Commissioners, just two brief comments. Relative to Commissioner Montoya's earlier questions regarding the incentives, just in a brief comment to Ms. Quarles, in service level two, you only have the benefit of the density allotment and not the water. So service level two may be an area where you may want to consider adding that as well. So it would be level one because it has water and sewer. And those are the main benefits, those being the incentives. And then two, three, and four may be even being considered for some of the development fee, that's an option.

The other thing is Ben Franklin said, "Hang together or most assuredly you will hang alone." And I just want to say that our leader of this particular process has been Ms. Quarles. And she's done an excellent job in helping us get here to this place. But relative to some of the changes that you've seen today, we truly are trying to provide the Commission with some of those alternatives. But it was clear to us in the recent meetings that you did -- and Commissioner Anaya and Commissioner Montoya and Commissioner Vigil did make it clear that we do want to see some work in the north and the south as far as being a possible receiving area. And I think to expand that, not only a possible receiving area for land, but more importantly, maybe a receiving area to build the actual units. But Mr. Chairman, I just wanted to make that comment.

GERALD GONZALEZ (County Manager): Mr. Chairman, just one last

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observation. The county is so land-poor, and I think the Commission has made that observation in the past, that even if we did receive pieces of land that couldn't be used immediately for housing purposes, there are other values that the county could gain from them, either by using them as trading chips for other pieces located elsewhere, or for locating County facilities throughout other parts of the county. And looking down the road for the next four years, we can't anticipate exactly where all the needs are going to be for future solid-waste transfer stations, for future satellite offices, those kinds of things. So there are other benefits than just housing that the county could gain from this. And fire stations.

MR. ANAYA: Mr. Chairman, Commissioners, noting the Benjamin Franklin comment, I'll go forward that staff is presenting this recommendation based on all of the discussion and recommendations and input that the task force, the Commission, staff, and everybody has brought forth. We feel confident as a team, as a staff, that the recommendation on the lien, which is what I'm going to discuss now, is something that is workable. And it also will give us an opportunity to do a sampling and see how it works and move forward. But that recommendation is the balance, we believe. And what it is is that the buyer of the home would have an appreciation share based on the proportion that they put into the unit. And the County would have an appreciation share for affordable housing based on the difference between the appraised value and the -

COMMISSIONER CAMPOS: Could you direct us to the right page and section?

MR. ANAYA: We're on page eleven. Ten and eleven.

COMMISSIONER VIGIL: Section 18?

MR. ANAYA: Yes, Section 18. So the alternative before you creates an appreciation share for the buyer, based on the proportion of their investment, and an appreciation share for the County, based on the difference between the appraised value and the actual share or loan and purchase price of the buyer. It also recommends that over a ten year period of time, that as the buyer lives in the house, that they increase their appreciation one tenth over the ten years, so that at the end of ten years for the appreciation only, the home buyer would realize full appreciation at the end of ten years. But the contribution, the difference between the sales price and the initial input by the buyer, always would come back and would be due on sale to the County to be reinvested in affordable housing.

The other thing that it incorporates is a right of first refusal to the County, to be given the option to purchase the actual property, a ninety day right of first refusal so that we would be able to possibly find an affordable buyer.

Mr. Chairman, I would stand for any questions for clarification. Myself and Diane are available for that.

COMMISSIONER MONTOYA: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Montoya.

COMMISSIONER MONTOYA: Could you explain on A, the 95 percent, in the red section, where it starts, "The 95 percent of the unrestricted fair value." Where does that 95 percent come from?

MR. ANAYA: Mr. Chairman, Commissioner Montoya, that came about as a result of what we have done in our current community college district ordinance and other programs through Homewise and the trust. What that does is, based on the initial appraised value, it takes 95 percent of that, instead of the actual value of the house. So instantly, the buyer gets five percent equity. Did I adequately explain that, Mike? That just gives the buyer equity right away, five percent, in addition to whatever possible equity they would gain over time, with increasing market value.

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COMMISSIONER MONTTOYA: Oh, okay.

COMMISSIONER VIGIL: The hardship provision, do you want to explain that a little bit more in detail? If a first-time buyer or an affordable housing purchaser has to sell a house for certain reasons, who makes that determination? How is that done?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Campos.

COMMISSIONER CAMPOS: Commissioner Vigil, could you just tell us what section you're dealing with?

COMMISSIONER VIGIL: Section 17, page 10. Does that hardship condition apply to the lien?

MS. QUARLES: Commissioner Vigil, actually section 17 is independent. The hardship considerations, the hardship conditions apply to compliance with the ordinance. If you turn to page 12, 18-I, this is where relief from the affordability lien actually applies. It says, "Where there's reason of unemployment, family medical emergency, divorce, death, or is unable to sell the unit for an amount equal to or greater than the original price, and extreme circumstances of hardship" - and you could refer back to those tests - "the affordability lien may be compromised or relieved."

COMMISSIONER VIGIL: Okay.

MS. QUARLES: It doesn't provide for the mechanism for doing that, but it does recognize it.

COMMISSIONER VIGIL: Okay.

MS. QUARLES: Under C, language under C, there's language here that will also allow, under the appreciation share for reasons of hardship similar to what I just described, you can accelerate the appreciation share under the same test.

COMMISSIONER VIGIL: Does the Board of County Commissioners make that determination, or would that be the housing administration?

MS. QUARLES: I'm not sure about that.

COMMISSIONER VIGIL: That would be discussed and probably negotiated during the regulation drafting.

MR. ANAYA: Mr. Chairman, Commissioner Vigil, as I recall, in our affordable housing regulations, we have similar provisions, and they would be dealt with under the regulations, is my recollection.

COMMISSIONER VIGIL: Okay. Thank you.

COMMISSIONER MONTTOYA: Mr. Chairman. So Robert, on this we're looking at a ten-year kind of holding period?

MR. ANAYA: Mr. Chairman, Commissioner Montoya, ten years, by which every year they stay in they get an additional ten. So it does encourage them that they're going to get some equity, but encourages them to stay in the unit longer.

COMMISSIONER MONTTOYA: And then the broker - is the broker like a realtor, or is the broker like the County? In section D, on the top, where it says the right to - who's going to broker the resale of the affordable unit? County staff?

MR. ANAYA: Mr. Chairman, Commissioner Montoya, they would provide notice to Santa Fe County. Currently, we utilize Homewise, that assists us with our home ownership program. It could be Homewise or whatever particular contractor. Or it could be Santa Fe County itself. So it just depends -

COMMISSIONER MONTTOYA: We will have a hand in that.

MR. ANAYA: Mr. Chairman, Commissioner Montoya, we would be provided the notice, and it would be up to us, the County, to exercise that right.

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COMMISSIONER MONTOYA: I like that ten-year period.

MR. ANAYA: Mr. Chairman, Commissioners, that particular section was a combination of a lot of input and discussion from the Commission. Thank you for your work on that. I don't have anything else, Mr. Chairman.

MR. LOFTIN: Just one quick question or comment or point here. I'm fine with the overall approach with this, and I appreciate the work that Diane and Robert did on this. When it talks about establishing the value of the 95 percent that you referred to earlier, then it says, "less the amount of the buyers down payment." That I think creates a fairness problem, because if somebody's paying \$150,000 for a house, they're paying it through two ways, typically the down payment and mortgage, where they're borrowing whatever they're financing. Well, if somebody has a \$5,000 down payment, their lien would be a certain amount. If somebody has a \$50,000 payment, the lien would be less. Now, they always get their down payment back, right? That's part of the equity that you would have. What I think you want to say is that people are going to get credit for their down payment, which they will.

But somebody's lien would be less with the County, the bigger the down payment - so you could just delete that because they're going to get - if they're paying 150 for the house, whatever they've made as part of the down payment, whatever they paid, part of the down payment, whatever they've made principal payments on the mortgage, they're going to get that back, plus the appreciation, whatever year they sold it in. I think it still accomplishes you -

CHAIRMAN ANAYA: You're talking about 11 B?

COMMISSIONER MONTOYA: Section 18A. So we'd delete that whole: "Less the amount--"

MR. LOFTIN: Just the "less the amount of the first buyer's down payment," and you'd be fine.

CHAIRMAN ANAYA: Okay. So are you done with your presentation?

MS. QUARLES: Mr. Chairman, I want to go back to one more, and then we'll be done. I'm probably going to take you back to the most difficult. We saved the best for last. If you'll go to page ten, this is under "alternative means of compliance." We're back under section sixteen, under section F. And I'm being frank, there was confusion, we all had different opinions about what actually happened at the last meeting. So what we finally decided to do, based on what we thought we heard, is we simply took F out altogether. And what this does is this says - this basically had restrictions on providing incentives for units that were off-site. Now, by striking it out, it allows off-site construction units to take advantage of all incentives by removing it. And again, we're looking for some discussion from you, or confirmation that is what you want. Because we just weren't clear what the actual actions were at the last meeting.

CHAIRMAN ANAYA: Could you give an example?

MS. QUARLES: Yes. Let's say that you're doing ten off-site units for affordable housing. Under the original provisions, for those ten units you would not have been able to take advantage of any of the incentives. You would have built them without the menu, if you will.

COMMISSIONER MONTOYA: On-site?

MS. QUARLES: Well, for the on-site units, you would be able to take advantage of them. It's the off-site units, when you use alternative means of compliance. By taking F out, you can use incentives for anything, for all alternative means of compliance. If you're building ten units off-site, you can use the incentives for those ten units.

MR. ANAYA: Mr. Chairman, Commissioners, this goes back to the earlier discussion that the Commission raised about whether or not you take units into a receiving area

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or not. And that's the clarity that we need from the Commission as to do you want to be able to allow a receiving area that possibly is outside of the central or in the central area, and allow them to get incentives? The incentives would still be based on whether or not they're tied to the utility, and follow whatever that cafeteria list is that you ultimately decide. But that's the essential question: do you want to allow them to get incentives if they're outside or not?

COMMISSIONER CAMPOS: I assume that the policy discussion here is do we have a policy that kind of requires that we have on-site, and discourage off-site development, so that when we have 30 percent affordable, it's mixed, as opposed to usually excluded or sent somewhere else. Is that the policy question?

MR. ANAYA: Mr. Chairman – and Diane, if I misstate this, jump in. But it's my understanding that if you are going to build off-site, let's just say you're going to build in Pojoaque, let's say you had a project in Santa Fe that you had an affordable housing requirement and you want to send units to be built out in Pojoaque. In your subdivision in Pojoaque, you're already going to have a 30 percent requirement for that subdivision anyway on the affordable units, based on what Diane had said earlier, if you expand the definition of the affordable area.

But let's not use Pojoaque, let's use an area in the central region that doesn't have water and utilities. Let's use an area that's just outside of the boundary to where you have utilities. And let's say it's in the northern area, and it's within the central region. There is already going to be a 30 percent requirement there for affordable housing for whatever subdivision you build. What you're talking about now is would you allow to send an additional amount on top of that, and then provide the incentives for that additional amount or not? That's the question. If you're going to send units to an area or somebody's going to propose an alternate source, are you still going to give them consideration on whatever those incentives may be?

COMMISSIONER CAMPOS: So you're basically saying they have affordable, plus they get extra affordable; is that right? So we have a very concentrated affordable development outside of our area?

MS. QUARLES: It's possible. And that's one of the reasons that one of the tests in here say that you can look at the overall concentration of affordable units within a project itself. So if someone's trying to send all their off-site units to a project that already had a 30 percent requirement, you could theoretically be looking at 60 percent. And so one of the tests in here is is 60 percent appropriate? Is that what you want, will the site support that kind of density? I think one of the questions you just raised is a core question. What F does, by taking it out, it basically levels the playing field. You get incentives wherever you are. If you have requirements, say you can only take advantage of incentives for units built on-site, that creates then an incentive to build the units within the project.

COMMISSIONER CAMPOS: I think that's one of the primary policy questions that we have to consider. And the idea was that we wanted integrated housing, and not having all the affordable housing concentrated in certain areas. I think that's the underlying discussion.

MS. MCGOWAN: Mr. Chairman, Commissioner Campos, the way you first phrased the question is, "Is there a policy?" and yes, there is an adopted policy already that says -- both in growth management plan and in the RPA plan, I believe -- that says that you want affordable housing integrated within the community.

COMMISSIONER CAMPOS: But by including F, not striking it, aren't we giving more incentives to keeping our main development with affordable housing?

MS. MCGOWAN: I believe so. I believe that's what Diane was trying to say

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also.

MR. ANAYA: Mr. Chairman, just a point of clarification. In the scenario that we said earlier about then you could potentially have up to 60 percent, it wouldn't be sixty. It would be 44 or 45 percent, max. Because you're not talking about affordable above I would say 80. I would agree with Commissioner Sullivan when he said 80 percent. But for terms of the County, it's 100 percent. So you're really not talking about a maximum that would be 60. You're talking about 45 percent in that particular example.

COMMISSIONER VIGIL: Diane, I think I want your comments to this. While Judy represents the policy to get affordable housing intertwined with developments, I believe that's a good policy. However, the way this ordinance is drafted, it provides alternatives to that. I am foreseeing that one of those alternatives would be if we actually leveled the playing field, what in fact we're doing is encouraging the building of units. If we don't level the playing field, what we're doing is just providing a limited alternative of building within a site or just providing a payment in lieu of or donating land. And I'm concerned about that, because the County is really not in the business of development themselves. So my fear would be without creating that level playing field and allowing us to evaluate the affordable housing proposal as is, which would perhaps include some of the incentives, we can, as the Board of County Commission, evaluate those affordable housing proposals in an equitable way. Can you respond to that?

MS. QUARLES: Commissioner Vigil, actually you raise a good point. There is maybe a middle ground in this, and that is you could reserve a may, that you may allow access to all incentives as part of your evaluation process. We've tended to be viewing it as sort of a black or white, it either is or it isn't. But what you could do as a compromise here is give yourself the discretion to grant those incentives, depending on the evaluation of the project itself.

COMMISSIONER VIGIL: I would be more inclined to do that, because I think we would limit ourselves otherwise. And we would be caught just between two options. That's what we're going to be receiving if we don't have the opportunity to provide the incentives. And those incentives can be evaluated independently within that housing proposal. So I'm more inclined, Commissioners, to include the may language. Thank you for that compromise, Diane.

COMMISSIONER MONTOYA: Mr. Chairman, Commissioner Vigil, so you would leave that in but change "shall" to "may"?

COMMISSIONER VIGIL: I think what we would do is we would - how would that be done, draft-wise? Is that it?

MS. QUARLES: What we'd just have to do is take this language and modify it, that says: "Affordable housing units that take advantage of this, or alternative means of compliance are used, it's the incentives under section blah-blah-blah may be available to the affordable units." Something to that effect.

MR. ANAYA: Mr. Chairman, Commissioner Montoya, and just clarity from the rest of the Commission, based on your earlier questions and comments relative to where incentives should or shouldn't be, is your perspective that there should be consideration on service level two for the incentives as well? And if that's the case, how does the rest of the Commission feel?

COMMISSIONER MONTOYA: Personally, I think one and two, on sections ten through fourteen. Is that what you're referring to?

MR. ANAYA: Mr. Chairman, I think staff needs clarity on that particular issue relative to where that falls. Because that would be a large component that we would

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have to amend.

CHAIRMAN ANAYA: Okay, so I guess we have a few things that we need to clarify. What you were just talking about is instead of service level three, four, and five, we would look at two, three, four, and five, and leave service level one alone for water and sewer.

MR. ANAYA: Mr. Chairman, that's going to be up to the Commission. I need a suggestion that as far as obtaining some balance, that maybe adding two does make sense. But as one staff perspective, I don't think adding one -

CHAIRMAN ANAYA: Adding one to this. Okay. And I tend to agree with that. How do you feel, Commissioner Sullivan, about adding two to three, four, and five?

COMMISSIONER SULLIVAN: Two is - yes, I commented before, that I felt balance, based on the dollar estimates that the staff had given us previously - two is water only and no sewer, right?

MR. ANAYA: Density only and no sewer.

MS. QUARLES: Actually, it's centralized water and wastewater, but there's no access to water, because it's not on the County utilities. So they can do the density bonus, but they don't get relief for water under service level two.

COMMISSIONER SULLIVAN: Okay, that's right, two is water and sewer. It's just not County water and sewer. I see. So would that give people an incentive not to be on County water and sewer? In other words, if I set up my own water and sewer department for my development, then I could get relief from these fees, if we put two in there.

MR. ANAYA: Good question.

COMMISSIONER SULLIVAN: Short answer, Mr. Chairman, personally I like this the way it is.

CHAIRMAN ANAYA: Commissioner Campos, do you like this the way it is?

COMMISSIONER CAMPOS: I like the way it is proposed by staff. I think they balanced the issues, they balanced the costs and incentives, and I think right now we're just winging it by throwing in another section.

CHAIRMAN ANAYA: Okay. Commissioner Montoya.

COMMISSIONER MONTOYA: I've already stated, I think again, for the purpose of breadth and flexibility, I think all of them should be in there.

CHAIRMAN ANAYA: Okay. Commissioner Vigil.

COMMISSIONER VIGIL: I agree.

CHAIRMAN ANAYA: That all of them should be in there?

COMMISSIONER VIGIL: Uh-huh.

CHAIRMAN ANAYA: Yeah, I agree with Commissioner Campos and Commissioner Sullivan that it should stay three, four, and five, just like it is.

The other issue was -

COMMISSIONER MONTOYA: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Montoya.

COMMISSIONER MONTOYA: I'd like to hear Steve, what's your opinion on that? Do you have one?

MR. ROSS: Is it a legal opinion you're asking for?

COMMISSIONER MONTOYA: Legal opinion.

MR. ROSS: Mr. Chairman, Commissioner Montoya, it isn't really a legal question. I understand why we were drafting it this way in the beginning. In some earlier drafts, all these incentives were available to everybody. And at that time, the thinking was that we wanted to encourage affordable housing period. And that was the goal. So it didn't

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really matter that there were some disparities based on where you are. But since then, I think we've tried to level the playing field a little bit in terms of where projects are located, if that helps.

CHAIRMAN ANAYA: Thank you, Steve.

Under section 16 A1 that was an issue. And I would like to leave it as is. And I believe Commissioner Vigil and Commissioner Montoya would like to leave it as is.

COMMISSIONER MONTOYA: I didn't hear from Commissioner Campos.

COMMISSIONER VIGIL: He didn't want it.

COMMISSIONER MONTOYA: Does that matter?

COMMISSIONER SULLIVAN: I just wanted to suggest - I had talked about the possibility of saying central, to indicate the direction that the ordinance was going, but to add in may language, that the Commission "may" consider affordable units outside the central area. In other words, you could say, 16.A1: "Providing affordable units outside the project, but within the unincorporated areas of central Santa Fe County, as depicted on exhibit A, subject to the provisions of section D of this ordinance. However, affordable units outside the central Santa Fe County may also be considered."

CHAIRMAN ANAYA: How do you feel about that?

COMMISSIONER VIGIL: I don't think it's necessary. I think we're actually accomplishing that end by the language that's actually here, and I'd like to hear Diane, your comments on that; is that additional language necessary?

MS. QUARLES: It could be incorporated. I don't think it changes the intent. It clarifies that the central area is the target. But I think one way or another, it's probably the same. At this point, the only difference is that right now it's kind of allowed by right, if you will, where you put it. This would give you some discretion to deny it being outside of the central region. That would be the only kind of slight difference I see.

COMMISSIONER VIGIL: But we do have that discretion irregardless, correct?

MS. QUARLES: Yes. You couldn't deny a project just for being outside at this point, because it would have to meet the tests. With that language, you could deny it just based on the fact that it's not in, because it's discretionary. Again, I think you'd still have to apply the criteria either way. You can't just say you're not in the central region. I'd think you'd still have to say, "for these reasons," and I would defer to Steve. But again, that's why there's tests and criteria.

COMMISSIONER VIGIL: Okay. I just don't think the language is necessary, Mr. Chairman.

CHAIRMAN ANAYA: Okay. Commissioner Campos?

COMMISSIONER CAMPOS: I'd go along with Commissioner Sullivan's suggestion.

CHAIRMAN ANAYA: Okay. Commissioner Montoya.

COMMISSIONER MONTOYA: I'm fine the way it is.

CHAIRMAN ANAYA: I'm fine with it the way it is. Okay. What other issues - here, on section sixteen F, we're going to go back to modify that a little bit, correct? Everybody's okay with that one?

COMMISSIONER MONTOYA: It'll be reinserted with new language.

CHAIRMAN ANAYA: Okay. And then other than that, I think we went through it all. What I would like to do now is I know there's been some hands waving in the back trying to get our attention. And I did see you, and maybe I'll have each person come up and just talk for two minutes briefly on what the issue might be. Is there anybody? Go ahead and come up here. I didn't forget you all. I saw you back there.

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ROSANNA VASQUEZ: The ordinance as amended, Commissioners, raises a couple of interesting questions that I'd like you to think about. One of them is the college district. In the college district, you have a level service one. You have water. You also have projects that are large where they're not all affordable, and you will have to bring water rights. It is in the college district where you have seen the lowest water budgets come forward to this Commission. And so what this ordinance does, by taking out the incentives for level service one, is only give the college district the incentive of water only for the affordable units for the first three tiers, not the fourth tier.

We cannot accommodate the density bonus in the college district. We are having a hard enough time on projects in the college district even achieving the density, the minimum there, because the neighbors don't want a higher density. I'll give you La Pradera, for example. We came in with 211 units. It was Vista Ocaso who came forward and said, "We don't want that many units." There was a minimum density there. We reduced that density down to 158 units because of the neighbors. So what you've got is you've got a problem in the college district. That's where you have your highest density. That's where you're utilizing county water. That's where you have an existing affordable housing ordinance. And what you've done with this ordinance is take away all the other incentives. We're not being able to benefit from the density bonus and increase the density to 30 percent. So that's one thing I would like you to think about, because that's where your bulk of affordable housing is going to be built. That's the first point.

The second point is with regards to section fourteen, the water rights transfer reduction, only applying to service levels three, four, and five. Diane's right. This again raises another issue. The problem - the affordable housing is going to be difficult to accomplish in the smaller developments. That's something that all of you have recognized in these study sessions. And I think the attempt here was, "Let's give them an incentive." Well, the incentive was here before. It was here before this draft. They already had that incentive to do that. It's still going to be difficult for those small projects to come forward and bring affordable housing. This does not help the smaller projects. All it does is hinder your larger projects, as in the community college district, that are going to provide more of your affordable housing.

The other concern that we had was with regards to the fourth tier of affordable housing, which you make completely ineligible for any of the incentives in this. And we were wondering why. I did hear that there was some impact study done by the County that showed it was a negative impact to the County. If we could see those numbers, we would love to see them and look at them. We have provided numbers to Diane. We've met with Mike Loftin the numbers. And what we did with regards to those numbers is take into consideration every single incentive that you had here, Commissioners. And we applied the numbers to those incentives, and we looked at the density, and we looked at the cost, and we came up with numbers that we talked to Mike Loftin about. I'd like to see the County numbers and compare them, because I was a little taken aback that it was going to be a significant financial impact to the County by taking out these incentives to level service one and level service two.

The other issue really is with regards to the alternative means of compliance in the EZ language. From a practical standpoint, anybody that's going to be requesting an alternate means of compliance is going to do it because they think it's suitable. They can't either meet the affordable housing or it's a better location. It does not make sense to require somebody to get full approval on the affordable housing project. What incentive does an applicant have to do that when they have no idea whether their major project is actually going to get approved? I would propose that that language be changed to require that the affordable housing project

and the original project, the sending and the receiving project, be done in tandem. And I think that that was the original way that we had discussed it before this draft. It just seems to make a lot of sense with respect to process. So that's the other concern that we've got.

Again, on the alternate means of compliance, Commissioner Sullivan, your issue about Edgewood, I think a project in Edgewood with the circumstances that Commissioner Sullivan brought would be almost impossible to meet the test on this alternate means of compliance the way that the staff has written it. I believe you do have flexibility to deny a project like that under the standards set forth in this ordinance.

I believe that's it. I would really like to see the water rights reduction and the language with regards to lowering your water budget be applicable to all service levels. And I will use La Pradera as an example again. We demonstrated a water budget of 0.126. The County hydrologist recommended a water budget of a 0.16. We're coming in now and he's recommending a twenty percent increase on line loss. What that does, the twenty percent increase on line loss when you look at the twenty percent line loss and you look at the cost to double pipe your system, your houses for gray water use, and put in the gray water re-use system for that subdivision, it gets very costly. I think this Commission needs to take a look at what kind of incentives can you give the developers to keep reducing the water budget to a 0.126, to a 0.16, to the water budgets that you're getting in the college district, which I think is important. And that language in section fourteen should apply to everyone. And I do believe you ought to really consider allowing all these incentives to be applicable to level service one, because it greatly affects the college district. Thank you.

CHAIRMAN ANAYA: Thank you, Rosanna. Gary?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner.

COMMISSIONER CAMPOS: Could we get comments now that these issues to staff before we go to that?

CHAIRMAN ANAYA: Gary, give us a few minutes.

MS. QUARLES: If I can recall --

MR. ANAYA: Mr. Chairman, while Ms. Quarles is looking, I could make one comment relative to the fiscal impact and one clarification that I, in having the discussion with our former land use administrator and now deputy county manager made a clarification on. The impact fees and development fees that are currently paid by developers go directly to offset on the impact fee for the fire, the public safety needs for the fire department and the construction of facilities for fire departments throughout the county. So there would be a direct reduction in that particular aspect if all incentives are provided to all levels. The other tier is the other fees that are charged are directly utilized for the development plan review of those projects as they go through the process. And clarification on that piece is that - and Mr. Abeyta made this point - is that if you didn't fill the gap, if you allowed for the reduction of those fees and you didn't fill the gap somewhere else, which theoretically could occur, you would just extend the time it would take for land use staff to be able to review those types of projects and bring them back and turn around and make recommendations, just because of workload. But we can provide the estimated numbers on what that impact would be, and would be happy to do that.

CHAIRMAN ANAYA: Thank you. Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Anaya, you're saying that if we waive the, let's say the fire fee, it's just not going to be there unless we supplement it out of general funds? Is that correct?

MR. ANAYA: Mr. Chairman, on the fire impact fee, if they were not required

to pay on any of the affordable – the impact fee, yes. You would either have to offset it or reduce your capital project plan.

COMMISSIONER CAMPOS: So that applies to all four of these incentives. We'd have to general fund them. If we're not charging them, we got to general fund them to keep our level of service up as far as land use and our fire services up, right?

MR. ANAYA: Mr. Chairman, Commissioner Campos, that's correct, understanding that the majority of the construction is going to occur in the service level one and two. That's the majority of where the housing construction's going to be. Three, four, and five, there will be a lot, but it would be minimal in comparison to what it would be in the service level one and two. So yes, you're right. At all levels, any waiver would be some offsetting costs. And the staff, we made the proposal as we did to try and mitigate that, reduce that amount down, and think we did so in a way that had some balance as well.

COMMISSIONER MONTOYA: Mr. Chairman.

CHAIRMAN ANAYA: Commissioner Montoya.

COMMISSIONER MONTOYA: I guess I am somewhat confused about the three, four, and five. They're pretty minimal in terms of units that are going to be developed for affordable housing. One and two is where the majority's going to be. We're trying to come up with an ordinance that's going to encourage development of affordable housing and if we're looking at thirty out of 100 units that are going to be with these impact fees, but we're developing thirty more units of affordable housing, we're putting something on the market that people are going to be able to purchase. By taking out some of these – and I don't know, I do want to see the numbers, by the way. Because I think that's pretty critical in terms of what is the impact going to be on the general fund. I'm not sure that it's going to be that significant that we're eliminating the potential of thirty additional units of affordable housing on the market by eliminating the relief from these impact fees. So I would like to see those numbers, and I think that again, the purpose of this policy I thought was to encourage and to create more affordable housing than there is right now. And I think we're eliminating that potential.

CHAIRMAN ANAYA: Okay.

COMMISSIONER CAMPOS: I'd to hear from staff on all the issues.

CHAIRMAN ANAYA: Mike?

MR. LOFTIN: Thank you, Mr. Chairman. Service area one, what worries me is that you do have – most of that is going to be the community college district, because that's where the City water is. And as everyone knows, the density bonus doesn't help them there. So in terms of equity of incentives, it already feels like it's – they're not getting water on all the units, only the first three tiers, not the fourth tier, but then don't get any of these other incentives. I mean, I guess I was a little surprised to see those incentives taken away. I think Rosanna is right that it doesn't – limiting those to service three, four, and five doesn't make it work better for them. All we're doing is taking away something from the other service areas, and it's going to make it more difficult. I think we spent a lot of time looking at the numbers that Rancho Viejo provided. Unlike some other numbers that have been provided to use, these numbers are actually pretty good and accurate and weren't inflated numbers. And it shows that with these incentives, they're still going to be losing some money to comply with them, no question about it. But we're making it, it's getting close by including – we're getting really close to getting the incentive package to work well. To take that away just really concerns me that it's really going to make it difficult is service areas one and two by taking these incentives away.

Another issue would be that we're doing a 30 percent affordable requirement, we're including this tier of 100 percent to 120 percent of the median income in that, but we're not

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providing the incentives to that tier either. And I'm not sure why we wouldn't do that, just fly them across the board.

CHAIRMAN ANAYA: Thank you. Judy?

MS. MCGOWAN: Yes, Mr. Chairman, Commissioners, I don't know which is right or wrong on the level of incentives, but I believe that Rosanna is right that the community college district can't take advantage of a number of things in the ordinance, including the alternative compliance. They're required to provide that on-site. I'm worried that it doesn't say that anywhere. But in fact, thinking about it, in order to meet their minimum density, they have to provide the affordable housing on-site. They can't ship it off someplace else, as we're allowing other people to do potentially in other parts of the County, which gives them a market advantage in some markets. It's not set for sure. But I am a little concerned that we're not looking at that and seeing exactly what the incentives or disincentives are in that place, which, as several people have said, is so far the only place where we had affordable housing, and the likely site of most of the future affordable housing in the next ten years.

CHAIRMAN ANAYA: Thank you. Commissioner Vigil.

COMMISSIONER VIGIL: Is that something, Steve, that could be remedied by amending the Community College Ordinance? Or do we have to look at it at the affordable housing?

MR. ROSS: Mr. Chairman, Commissioner Vigil, this ordinance repeals section K of the Community College District Ordinance. Now, certainly that's another approach, is to carve the community college district out altogether.

COMMISSIONER MONTOYA: Out of this ordinance?

MR. ROSS: Yes. Because there's an existing system in place.

COMMISSIONER VIGIL: Okay. Thank you, Mr. Chairman.

CHAIRMAN ANAYA: Okay.

COMMISSIONER CAMPOS: We haven't heard from Ms. Quarles. Put her on the spot.

MS. QUARLES: I'll just see if I can go real fast based on what I remember. With respect to the community college district, some of the things that I've heard expressed do have concerns. We do want to encourage affordability in the community college district. It is the bulk of the housing, and we need to help them make it work. So having said that, that's my personal opinion. One of the things that we have done is we reduced the requirement from 30 percent to 22.5 percent for affordability. We've introduced the entry market to accommodate that, that was one of the things we did. I understand Rosanna's concern over actual water budget. However, I don't think it's appropriate here. I think that that needs to be discussed in the venue of the water allocation policy about how we calculate it for - that's really a larger picture question, if you will, in how we deal with utilities. So I appreciate her concerns, but I don't think it belongs in this ordinance. There was even a question of whether this did.

The question of fees, there has been some concern raised by the departments and the hit that it will create to them. However, I told them that that can be addressed. For instance, the fire impact fee was only applied at fifty percent. We could raise it to make up for the difference and still give those credits to the affordable units as originally planned. In addition to the development fees, they're concerned about the FTEs that they would lose based on the fees that they would lose. But that can be adjusted by going to a sliding-scale fee. They need to reevaluate their fees anyway, because they're just tremendously low.

Let me think what else I might have missed. I think that's it, in the interest of time.

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There's something else I could respond to if you'd like.

CHAIRMAN ANAYA: Thank you. Okay, Gary.

GARY ELLERT: I'm going to go ahead and stand, Mr. Chairman, I've got a bum hip and I don't want everybody to feel sorry for me trying to get up off the chair. Thank you for taking a look at some of our issues dealing with this in hard copy and in the study sessions. And I'd like to thank staff, Diane Quarles, and the Commissioners for their input on this very difficult issue.

I come here today as just a resource, a couple of other issues that I wanted to bring to your attention. I do have a comprehensive look at inclusionary zoning copy that was presented to me about three weeks ago in Phoenix from the National Association of Homebuilders office. And at that time, I understood, and I do have a copy of it, that the National Homebuilders Association, along with the Homebuilders Association of Greater Austin, including the NAACP, has filed in the United States District Court for the western district of Texas division a complaint, declaratory in adjunctive relief dealing with fair housing act. And I think it's probably going to start flowing over to inclusionary zoning, to talk to Commissioner Vigil's concerns on this.

I know that I've given this to staff. Diane Quarles has it and the County manager has it, and I talked with your chairman yesterday. In addition to this, I'm going to be having our Homebuilders Association folks on affordable housing – and I've just consummated this deal, at least I think – come out here for a full day in mid January. And I would offer some time to the County in some capacity to be able to maybe listen or have some questions and answers as to what has worked and what has not worked and why each one went their separate ways during that time. And I'll get that date back to the County manager as soon as I subsequently get that put in place. But outside of that, thank you for the time.

CHAIRMAN ANAYA: Thank you, Gary. Ike?

IKE PINO: Just a couple of comments. [Inaudible] a couple of things to help me understand them.

I thought what I heard was because we have water and sewer in the college district that that might disqualify us from incentives. Now, how water gets in the college district is this way: a developer goes out and buys the water rights. The developer, at his cost, transfers the water rights to the County. The developer pays a stand-by fee for water he's not even using. Once that's done and there's an approval, the developer pays for all the infrastructure, 100 percent, and the developer provides you your customers, that then start paying once the stand-by fee kicks off. As near as I can tell, there's absolutely zero cost to the County, that's 0.000 cost to the County in water being provided in the college district. And how that's an incentive, when we're providing all that cost, I'm not understanding that. So if I could have somebody help me with that later on, I'd be happy to hear it.

Also, the provision of sewer, the County has absolutely zero to do with sewer in the college district. Zero. We build the lines, we build the collection lines, the treatment plant, and believe me, the way things cost these days in treatment, you don't want to even get in that business, because it's a money-loser. But still, I'm not sure how that qualifies us to not be considered for an incentive.

Finally, there was the reduced allocation. And it's true that the allocation was reduced from 0.25 to 0.20. But that wasn't free. In fact, you're holding on to close to 40 acre-feet of water rights that we've submitted as a bank, in order to prove that we could do this over a five year period in parts of the development that were not 0.20 to begin with. And we've added a cistern program when one wasn't required. We just spent two million bucks on a re-use system that's turned on now so we can irrigate as soon as it's time to irrigate, even this winter.

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Those allocations were reduced because I think it was demonstrated clearly to the County that we were not using 0.25 acre-foot per unit.

And so these three things were mentioned as reasons why category one was taken out of the incentive passage. And there may be some validity to that, but I'm not understanding how that translates into us not being able to qualify for any of the incentives. And if I could get some help with that from staff at some point, I'd welcome the information, Mr. Chairman.

CHAIRMAN ANAYA: Thank you, Ike.

CHAIRMAN ANAYA: Mr. Miller.

COMMISSIONER VIGIL: Before Mr. Miller speaks, Diane, do you have any response to that?

MS. QUARLES: As far as the changes – the reduction in water, that was always applicable to three, four, and five. That actually wasn't a change. We actually expanded it. It was only for the affordable units, and now we applied it to the whole project. So that was not something that service level one would have been eligible for, even from the very beginning.

The changes that I think Ike is referring to are the changes in the fee waivers. That was a change that was made yesterday, two days ago, in that balancing act. And again, it's based on the fiscal impact to the County. Again, it's a policy question. I agree with you, it's a balancing act. It could be re-included. We would have to look at fees in general relative to these, and how to make sure that those debts don't negatively impact the general fund. But other than that one issue, I can't really say specifically why it was done, other than we wanted balance and the fiscal impact issue.

COMMISSIONER VIGIL: Thank you.

CHAIRMAN ANAYA: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Diane, let me just understand, in section eight, water for affordable housing, it says that a project that provides service level one shall not be required to transfer water rights to the county for affordably priced housing. So someone like Rancho Viejo would be in service level one, right?

MS. QUARLES: That is correct. This is probably the largest incentive for Rancho Viejo, and they're going to get water for free for the 22.5.

COMMISSIONER SULLIVAN: Right. So for almost a quarter of their units, Rancho Viejo has run out of County water, the 167 acre-feet that were purchased as a part of the agreement for 500 acre-feet with the city is gone. They've used all that up through Windmill Ridge Three. So now they have to buy water rights, and they have to transfer them to some point that's designated by the County. So section eight would allow them to continue development, and they wouldn't have to buy water rights for 77.5 percent of their units. That would be paid for by the County, through the water rights that we're buying, whether it's Top of the World or Truth or Consequences or wherever it may be. So I can see that there's a very big incentive there for service level one, because they do not have to pay any water rights. And more importantly, they don't have to take the time to get those water rights, time is money, in 22.5 percent of the units. Am I reading that correctly?

MS. QUARLES: That is correct. It refers to the transfer of water rights for the 22.5.

COMMISSIONER SULLIVAN: Okay. I just want to clarify that they do have that fairly big incentive. Thanks.

CHAIRMAN ANAYA: Robert? And then we'll go to Mr. Miller.

MR. ANAYA: Mr. Chairman, with the background that Mr. Pino, as a former manager and now businessman and developer, if he's a dumb developer than I'm really really

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not that bright. But there are a couple points, in fairness and respect to Mr. Pino, that I would like to make that piggyback off of some similar comments just made. And that is that in addition to the incentive of water, the affordable housing task force and staff, in discussions with Mr. Pino and other developers, also make some adjustments that are worthy to note, that deal with the size of the house being reduced, as well as an increase in the sales price associated with this particular ordinance as well. But I do think it's fair that we be able to sit down. And I will sit down with him and any others to have some of the dialogue about how we came up with that difficult balance. But I think those are two important points to note as well.

CHAIRMAN ANAYA: Thank you, Robert. Mr. Miller?

JOE MILLER: Thank you, Mr. Chairman. I'm not too familiar with the code. The first I saw it was today, but I picked out some things that I don't understand yet, probably be a lot more if I go with it. One of them is we're talking about affordable housing. I think there should be some distinction in there, because a lot of people develop their land and they don't build on it. If you have a subdivision and you sell your subdivision out and you have to sell 30 percent of it designated as affordable housing, I don't know the mechanics of that. Do we have it restricted to who we can sell those to, or do we sell them to builders, or maybe individuals want to buy them. There's no difference in the code between affordable housing and affordable land. That's one thing.

Another thing is, as you all know, next spring we'll be celebrating our tenth anniversary of the moratorium in the Eldorado area. I don't think it's fair and just to have these people tied up for ten years and not be able to develop their property or even decide a master plan, and then throw something like this at them. I think the people affected by the moratorium should be exempted from this. They've suffered enough. I don't think we should throw something like this at them now too.

CHAIRMAN ANAYA: Thank you, Mr. Miller. Diane, did you want to comment on his first question?

MS. QUARLES: I'm sorry.

COMMISSIONER VIGIL: Land.

COMMISSIONER SULLIVAN: It was about he thinks should be affordable land.

MS. QUARLES: One of the things we recognize is there's a development that has access to full services and developments that don't. The ordinance tries to make those distinctions. When we say affordable units, if a project comes in and it's platted, there may be certain lots in here that are going to be designated for affordable. We would assume that builders that build affordable units may purchase those, such as Homewise or the Community Housing Trust. There are provisions where if those units, those lots cannot be sold for the purpose intended, there is some relief in here under hardship conditions that allow you to get out from under those requirements if the lots can't be sold within a reasonable time. So recognizing that you have to find a market for it, if the market doesn't exist, there is an out, if you will, under the hardship provision.

I don't really have anything to respond to on the moratorium, because it's really outside my purview.

CHAIRMAN ANAYA: Maybe Mr. Miller if you need some more information, you could sit down with Diane or Robert, any of these people would be happy to clue you in.

MR. MILLER: [Inaudible]

MS. QUARLES: I might actually defer to Homewise to kind of go through the mechanics of how they purchase lots.

MR. LOFTIN: My understanding is that the developer, even if you're selling lots, is responsible for an affordable home to be built there. That happens. So if you're only selling lots, which is the case of Aldea, which has an affordable housing agreement with the County, they complied with it in two ways. One is with the townhouses, where they're selling land to developers, to builders, to homebuilders, to builders building for market rate units and the affordable amount. They just have to sell the affordable at a certain price. The others, in some cases they've sold individual lots for the negotiated price, and it's our responsibility to go in and build the home and meet the compliance requirements. But that could be with any builder. But what it means is that the price of the lot has to be negotiated. You're not going to be selling the lot at market value. You're going to have negotiate a price where the builder can meet the requirements of the affordable housing ordinance.

CHAIRMAN ANAYA: Okay. If you have 100 lots and you just want to sell the lots and not build a home, it's going to be up to the builder? How does that work?

MR. LOFTIN: Typically what happens is the lot developer is going to sell those lots at a price to a builder who can build the home. For instance, in La Pradera, the way they did that is they sold lots to builders, like six lots at a shot, I think. One of those lots might have been an affordable. Part of the price of those lots was – that's the way they complied with it so that the builder now, they're buying those lots at a certain price for six lots. One of those lots, they have to build an affordable unit on. So basically what they're doing is through contracting passing on the affordable housing requirements to a homebuilder who's building the home. And the homebuilder's going to run their numbers and say, "Look, well, I've got to sell a home for \$150,000, but I can only pay you X for the lot. So you're not going to get market value for the lot by any means." So it just becomes a negotiated business deal between the lot developer and the builder who can build the home.

CHAIRMAN ANAYA: Maybe we can look at that.

MS. QUARLES: What I might suggest, Mr. Chairman, is that some of these mechanics we could include in the housing regulations regarding the buying and selling and purchasing of lots, and especially how to deal with them in smaller subdivisions.

CHAIRMAN ANAYA: Okay. Thank you, Mr. Miller. Good comments.

**V. DISCUSSION: Affordable Housing Ordinance Public Hearing Schedule and the Publication of Title and General Summary of Affordable Housing Ordinance**

CHAIRMAN ANAYA: I'll open it up to whoever wants to speak. Diane? Commissioner Sullivan?

COMMISSIONER SULLIVAN: Mr. Chairman, I think this portion of the agenda is just to give staff the direction of the ordinance to publish and I think that you properly went through the three major decisions/issues that staff wanted us to comment on which I think we did by taking a straw vote. So I think at this point we are ready to – we have already given the staff the authorization to publish title and general summary at the last meeting but I think they wanted more clarity to publish something that hadn't had as much detail as they could develop. It seems to fairly detailed to me and I'm comfortable moving forward and publishing it. That would be my comment.

MR. ROSS: Mr. Chairman, what we really need, the most important thing we need is the date for the meeting in January. That's really the only thing we're lacking.

COMMISSIONER CAMPOS: Remember, we had discussed that these two meetings would be special meetings. That was the initial idea because we thought there would be a lot of discussion and public input and maybe we should have separate meetings.

COMMISSIONER MONTROYA: So our first meeting is the 10<sup>th</sup>?

MR. ROSS: Yes, the 10<sup>th</sup> and the 31<sup>st</sup>.

COMMISSIONER SULLIVAN: Could we do it like we did today, Mr. Chairman, start at 10 in the morning to cover this topic and then move into land use in the afternoon.

COMMISSIONER CAMPOS: What about public input? At any time we anticipate significant public input we do it after 6.

A discussion ensued regarding scheduling and the following decision was made: January 10<sup>th</sup> Public Hearing at 6 p.m.  
If additional meetings are necessary they will be scheduled.

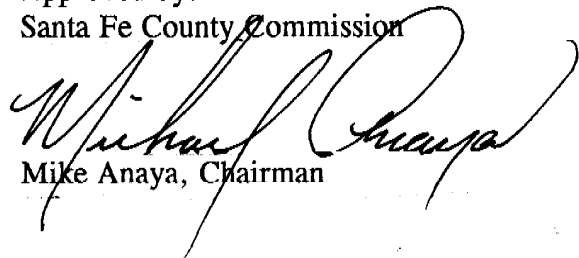
CHAIRMAN ANAYA: I got a letter from the League of Women's Voters stating they were in very strong support of what the Commission and staff is doing. Thank you again staff for all your hard work.

COMMISSIONER VIGIL: Thank you.

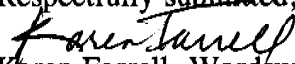
## VI. ADJOURNMENT

Having completed the agenda and with no further business to come before the Board, this meeting adjourned at approximately 12:00 p.m.

Approved by:  
Santa Fe County Commission



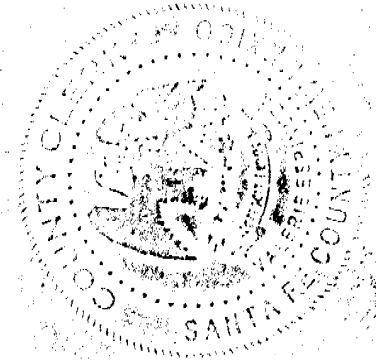
Mike Anaya, Chairman

Respectfully submitted,  
  
Karen Farrell, Wordswork

ATTEST TO:



VALERIE ESPINOZA  
SANTA FE COUNTY CLERK



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**SANTA FE COUNTY ORDINANCE NO. 2005-\_\_\_\_\_**

**AN ORDINANCE REQUIRING AFFORDABLE HOUSING IN PROJECTS AND MINOR PROJECTS DEVELOPED WITHIN THE CENTRAL AREA OF THE COUNTY, CREATING THE POSITION OF AFFORDABLE HOUSING ADMINSTRATOR, PROVIDING FOR ENACTMENT OF AFFORDABLE HOUSING REGULATIONS, PROVIDING FOR INCENTIVES TO AMELIORATE THE COST OF PROVIDING AFFORDABLE HOUSING, ENSURING LONG-TERM AFFORDABILITY, PROVIDING FOR ALTERNATE MEANS OF COMPLIANCE AND MEANS TO ADDRESS HARDSHIP SITUATIONS, AMENDING ORDINANCE NOS. 1996-10, 1997-03, 2000-13, 2001-7, AND 2002-1, REPEALING SECTION K OF ORDINANCE NO. 2000-12, AND REPEALING ORDINANCES NO. 1997-02, 1997-10 and 2000-11.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY:**

**Section One. Purpose and Intent.** The purpose of this Ordinance is to provide increased housing opportunities within a broad range of incomes for current and future residents of Santa Fe County. The intent is to encourage new development to achieve a reasonable balance between market rate housing and Affordable Housing through the use of incentives and other means to help offset potential costs.

**Section Two. Applicability.** This Ordinance shall apply to each Project and Minor Project within the unincorporated areas of central Santa Fe County shown in Attachment A not governed by the Santa Fe County Extraterritorial Zoning Ordinance, Ordinance No. 1997-4, as amended, **and the Santa Fe County Extraterritorial Subdivision Regulations (1991), as amended.** This Ordinance shall apply to existing approved master plans or preliminary development plans, and shall apply to applications for approval of master plans, preliminary development plans or preliminary plats submitted for review after the effective date of this Ordinance.

**Section Three. Definitions.** For purposes of this Ordinance, the following definitions shall apply:

A. "Affordable Housing" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible or Entry Market ~~Buyer~~ Buyer, where the Eligible Housing Unit is occupied by the Eligible or Entry Market Buyer as a primary residence.

B. "Affordably Priced Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Eligible Buyer within Income Ranges 1, 2, or 3 respectively.

BC. "Affordable Housing Administrator" means the County employee charged with administering this Ordinance, making recommendations and taking other actions as set forth in this Ordinance.

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CD. "Affordable Housing Plan" means a written plan that describes how an applicant intends to comply with the Affordable Housing requirements of this Ordinance, and which specifies the general location, number and types of Affordable Housing Units that will be built.

DE. "Affordable Housing Regulations" refers to regulations developed and updated periodically by the Board of County Commissioners to govern implementation and administration of this Ordinance.

EF. "Affordable Rental Unit" means an Affordable Housing Unit that is developed for rental purposes only.

EG. "Affordable Unit" means an AffordableAffordably Priced Housing Unit or an Entry Market Housing Unit.

H. "Appreciation" means the amount an Affordable Unit has increased in value since the first sale of the unit to an Eligible Buyer, less the amount of the Affordable Mortgage or Lien, and using an initial sales price that has been adjusted by an index specified in the Affordable Housing Regulations.

GH. "Area Median Income" means the median income of the Santa Fe Metropolitan Statistical Area, adjusted for various household sizes, published by the United States Department of Housing and Urban Development and amended annually pursuant to data published by the United States Department of Housing and Urban Development.

HI. "Code Administrator" means the Santa Fe County Land Use Director, or his/her designee.

I-J. "Project" means any division of property into ten or more parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

JK. "Eligible Buyer" means the buyer of an Eligible Housing Unit whose Annual Gross Income is one hundred percent (100%) or less than the Area Median Income.

KL. "Eligible Housing Type" or "Unit" means a housing unit, attached or detached, that is constructed in compliance with applicable codes. Design standards for an Eligible Housing Type or Unit shall be further categorized within the Affordable Housing Regulations according to housing type, number of bedrooms, number of bathrooms and minimum square footages of heated residential area.

M. "Entry Market Buyer" means a buyer of an Eligible Housing Type of Unit whose Annual Gross Income is between 101% to 120+% of the Area Median Income.

N. "Entry Market Housing Unit" means an Eligible Housing Type or Unit that is sold at or below the Maximum Target Housing Price to an Entry Market Buyer within Income Range 4 respectively.

LO. "Income Range" means the income range used to determine the Maximum Target Home Price for each Eligible Housing Type. For purposes of this Ordinance, the Income Ranges are as follows:

1. Income Range 1: 0% to 65% of the Area Median Income.
2. Income Range 2: 66% to 80% of the Area Median Income.



3. Income Range 3: 81% to 100% of the Area Median Income.

4. Income Range 4: 101% to 120% of the Area Medium Income.

MP. "Maximum Target Housing Price" means the highest price at which an Eligible Housing Type or Unit may be sold to an Eligible or Entry Market Buyer in the appropriate Income Range and otherwise satisfy the affordable housing requirements of this Ordinance. The Maximum Target Housing Prices for each Eligible Housing Type and Income Range shall be included in the Affordable Housing Regulations, and the Maximum Target Housing Prices shall be amended from time to time as the Area Median Income, interest rates, or other appropriate indices change. The Maximum Target Housing Price shall not include any options, lot premiums or upgrades chosen by the Eligible or Entry Market Buyer so long as the options, premiums and upgrades are published by the seller in advance as part of its marketing efforts and so long as the options are reasonably comparable to those offered to other buyers of the same housing type and do not exceed the sum of \$2,000 in total.

NQ. "Minor Project" means subdivision of a parcel or parcels into between five (5) and up to ten (10) lots or parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

OR. "Service Level" means the type of water and wastewater system proposed to serve a Project or Minor Project. Service types are further categorized as centralized (public or publicly-regulated integrated water distribution and/or wastewater collection systems), or non-centralized (private water and/or wastewater systems provided on-site). Categories of Service Levels are as follows:

1. Service Level I: Community Water System and Community Liquid Waste Disposal System; water service provided by the Santa Fe County Water Resources Department;

2. Service Level II: Centralized water and wastewater; water service is provided by a public utility other than Santa Fe County Water Resources Department;

3. Service Level III: Centralized water and non-centralized wastewater;

4. Service Level IV: Community wells and non-centralized wastewater; and

5. Service level V: Individual or shared wells and non-centralized wastewater.

PS. "Project" means any division of property into ten or more parcels for purpose of sale, lease or other conveyance of one or more single-family residences.

#### **Section Four. Affordable Housing Requirements.**

A. Of the total housing permitted in any Project, no less than thirty percent (30%) shall be Affordable Housing as defined herein.

B. The Affordable Housing distribution of the Affordable Units provided in connection with a Project shall include both the Affordably Priced Housing Units provided equally to Eligible Buyers in Income Range 1 (~~40~~7.5%), Income Range 2

~~(407.5%)~~, and Income Range 3 (~~407.5%~~) and the Entry Market Housing Units provided to Entry Market Buyers in Income Range 4 (7.5%).

C. If a fractional portion of an Affordable Unit remains when determining the required number of Units, the following requirements apply:

1. Where the fractional remainder is greater than 0.5, an additional unit shall be required.

2. Where the fractional remainder is 0.5 or less, a residual fee shall be required in accordance with the Housing Regulations.

D. Affordable Housing shall be integrated into the overall design and layout of the Project, and the Affordable Units shall be reasonably dispersed within the Project. An appropriate mix of housing types and sizes may be included in the Project so long as it otherwise complies with this Ordinance. At a minimum, the general location, total number of units, a description as to the type and design of those units, the general pricing structure, and the proposed phasing of the Affordable Housing shall be identified in the Affordable Housing Plan and the exact location of the Affordable Units shall be identified in the Affordable Housing Agreement.

E. Affordable Housing shall be provided in phases if the Project is otherwise to be phased, but the proportion of Affordable Housing Units offered for sale within any phase must not be less than the proportion of the total number of lots to be developed within all phases of the Project and the total number of Affordable Housing Units to be offered within all phases of the Project.

F. An applicant shall submit an Affordable Housing Plan as a part of the application for approval of a Project. The Affordable Housing Plan shall describe, in detail, how the applicant intends to comply with the Affordable Housing requirements of this Ordinance, and shall specify whether alternative means of compliance or hardship conditions will be claimed and, if so, the grounds for doing so. The Affordable Housing Plan shall be submitted at the earliest phase of the review process and shall be included as a part of the development review for that development. The Affordable Housing Administrator may request additional information from the applicant, or reject or require amendments to a proposed Affordable Housing Plan if the proposed Affordable Housing Plan fails to meet the requirements of this Ordinance or the Affordable Housing Regulations. The Affordable Housing Plan will be incorporated into the Affordable Housing Agreement that shall be filed and recorded with a final development plan or a final plat, whichever instrument is the first to be recorded.

G. A final plat shall not be recorded until the applicant has entered into an Affordable Housing Agreement with the County.

**Section Five. Affordable Housing Requirements for Minor Development.**

The Affordable Housing provided in connection with a Minor Project shall be provided, as follows:

A. For a Minor Project that creates five (5) or six (6) housing units, one (1) AffordableAffordably Priced Unit within Income Range 2 shall be provided.

B. For a Minor Project that creates between seven (7)-, eight (8) or nine (9) housing units and ~~ten~~ (10) housing units, two AffordableAffordably Priced Units shall

be provided including one (1) AffordableAffordably Priced Unit in Income Range 1 and one (1) AffordableAffordably Priced Unit in Income Range 2.

**Section Six. Affordable Housing Regulations.**

A. The Affordable Housing Administrator shall recommend and present to the Board of County Commissioners proposed Affordable Housing Regulations contemporaneous with consideration of this Ordinance.

B. The Affordable Housing Regulations ultimately adopted by the Board of County Commissioners shall include, at a minimum, the following:

1. The application submittal requirements necessary to reasonably evaluate compliance with this Ordinance, the requirements governing the Affordable Housing Plan and Affordable Housing Agreement.

2. The form of the Affordable Housing Agreement including standard terms and conditions for providing Affordable Housing within the Project or within a Minor Project, and to ensure compliance with the terms of this Ordinance. The Affordable Housing Regulations shall specify that the Affordable Housing Agreement describe the location, housing type(s) and size(s) and the Maximum Target Housing Price(s) of the proposed Affordable Units, and shall describe how Affordable Units will be marketed and sold to eligible Eligible or Entry Market ~~buyers~~Buyers, and shall specify that the Affordable Housing Agreement shall be filed and recorded with the Final Plat;

3. A reasonable process for certifying Eligible or Entry Market Buyers by the County or its agent that, to the extent possible, takes no more than fifteen (15) business days from the date a potential buyer applies for certification;

4. Reasonable fees to be charged for certification of Eligible or Entry Market Buyers;

5. The form of the Certificate of Compliance to be issued upon compliance with the terms of this Ordinance;

6. A Maximum Target Housing Price for each income range;

7. Minimum design requirements including the number of bathrooms and the minimum residential square footages of heated area according to the number of bedrooms;

8. Green building standards, adjusted Maximum Target Housing Prices for green building Affordable Units, and green building certification requirements;

9. The method used to determine and periodically adjust the Maximum Target Housing Price, including the methodology to be used to determine the initial market price for each Eligible Housing Type and a means to discount the market price by the same percentages to determine the price for each category of Eligible Housing Type and for each Income Range;

10. Method for determining fees associated with this Ordinance, including cash payments as an alternative means of compliance and residual fees; and

11. Any other matter deemed necessary by the Board of County Commissioners.

C. The Affordable Housing Regulations shall be adopted by resolution of the Board of County Commissioners, and shall be amended from time to time as deemed

necessary and to account for changes in indices used to make calculations required by this Ordinance and the Affordable Housing Regulations.

**Section Seven. Rental of Affordable Units.** An Eligible or Entry Market Buyer shall not lease an Affordable Housing Unit provided pursuant to this Ordinance unless the proposed tenant is an immediate family member of the Eligible or Entry Market Buyer, the Eligible or Entry Market Buyer is under duress by reason of unemployment, family medical emergency, is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or other unique circumstances of hardship, and the proposed lease of the premises is approved in writing by the Affordable Housing Administrator.

**Section Eight. Water for Affordable Housing.** Notwithstanding the provisions of Article \_\_\_, Section \_\_\_ of the Santa Fe Land Development Code and Ordinance No. 2005-\_\_\_ (Master Plan Procedures), or any Resolution governing operations of the Santa Fe County Water Resources Department, a Project that provides Service Level I shall not be required to transfer water rights to the County for the AffordableAffordably Priced Housing Units provided in Income Ranges 1, 2, and 3 as required by application of Section 4(A) of this Ordinance, and may not be required to transfer water rights to the County for Affordable Housing provided in Income Range IV, not to exceed ten percent of the total housing provided in connection with the Project, so long as at the time of application the County holds adequate water rights to supply the AffordableAffordably Priced Housing Units, and is otherwise capable of supplying the AffordableAffordably Priced Housing Units.

**Section Nine. Density Bonus for Affordable Housing.**

A. A Project that provides Service Level I or II may receive increased density to accommodate the AffordableAffordably Priced Housing Units provided within Income Ranges 1, 2, and 3 provided pursuant to the requirements contained within this Ordinance, not to exceed 2/3 unit for each Affordable Priced Housing Unit provided, ~~an~~ increase of fifty ~~sixty~~ six percent (50~~66~~%) of the density density bonus as a percentage of the total number of Affordable Priced Housing Units and as ~~is~~ otherwise permitted by application of the Land Development Code, and not to exceed an increased density -of fifteen percent attributable to the Project in total.

B. A Project that provides additional Affordable Housing Units within Income Range 4 amounting to an increase of fifteen percent (15%) more than the Project would otherwise have to provide, may receive an additional five percent (5%) density bonus, not to exceed an increase of fifty percent (50%) of the density otherwise permitted by application of the Land Development Code, and not to exceed an increase of twenty percent (20%) attributable to the Project as a whole.

BC. The affordability requirements for a Project shall be determined prior to applying any density bonus.

CD. Density bonuses of more than twenty percent (20%) attributable to the Project as a whole may be approved by the Board of County Commissioners on a

case-by-case basis, so long as the Project remains compatible with surrounding uses and the impacts to adjacent areas are minimal.

**Section Ten. Relief from Fire Impact Fees.** Notwithstanding the provisions of Article \_\_\_\_, Section \_\_\_\_ of the Ordinance No. 1995-04 ("An Ordinance Imposing Fire and Rescue Impact Fees") and Article XII of the Santa Fe County Land Development Code, adopted September 10, 1996, , the Santa Fe County Land Development Code and Article \_\_\_\_ Section \_\_\_\_ of the Santa Fe County Fire Code, a Project that provides Service Level III, IV or V, or a Minor Project a Project or Minor Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay fire impact fees for each Affordable Unit provided within the Project.

**Section Eleven. Relief From Development Fees.** Notwithstanding the provisions of Article V, Section 6 ("Fees and Levies") Article XII, Section \_\_\_\_ of the Santa Fe County Land Development Code, a Project that provides Service Level III, IV or V, or a Minor Project a Project or Minor Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay development fees for each Affordable Unit provided within the Project.

**Section Twelve. Relief From Additional Santa Fe County Water Utility Connection Charges.** Notwithstanding the provisions of Article \_\_\_\_, Section \_\_\_\_ of Resolution No. \_\_\_\_ \_\_\_\_, a A-Project that provides Service Level III, IV or V, or a Minor Project that provides Affordable Housing as required by this Ordinance shall be relieved of the obligation to pay additional water connection charges for each of the Affordable Units that exceed the cost of the water meter.

**Section Thirteen. Reduction of Lot Size for Affordable Units.** A Project that provides Service Level III, IV or V, or a Minor Project that is not eligible for a water rights transfer waiver (Section Eight, herein) or a water allocation or density bonus (Section Nine, herein), may reduce the lot area for each Affordable Unit to the minimum permitted by applicable Regulations of the New Mexico Environmental Department, so long as the Affordable Units whose lot sizes are reduced pursuant to this Section are reasonably dispersed throughout the Project. The reduction in lot size shall not alter the hydrologic standards set forth in the Santa Fe County Land Development Code."

**Section Fourteen. Water Rights Transfer Reduction.** A Project that provides Service Level III, IV or V, or a Minor Project that is not eligible for a water rights transfer waiver pursuant to Section ~~Eight~~ herein or a density bonus pursuant to Section ~~Nine~~, Nine, herein may nevertheless be eligible to reduce the water budget for the estimated actual usage attributable to the Affordable Housing-Units within the Project as a whole, so long as at the time of application the County holds adequate water rights to supply the Affordably Priced Housing Units, and is otherwise capable of supplying the Affordably Priced Housing Units. to the estimated actual-usage attributable to the Affordable Units, notwithstanding the provisions of Article \_\_\_\_, Section \_\_\_\_ of the Land

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Development Code and subject to any requirements or conditions from the New Mexico State Engineer's Office governing such transfers.

**Section Fifteen. Other Incentives Authorized by Article 27, New Mexico Affordable Housing Act.** The County may donate land for construction of affordable housing or an existing building for conversion or renovation into affordable housing or may provide or pay the costs of infrastructure necessary to support affordable housing projects if permitted under the terms of a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

**Section Sixteen. Alternate Means of Compliance.**

A. A Project or a Minor Project may alternatively meet all or a portion of its obligation to provide Affordable Housing by:

1. providing Affordable Units outside the Project but within the unincorporated areas of Santa Fe County, subject to the provisions of Section Sixteen (D) of this Ordinance ;

2. making a cash payment of equal or greater value than would be required if the Project had constructed or created Affordable Units as provided in this Ordinance;

3. dedicating property suitable for construction of Affordable Units within the unincorporated areas of Santa Fe County whose value is equivalent or of greater value than would be otherwise be required if the Project had constructed or created Affordable Units as provided in this Ordinance; or

4. complying with the Green Building Construction Standards in the entire Project, so long as appropriate adjustments are made to the adjusted Maximum Target Housing Price for each Income Range according to guidelines set forth in the Affordable Housing Regulations.

B. Review and approval of a proposal to use an alternative means of compliance provided by this Section shall be conducted during the review of application for approval of the master plan, preliminary plat or development plan, as appropriate. Alternatively, a person desiring to develop a Project may apply for concept approval of a proposed Affordable Housing Plan prior to applying for approval of a Project, in which case the application shall be processed in the same manner as an application for a [master plan] is processed. Concept approval of an alternative means of compliance shall not imply nor commit to an approval for future development.

C. Where an alternative means of compliance pursuant to Section Sixteen (A)(4) is proposed, both the Project and its off-site affordable housing component shall be considered and processed as a single Project, except as provided in Section Sixteen (D) of this Ordinance.

D. Where an alternative means of compliance pursuant to Section Sixteen (A)(4) is proposed but the off-site Affordable Units (hereinafter referred to as "the receiving project") are to be located within an area governed by the Santa Fe County Extraterritorial Zoning Ordinance, Ordinance No. 1997-4, as amended, the Santa Fe County Extraterritorial Subdivision Regulations (1991), or the platting and planning jurisdiction

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of any municipality (hereinafter referred to collectively as "the Extraterritorial Zone"), the provisions of Section Sixteen (C) shall apply; however, prior to processing an application for the portion of the Project that lies outside of the Extraterritorial Zone (hereinafter referred to as "the sending project"), the receiving project must receive final development plan and plat approval from the Extraterritorial Zoning Authority or, in areas without an extraterritorial zoning ordinance or regulations, from the appropriate municipality.

E. In deciding whether to accept a proposed alternative means of compliance pursuant to Section Sixteen (A)(3), the County shall consider the following where applicable:

1. whether implementation of a proposed alternative means of compliance would overly concentrate Affordable Units in an area or within the proposed Project in a location where such a concentration would be inappropriate given present or future conditions;

2. if the proposal involved providing Affordable Units outside the Project area, whether the cumulative number of Affordable Units required by both the sending and receiving projects has been fully satisfied and that the required number of Affordable Units that would have otherwise been required by both Projects has not been diminished;

3. if the proposal involves providing Affordable Units outside the Project area, whether there is adequate existing infrastructure, including water systems, liquid waste facilities and transportation systems, to support the Affordable Units in the proposed location, whether infrastructure for water and liquid waste disposal systems can serve the proposed alternative site or project, and whether the commitment to provide such service has been confirmed in a commitment letter, or water or wastewater service agreement;

4. if the proposal involves providing Affordable Units outside the Project area, whether there is a specific need or market for Affordable Units in the location where proposed;

5. if the proposal involves providing Affordable Units outside the Project, whether the property where the Affordable Units are proposed to be located is suitable for residential use and residential development; and

6. if the proposal provides an overall greater public benefit than if the Affordable Units were constructed within the Project or Minor Project .

F. In deciding whether to accept a proposed alternative means of compliance pursuant to Sections Sixteen (A)(2) or (A)(3), the County shall consider the following where applicable:

1. whether the value of the cash payment or property is commensurate with the total value to construct equivalent Affordable Units within the Project or Minor Project;

2. whether a cash payment or property creates a substantial surplus of funds within the dedicated housing fund or trust specific to that purpose;

3. whether the appraised value of the dedicated land is equal to or greater than the total estimated value of the affordable units that would have been

constructed within the Project and, where the appraised value is less than the estimated value of the units, an additional cash payment equal to that difference; and

34. whether a cash payment or property provides a greater overall public benefit than if the Affordable Units were constructed within the Project or Minor Project that would have otherwise provided for mixed-income development.

GE. The method for determining whether the total cash payment amount or value of property proposed for transfer is sufficient shall be established in the Affordable Housing Regulations.

F. Affordable housing incentives provided under Sections Eight through Fifteen shall apply to those Affordable Units that are constructed within the Major or Minor Project and shall not apply to that portion where an alternative means of compliance is used to meet the obligations of this Ordinance.

#### **Section Seventeen. Hardship Conditions.**

A. The Board of County Commissioners or, if a Board of Adjustment is created by the Board of County Commissioners of Santa Fe County, then the Board of Adjustment, may waive one or more of the requirements set forth in this Ordinance if a condition of hardship exists as set forth in this Section.

B. A condition of hardship shall exist for purposes of this Section, as follows:

1. For a Project providing Service Level I or II, a condition of hardship exists where the Project fails to qualify for any incentive set forth herein, where the Project fails to demonstrate eligibility for an alternative means of compliance, where application of the provisions of this Ordinance would result in economic infeasibility of the Project, and where complying with the requirements of this Ordinance would deprive a property owner of substantially all economically viable use of the subject property taken as a whole contrary to the Constitution of the United States or the Constitution of the State of New Mexico.

2. For a Project providing Service Level III, IV or V, or for Minor Projects, a condition of hardship exists when an Affordable Unit (or lot created for an Affordable Unit) cannot be sold within a reasonable period of time without causing a loss on the Project or Minor Project taken as a whole.

#### **Section Eighteen. Long-term Affordability.**

A. Each Affordable Housing Agreement shall include a form of lien, mortgage or other instrument (hereinafter referred to as "the ~~A~~affordability ~~M~~mortgage or ~~L~~lien") that shall be executed and recorded along with the deed conveying the Affordable Unit to the first buyer, and that instrument shall create a mortgage or lien in favor of the County in the amount of the difference between the Maximum Target Housing Price and ninety-five percent of the ~~the~~ unrestricted fair market value of the Affordable Unit on the date of any subsequent sale or refinancing, as determined by an appraisal approved by the County, less the amount of the first buyer's down payment. The lien, mortgage or other instrument shall be duly executed and recorded in the Office of the County Clerk.



B. The Within that lien, instrument, or mortgage, ~~there~~ shall contain a provision that creates a right of first refusal in favor of the County to purchase the Affordable Unit or the right to broker resale of the Affordable Unit to an Eligible or Entry Market Buyer. This instrument shall require the owner of an Affordable Unit to provide the County with ninety (90) days written notice of intent to sell the Affordable Unit during which period the County may purchase the Unit or broker a purchase and sale of the Affordable Unit to an Eligible or Entry Market Buyer, for the-then Maximum Target Housing Price.

C. The lien, mortgage or other instrument shall also provide that if the Affordable Unit is sold or refinanced during the ~~first~~ ten year period beginning on the date of sale of the Affordable Unit to the first buyer thereof to the ~~eleventh~~ anniversary of date of sale of ~~the~~ Affordable Unit to the first buyer, the County shall share in any Appreciation; the seller's share of the resulting appreciation shall be measured by multiplying the number of full years that have elapsed from the date of first sale of the Affordable Unit by 0.10 and then multiplying that result by the Appreciation, less the amount of the Affordability Mortgage or Lien. The County's share of the Appreciation and the amount of the Affordability Mortgage or Lien Any appreciation accrued on the first buyer's original portion of their investment or any improvements made to the property during the ten year period that the lien or other instrument is in effect shall be due the first buyer at the time of sale. If the sale price is insufficient to close the transaction and satisfy the County's share of the Appreciation and the Affordability Mortgage or Lien, the County's share shall be reduced according to criteria set forth in the Affordable Housing Regulations. ~~provided there are sufficient funds to satisfy the affordability lien and any appreciation due the County as per this section. The method for calculating appreciation share, based on this Section of the Ordinance, shall be provided in the Affordable Housing Regulations.~~

~~C~~D. The form of the instruments described in subsections 18(A), 18(B) and 18(BC), above, and the methodology for determining the initial market value of the Affordable Unit shall be specified in the Affordable Housing Regulations.

E. Any lien, mortgage, or other instrument referred to in this Section shall be released and satisfied through an appropriate instrument at the time of sale of the Affordable Unit and the appropriate instrument shall be recorded in the Office of the County Clerk documenting the release and satisfaction thereof. Any amounts collected ~~The~~ proceeds from application of any the lien, affordability mortgage or lien instrument and any shared appreciation due ~~in accordance with~~ pursuant to Sections 18(A), ~~18(B)~~, ~~18(C)~~, shall be paid to the County contemporaneously with ~~upon~~ release of said instrument.

F. An Aafforadability Mmortgage or Llien y lien, mortgage or other instrument referred to in this Section may be temporarily released for the limited purpose of closing a subsequent purchase and sale of an Affordable Unit so long as an affordability mortgage or ~~the~~ lien, mortgage or other instrument is executed by the buyer and recorded as provided in this Section.

~~F~~G. Any amounts collected from application of any Affordability Mortgage or Lien ~~The~~ proceeds of the instruments described imposed in this Section

Eighteen (A) shall be deposited into a fund created in the County treasury or separate trust whose sole purpose shall be to support Affordable Housing within Santa Fe County or, alternatively, transferred to the Santa Fe County Housing Services Division Authority to support affordable Affordable Housing within Santa Fe County. The fund or trust shall be governed by rules and requirements set forth in a separate Ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq.

GH. Upon resale of an Affordable Unit, the affordability Affordability Mortgage or Lien may, upon prior written consent of the Administrator/County, be assumed by another Eligible or Entry Market Buyer and avoid application of the provisions of this Section, unless the sale to the Eligible or Entry Market Buyer resulted from exercise by the County of its first right of refusal pursuant to Section 18(B) of this Section. If another Eligible or Market Buyer assumes the affordability lien, they must notify the Housing Administrator on writing of the assumption,

HI. Where the-then owner of an Affordable Unit is under extreme duress by reason of unemployment, family medical emergency, divorce, or death and is unable to sell the Affordable Unit for an amount equal to or greater than the original sale price or for other unique and extreme circumstances of hardship, the Affordable Lien may be compromised or released.

**Section Nineteen. Affordable Housing Administrator.** The position of Affordable Housing Administrator is established within the Housing Department. The Affordable Housing Administrator shall administer the Affordable Housing Ordinance, manage the fund or trust established pursuant to Section 17(F) of this Ordinance and a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq., act as an ombudsman to the development review process, and have other responsibilities set forth in this Ordinance. The salary and benefits of the Affordable Housing Administrator shall be paid from proceeds collected pursuant to Paragraph 17(F) of this Ordinance and a separate ordinance enacted pursuant to NMSA 1978, Section 6-27-1 et seq., to the extent permitted by law.

**Section Twenty. Affordable Housing Ordinance Review.** The Affordable Housing Administrator shall prepare an Affordable Housing Report and present it to the Board of County Commissioners by the first anniversary of the effective date of this Ordinance. The purpose of the report is to measure the overall effectiveness of the Ordinance and to identify any deficiencies. In the report, the Affordable Housing Administrator shall recommend any amendments necessary to rectify those deficiencies. A similar report shall be developed and presented annually thereafter. If, at a future date, the provisions contained herein no longer meet the purpose and intent provided in Section One of this Ordinance, the Board of County Commissioners may consider appropriate amendments to this Ordinance or may repeal this Ordinance in whole or in part.

**Section Twenty-One. Repeal and Amendment of Existing Ordinances.**

A. Upon the effective date of this Ordinance, Ordinances Nos. 1997-02, adopted March 5, 1997, Ordinance No. 1997-10, adopted August 12, 1997, and Ordinance No. 2000-11, adopted September 26, 2000, shall be and hereby are repealed.

B. Upon the effective date of this Ordinance, Ordinance No. 1996-10 (the "Santa Fe County Land Development Code"), first adopted September 10, 1996, as amended, shall be and hereby is amended, as follows:

1. A new subsection 2.4.1a(1)(a)(vii) is adopted which shall provide as follows: "2.4.1a(1)(a)(vii). Submittals required by Ordinance No. 2006-[Ordinance Number]("Affordable Housing")."

2. A new subsection 2.4.2b(1)(d)(vii) is adopted which shall provide as follows: "2.4.2b(1)(d): Submittals required by Ordinance No. 2006-[Ordinance Number]("Affordable Housing")."

3. Art. III, Section 11.1 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-[Ordinance Number] ("Affordable Housing").";

4. Art. III, Section 11.2 shall be amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-[Ordinance Number] ("Affordable Housing").";

5. A new subsection 7.1.2(dd) of Art. V shall be and hereby is adopted which shall provide as follows: "7.1.2(dd): Submittals required by Ordinance No. 2006-[Ordinance Number]("Affordable Housing")."

C. Upon the effective date of this Ordinance, Section 10.1.2 of Ordinance No. 1997-03, as amended, shall be and hereby is amended with the following additional language, to be placed at the end of the Section: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-[Ordinance Number] ("Affordable Housing")."

D. Upon the effective date of this Ordinance, Section K and Art. XV, Section 1, Exhibit 1 ("Zoning Matrix"), Col. N, 1b, 5b, 6b, 8b -of Ordinance No. 2000-12 ("the Community College District Ordinance"), adopted enacted December 11, 2000, shall be and hereby areis repealed.

E. Upon the effective date of this Ordinance, a new Section 3.4.1.c(2) of Ordinance 2000-13 (the "Tesuque Community Zoning District"), adopted December 11, 2000, -shall be and hereby is amended as follows: "2) where affordable housing that is provided pursuant to Ordinance No. 2006-[Ordinance Number] ]("Affordable Housing")."

F. Upon the effective date of this Ordinance, a new Section 4.4.2 of Ordinance

2002-1 ("Madrid Community Planning District"), adopted January 8, 2002, shall be and hereby is adopted which shall provide as follows: "... except as otherwise provided by application of the density bonus set forth in Ordinance No. 2006-[Ordinance Number] ("Affordable Housing")."

G. Any ordinance, regulation or policy that is inconsistent with this Ordinance shall be, and hereby is, repealed.

**Section Twenty-Two. Severability.** The provisions of this Ordinance are severable and if any individual provision of this Ordinance is held invalid by a Court of Law, then the offending provision shall be stricken but the remaining provisions shall remain in full force and effect.

**PASSED AND ENACTED THIS \_\_\_\_ DAY OF JANUARY, 2006.**

**THE BOARD OF COUNTY COMMISSIONERS  
OF SANTA FE COUNTY, NEW MEXICO**

By  
Chair

**ATTEST:**

Valerie Espinoza, County Clerk

**Approved as to form:**

Stephen C. Ross, County Attorney

SFC RECORDED 02/20/2006