

Final Report

Las Cruces Affordable Housing Strategies

Prepared by the Ad Hoc Committee on
Affordable Housing

Final Report

July 28, 2009

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Strategies**

Prepared by

Affordable Housing Ad Hoc Committee
City of Las Cruces, Community Development
575 South Alameda
Las Cruces, New Mexico 88044

Prepared by

BBC Research & Consulting
3773 Cherry Creek N. Drive, Suite 850
Denver, Colorado 80209-3868
303.321.2547 fax 303.399.0448
www.bbcresearch.com
bbc@bbcresearch.com

and

Clarion Associates
621 17th Street
Denver, Colorado 80293
303.830.2890 fax 303.860.1809
www.clarionassociates.com

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SECTION I.
Introduction and Background

SECTION I.

Introduction

On June 2, 2008, the City of Las Cruces established the Mayor’s Affordable Housing Ad Hoc Committee. The Committee’s purpose is to oversee the development of a plan to better meet affordable housing needs in Las Cruces.

Mayor Miyagishima appointed 13 Committee members, representing a variety of stakeholder groups in Las Cruces. Councillor Sharon Thomas was elected as Committee Chair by the Committee members.

The Ad Hoc Committee includes the following members and organizations:

Committee Members	Representing
Councillor Sharon K. Thomas	City Council and Committee Chair
Mayor Ken Miyagishima	City Council
Councillor Dolores Archuleta	City Council
Ray Shipley	Planning & Zoning Commission
Win Jacobs	Housing Authority Board
Billy Moya	Title Industry (employed at Dona Ana Title)
Shelly L. Sanders	Mortgage Lending (employed at First National Bank NM)
Peggy Shinn	Realtors (from Coldwell Banker Dewitter Hovious)
Rose Garcia	Housing Nonprofit (Executive Director at Tierra del Sol Housing Corporation)
J. Joe Martinez	LC Chamber of Commerce
David Gordon	LC Home Builders Association (owns Desert Sage Building & Development)
Michael Sanchez	Potential Homebuyer
Tom Chagolla	Member-at-large
Vacant	Section 8/Public Housing participant

In addition to the establishment of the committee, BBC Research & Consulting (BBC) and Clarion Associates (Clarion) from Denver, Colorado and Williams Demographics from Las Cruces were hired to assist the Committee fulfill its goals through the following tasks:

- Evaluate the City’s existing policies and programs,
- Identify opportunities for modifying current programs/policies, and

- Recommend new programs and policies to better meet housing needs, including programs to help finance the development of affordable housing.
- The consultants also conducted a detailed review of the City's land use codes and ordinances to identify barriers to the development of affordable housing and opportunities to create more incentives for such development.

The consultants' work product includes detailed recommendations and an implementation plan for the City to better facilitate affordable and workforce housing development.

The consultants met with the Committee on a regular basis from July 2008 through March 2009. The first Committee/consultant meeting involved a review of the existing housing needs in Las Cruces. In subsequent meetings, the consultants presented best practice programs and policies from other communities and facilitated discussions about these programs/policies. One meeting was dedicated to reporting the results of the zoning and development fees review and recommendations for policy changes.

This report begins with background information on the City's existing programs and funding sources; provides information about the Committee meetings and the programs that were considered to address the City's affordable housing needs; contains a stand alone chapter dedicated to the zoning and development fees review; and culminates with the Committee's recommendations to better address Las Cruces' affordable housing needs.

SECTION II.
Las Cruces Affordable Housing Programs

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Las Cruces Affordable Housing Programs

This section discusses the programs that the City of Las Cruces has historically used to meet the housing needs of its low- and moderate-income residents. It sets the context for the remainder of the report, which culminates with recommendations and an implementation plan for increasing the city's resources and capacity within the City to address housing needs.

Federal Sources for Affordable Housing

Las Cruces has historically depended upon federal funding to support housing and community development activities. On average, the City of Las Cruces receives approximately \$1.5 million annually between the federal Community Development Block Grant (CDBG) and the HOME Investment Partnership Program (HOME). CDBG and HOME are entitlement funds received from the U.S. Department of Housing and Urban Development (HUD). In addition to these federal block grants, through funding received by nonprofit developers and the Housing Authority of the City of Las Cruces (HACLC), the City's low- to moderate-income residents benefit from the federal Section 8 voucher program and the federal Low Income Housing Tax Credit (LIHTC) program.

Specifically, the federal programs that have been used to address housing needs in Las Cruces include:

- **Community Development Block Grant (CDBG)**—Established in 1974, the program provides a lump sum of funding to qualifying cities and every state for community development activities. Federal regulations govern how the funds can be used. Housing activities are limited to housing rehabilitation, downpayment assistance, property acquisition, property demolition, infrastructure for developments that will contain affordable housing and construction of facilities that serve special needs populations (e.g., homeless shelter). CDBG cannot be used directly to build new affordable housing.

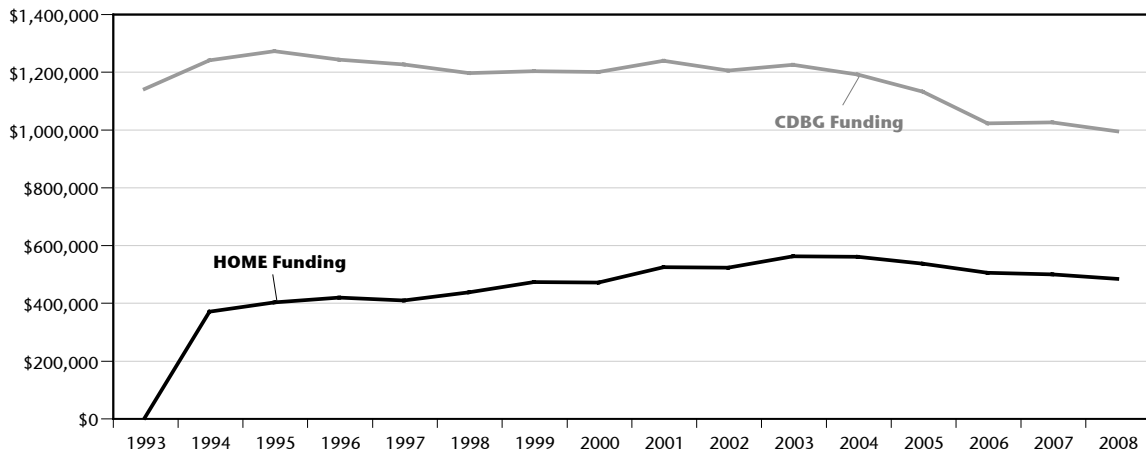
The City of Las Cruces has received CDBG since 1996. CDBG in Las Cruces has generally been used for owner occupied rehabilitation and public improvements—streets and sidewalks, bus shelters, nonprofit facilities—and owner-occupied home rehabilitation, along with supporting the operations of social service and housing providers. Las Cruces' CDBG allocation has declined since its peak of almost \$1.3 million in 1995 to just less than \$1 million currently. This reflects the overall decline of the national CDBG budget.

- **HOME Investment Partnerships Program (HOME)**—This program, enacted in 1990, is also a block grant program but, unlike CDBG, is solely dedicated to the development of affordable housing. Las Cruces first received HOME funds in 1994. Eligible activities include new construction, rehabilitation of existing housing, downpayment assistance and direct rental assistance to low-income renters. Developments funded with HOME have an “affordability period” during which the units created from HOME remain affordable to low- to moderate-income households. The City of Las Cruces receives about \$500,000 each year in HOME funds.

The City has historically used HOME dollars to fund three activities: 1) A home rehabilitation program administered by the City (now funded with CDBG); 2) Funding for affordable housing development (property acquisition, new construction); and 3) Funding to support the operations of certified Community Housing Development Organizations (CHDOs). In the past years, the bulk of HOME has been dedicated to the acquisition of lots by nonprofits for development of affordable housing.

As shown in the following exhibit, CDBG and HOME funds have been declining, most significantly since 2003.

Exhibit II-1.
HUD Historical Funding for CDBG and HOME, 1993 to 2008



Source: U.S. Department of Housing and Urban Development.

- **Section 8 voucher program.** Annually, the Housing Authority of the City of Las Cruces (HACL) receives \$1.2 million for the Section 8 voucher program. This allows the housing authority to assist about 900 households per year, for a per household cost of \$1,333 annually on average. The majority of families assisted through the voucher program have some source of income, mostly through social security/general assistance or disability payments. Most residents assisted are mostly female heads of household, two-thirds are families and one-fifth are elderly and/or disabled.
- **Section 8 project-based units.** This federal program subsidizes the rents of units in existing rental and newly construction “project-based” Section 8 developments. The HACL manages 102 units of Section 8 new construction at two sites. One site is family housing (61 units); the other is elderly/disabled housing (41 units). Residents are mostly female heads of household, and 46 percent are elderly/disabled.
- **Public housing authority units.** HACL also receives about \$355,000 per year in capital funds to maintain rental properties owned and managed by the housing authority, which include 249 units of public housing located at four sites and 10 scattered single dwelling units. The households assisted are mostly female heads of household, many families, and have sources of income through government assistance. About 40 percent are seniors/disabled.

- **Low Income Housing Tax Credit program.** Administered by the federal Internal Revenue Service (IRS), this program provides tax benefits to developers who invest in affordable housing. This is strictly a rental program, where the investor is allowed to take a credit against federal income taxes over a 10-year period, provided the property continues to operate as affordable rental housing for a minimum of 30 years. Tax credits are competitive, and are awarded to developers by the New Mexico Mortgage Finance Authority (MFA). The city has more than 500 tax credit units, more than half of which are senior developments.
- **Other federal funding sources.** In addition to the block grant, Section 8 and LIHTC programs, the City of Las Cruces is eligible to compete for other types of federal funding for affordable housing. The most common programs include:
 - Section 202—funding for the construction and operation of low-cost senior rental housing;
 - Section 811—funding for the construction of low-cost rental housing for persons with disabilities;
 - Shelter+Care—funding to assist persons who are homeless or at-risk of homelessness with their rent payment, in addition to providing them with supportive services (e.g., mental health counseling, job training);
 - Continuum of Care—This program provides funds for communities to reduce and end chronic homelessness and prevent residents at-risk of homelessness from becoming homeless.
 - Emergency Shelter Grant (ESG)—This program provides funding to assist organizations that provide housing and services to homeless persons and their families. During the last 2 years, 4 organizations in Las Cruces have received ESG funding to help with their operations and services.
 - HOPWA—The federal Housing Opportunities for Persons with AIDS (HOPWA) program provides housing assistance to persons living with HIV/AIDS and operating support to organizations serving this population. In New Mexico, HOPWA funds are awarded on a competitive basis to MFA. The Camino de Vida Center for HIV Services has been the recipient of HOPWA funds for the southwest section of New Mexico, including Las Cruces.

State and Local Funding

State funds have also been used to provide housing assistance to citizens of Las Cruces. MFA administers state programs for affordable housing. These programs are available to Las Cruces residents, in addition to other New Mexicans. The state’s affordable housing programs that Las Cruces residents may take advantage of include:

- Below market-rate mortgages for first time homebuyers;
- Downpayment and closing cost assistance to low-income homebuyers;
- Owner-occupied weatherization improvements; and
- Financial assistance in developing affordable rental housing.

The City's local efforts to encourage and support affordable housing development have been applied on an as-needed basis. The City has provided the housing authority with a loan for property acquisition and waived building permit fees for nonprofit affordable housing developers. The City's development fee waiver program is the first formalized approach at incentivizing and subsidizing affordable housing development.

Major Housing Programs

This section describes the main housing programs employed in and by the City of Las Cruces to meet housing needs. These programs are funded all or in part by the sources described in the prior section.

Home Rehabilitation Program. The purpose of the city-administered Home Rehabilitation Program is to assist families with low- and moderate-incomes in rehabilitating their homes. This is done by enabling families to secure a low interest mortgage loan or grant, which may not be available to them otherwise. Owner-occupants are eligible provided they live within the City of Las Cruces, are in violation with the City of Las Cruces building code and/or Housing Quality Standards, and earn less than 80 percent of the area median income (in other words, making less than about \$34,000 per year).

Key components of the Home Rehabilitation Program include:

- Homeowners can get a maximum of \$52,000 per year in a low-interest loan or grant to make major repairs.
- Eligible homeowners in the program must agree to vacate their unit while it is under repair (sometimes as long as 6 months). Many live with families and friends; the city assists with relocation if needed.
- The homes assisted by the program have a variety of issues, although most need roof and electrical repairs.
- The households assisted are predominantly elderly and female-headed, many single parent households.

Since 2004, 46 housing units have been rehabilitated from the Home Rehabilitation Program. The City has a goal to assist 12 households per year. In 2007, the City assisted six households at an average cost of \$35,780 per home.

All of the households assisted through the program earn less than 80 percent of the median income and about 22 percent of these households were extremely low-income households (earning 30 percent or below the median income).

According to the staff that manage the program, the biggest challenge for the program is lack of resources. If the program had more funding and could be expanded, staff projects that twice as many households could be assisted per year.

Mobile Home Ramp Program for the Disabled. This recent addition to the Home Rehabilitation Program assists low-income, disabled individuals and families that live within mobile homes. The program provides them an accessible ramp to their home for permanent members of their household who have a mobility or other qualifying disability. This includes those who own their home or who are renting, and it can be in a mobile home park or placed on their own land. The ramp is given in the form of a grant and becomes the property of the low-income family. Since the program is relatively new, the City is currently assisting its first client.

Affordable housing development. Las Cruces funds affordable housing projects differently each year depending upon needs. The City has an informal policy of alternating its focus on for sale and rental projects year to year.

The exhibits below summarize the types of developments the City has funded during the past few years, along with the per household cost.

**Exhibit II-2.
Households Assisted with
CDBG and HOME, 2003
to 2006**

Source:
City of Las Cruces CAPER reports and BBC Research & Consulting.

Renters Assisted		AMI Range	
	0-30%	113	45%
	31-50%	116	46%
	51-80%	21	8%
Total Renters		250	100%
Owners Assisted		AMI Range	
All owners	0-30%	34	23%
	31-50%	56	37%
	51-80%	60	40%
		150	100%
Special populations	0-80%		30

As shown in Exhibit II-2, the City’s funding has heavily targeted the lowest-income households in the City, particularly rental programs. The vast majority of renters assisted between 2003 and 2006 earned less than 50 percent of the City’s AMI, or less than about \$20,000 per year.

**Exhibit II-3.
Funding and Cost of Affordable Housing Development and Rehab, 2001 - 2007**

Year Funding Approved	Funding Source	Funding Amount	No. of Households Assisted	Cost per Household	Type of Activity	Description
2007	CDBG	\$ 214,680	6	\$ 35,780	Home rehabilitation	Home rehabilitation of owner occupied properties.
2006	HOME	\$ 323,500	15	\$ 21,567	Acquisition of lots	Acquisition of 15 lots in the mixed-income subdivision of Sierra Norte Heights Phase I. The lots will be given to nonprofit housing developers for construction of for sale affordable homes.
2004-2005	HOME	\$ 371,976	13	\$ 28,614	Relocation of mobile home park	Relocation of 13 households in the Valley View Mobile Home Park to prepare the site for the Housing Authority of Las Cruces Stone Mountain Place Apartment Complex.
2002-2004	HOME	\$ 184,170	8	\$ 23,021	Acquisition of land	Purchase of lots for sweat equity homebuyer program.
2001-2005	HOME	\$ 1,018,661	14	\$ 72,762	Section 811 new construction	Construction of rental housing for persons with various types and degrees of mental disability. This apartment project consists of 5 buildings containing 14 units for low-income, chronically ill adults, with some supportive services on-site. HUD funding covered just 50 percent of construction costs
2004-2005	HOME	\$ 377,018	29	\$ 13,001	Acquisition of land	Purchase of land for sweat equity homeowner units. 104 total units, of which 29 are HOME units.
2005	HOME	\$ 419,116	17	\$ 24,654	New construction	Development of an 84 unit rental project called Stone Mountain using HOME and Low Income Housing Tax Credit funds.
2004	HOME	\$ 203,519	14	\$ 14,537	Acquisition of lots	Acquisition of 14 lots for construction of for sale affordable homes.
2003	HOME	\$ 342,744	100	\$ 3,427	LIHTC	Conversion of Desert Palms motel into a housing tax credit rental project, assisting low-income households and seniors. HOME dollars were provided as gap financing.
2003	HOME	\$ 106,539	48	\$ 2,220	LIHTC	Tax credit rental project assisting migrant farm workers and/or retired low-income farmworkers.
2003	HOME	\$ 100,000	6	\$ 16,667	New construction	Construction of affordable single family units using sweat equity program.
2001	HOME	\$ 275,000	60	\$ 4,583	LIHTC	Tax credit rental project assisting low-income seniors.
					Relocation of residents	Valley View Mobile Home Park relocation for Stone Mountain Tax Credit Development

Source: City of Las Cruces and BBC Research & Consulting.

Exhibit II-3 compares the per household cost of the affordable housing developments the City has recently funded. (It also includes the home rehab program funding for 2007 for comparison of program cost). It should be noted that comparisons across activities are not always appropriate, as some projects were supplemented with other funding sources. For example, the cost per household for development of Low Income Housing Tax Credit units is quite low because City funds are used to supplement the tax credit financing available for these units. In contrast, the per unit construction costs for the Section 811 rental complex which provides housing and services to persons with disabilities is relatively high, as supplemental funding sources were limited (HUD provided just half of the construction costs).

The exhibit does show some general trends, however. Lot acquisition costs between \$15,000 and \$20,000 per household. The \$20,000 cost is more reflective of current conditions, as land costs have been appreciating. The per household subsidy for new construction ranges from \$17,000 to \$25,000 (excluding the Section 811 development). Supplemental funding for tax credit projects has the lowest per household cost, and home rehab has the highest because of the poor condition of the units that are rehabilitated.

These data do not account for the administrative time spent on the projects, nor do they incorporate the related benefits for each program. For example, the per household cost of the Valley View Mobile Home relocation and the home rehab program are relatively high. But these programs offer other benefits for the City as they improve the condition of the neighborhood overall and help to reverse slum and blight.

Community Development Housing Organizations. The City is required by HUD to set aside a minimum of 15 percent of its HOME funds for housing to be developed, sponsored, or owned by Community Housing Development Organizations, or CHDOs. A CHDO is a non-profit housing developer whose governing board, membership and organizational structure reflect its accountability to low-income community residents. CHDOs must have a demonstrated capacity for carrying out HOME-approved activities and a history of serving the community in which the HOME-assisted housing is located. CHDOs are designated by the HUD and the City and are approved by City Council. CHDOs must be recertified annually.

The City currently has two certified CHDOs, Mesilla Valley Habitat for Humanity (MVHFH) and Tierra del Sol Housing Corporation. The City sets aside a minimum of 15 percent of its HOME funds for housing to be developed, sponsored, or owned by its CHDOs. This amount has ranged from

CHDO operating assistance. The City may set aside up to 5 percent of the fiscal year HOME allocation to be used for operating expenses of CHDOs. These funds may not be used to pay operating expenses incurred by a CHDO acting as subrecipient or contractor under the HOME program. Operating expenses means reasonable and necessary costs for the operation of the CHDO. Such costs include salaries, wages, and other employee compensation and benefits, employee education, training and travel, rent, utilities, communication costs, taxes, insurance, equipment, and materials and supplies.

CHDOs may receive up to 5 percent of the annual HOME allocation. In 2008, the two CHDOs each were allocated \$12,900 of HOME funds for operating assistance. A total of \$107,300 of HOME funds have been allocated to CHDO operating assistance during program years 2003 to 2008.

Shelter Plus Care. The City of Las Cruces, in conjunction with Mesilla Valley Community of Hope (MVCH), was awarded a HUD Shelter Plus Care Grant in the amount of \$327,060 for grant years 2004 to 2009. Beginning in 2005, the City began implementation of its Shelter Plus Care (S+C) Program, Community Housing Connection, in which tenant based rental assistance (TBRA) was provided for the disabled homeless population of Las Cruces. Annually, \$65,412 of S+C funds are designated to assist 12 households with rental housing and services.

The City administers this program in partnership with Housing Authority of the City of Las Cruces, Southwest Counseling Center, and the Mesilla Valley Community of Hope (MVCH). This funding provides Tenant Based Rental Assistance for the disabled homeless population of Las Cruces with required match in the form of supportive services being provided to the tenants. MCVH and Southwest Counseling Center are the primary supportive services providers. The Housing Authority of the City of Las Cruces is responsible for the rental administration. The City of Las Cruces serves as the fiscal agent of the grant funds, as well as ensures compliance with applicable federal regulations.

Development Impact and Fee Waiver Program. The City recently passed a new ordinance authorizing development fee waivers for affordable housing units. A developer can be waived an estimated \$3,800 per unit in development fees for affordable units. The city has a cap on the amount of total fees that can be waived in one year of \$95,000.

Public facilities and infrastructure. As mentioned above, the types of housing activities allowed by CDBG are limited. CDBG is a much more flexible community development program than a housing program. As a result, many communities—including Las Cruces— use CDBG for improvements and/or new construction of public facilities and infrastructure.

CDBG in Las Cruces has been used for a wide variety of public improvements, from a new kitchen for the local Meals on Wheels program to construction of bus shelters at bus stops to road construction in low- and moderate-income areas.

Public services. This category of assistance refers to dollars that are allocated to nonprofits in the city that provide services to low-income residents, including residents with special needs (e.g., disabilities). Each year, organizations in Las Cruces apply for public service funds. These funds can be used for many activities, and in the past have funded the operations of homeless shelters, medical services for the poor and services to victims of domestic violence.

Mortgage lending assistance. The city has not allocated CDBG or HOME for homebuyer assistance since 2004. In 2002, the city assisted 50 households with purchasing a home by using CDBG; in 2003 and 2004; 13 to 15 households were helped using HOME funds. Since 2005, mortgage lending assistance has been provided through the state's MFA's PaymentSaver program. PaymentSaver is offered through local institutions in Las Cruces. The program provides a below-market interest rate first mortgage loan as a second mortgage loan at zero-percent interest to cover up-front costs (the down payment and other costs related to the purchase).

During 2007, 25 Las Cruces families received PaymentSaver assistance. The level of assistance ranged from \$6,500 to \$15,000.

Homebuyer education. In September 2005, The Las Cruces City Council approved the execution of separate agreements with Tierra Del Sol Housing Corporation and YWCA El Paso Del Norte Region to proceed with the implementation of the Homeownership Centers and the delivery of the curriculum. Both agencies have established homebuyer education resource centers as well as offer homebuyer education classes in both English and Spanish. They also provide one-on-one counseling sessions. The program is intended to assist families with improving their credit and money management skills and then to get them ready for potential homeownership.

In the mid-1990s, the City of Las Cruces received an Economic Development Initiative Special Project grant from HUD to develop curriculum for a Homebuyer Education Project and implement a Model Extension Program to increase homeownership in Las Cruces. The Model Extension Program has been developed jointly by the City of Las Cruces and the Department of Extension Home Economics at New Mexico State University (NMSU).

The goal of the Model Education Program is to educate prospective homebuyers in the skills necessary to purchase affordable homes, thereby increasing their opportunities for homeownership. The curriculum, available in both English and Spanish, has been developed by NMSU.

Housing Providers

In addition to the city's efforts at meeting housing needs (described through its programs, above), there are a handful of organizations in the city whose mission is to develop and maintain affordable housing. These organizations are described in this section.

Housing Authority of the City of Las Cruces (HACLCL). The HACLCL has numerous ongoing housing programs structured to serve the continuum of housing needs of low-income residents in Las Cruces. The primary programs include:

- **Section 8 Housing Choice Voucher Program.** The HACLCL administers the federal Section 8 program, which provides subsidies to low-income renters in the city. Through this program, renters receive assistance with paying their monthly rent. Renters in the program may choose from any rental units in the city that have rents under a certain level (called Fair Market Rent, or FMR) which is set by the federal government. The HACLCL currently provides vouchers to approximately 900 households; the waiting period for a voucher ranges from 18 months to 3 years.
- **Section 8 Housing Choice Voucher Homeownership Program.** This program allows the first-time homebuyer to use the Section 8 voucher subsidy to meet monthly homeowner expenses. The housing authority started this program in 2007 and has subsequently housed 18 families to date.
- **Section 8 New Construction.** The HACLCL owns, manages and maintains rental properties in neighborhoods in Las Cruces for low-income families, the elderly and disabled. 102 of these units are Section 8 New Construction units; 61 are family units and 41 are elderly/disabled.
- **Workforce homeownership.** The HACLCL has pursued several efforts to address the needs of workforce housing. The first, City In-Fill Development/Construction Trades program is a partnership between the City, the housing authority and the Construction Trades Program. The City donated 6 lots on which workforce housing has been constructed for persons working in the career fields of law enforcement, education, health care and first responder.

In addition, the HACLCL has collaborated with Fannie Mae, First Light Federal Credit Union, the YWCA and local realtors and builders to deliver the Housing Opportunities for Workforce (HOW) program. The program is a lease purchase program for workforce. The HACLCL buys a home for a qualifying household, leases it back to them for one year and allows the participant to assume the mortgage when they are credit-ready. Finally, the HACLCL has built 10 homes that are leased to purchasers (the housing authority takes a soft second or third position) with a purchase option.

- **HACLCL-owned properties.** The HACLCL currently manages 249 units of public housing located at 4 different sites and 10 scattered single dwelling units.
- **Montana Senior Villages I and II.** These developments (total of 132 units) were created using the LIHTC program and are managed by the HACLCL. The units provide affordable housing and a community center for low-income seniors.
- **Stone Mountain Place.** The HACLCL, in collaboration with a private developer built 84 affordable two- and three-bedroom apartments, a community center, laundry facilities and a playground.

Tierra del Sol. Tierra del Sol is a local nonprofit developer of affordable housing. The organization uses sweat equity and various mortgage and down payment assistance tools to make home ownership accessible to low-income households. Tierra del Sol is a long time developer of affordable housing in the Las Cruces area.

Tierra del Sol's current projects consist of:

- Paseo del Oro subdivision. This is new construction lots and self help homes with 3-4 bedrooms. 83 of the units will be affordable to 80 percent of AMI and below; 39 at 80 percent of AMI and above, although still below market (\$92,000 to \$130,000).
- Sierra Norte subdivision. New construction lots and self help homes for 6 3-4 bedroom units ranging from \$89,000 to \$120,000 in price (80 percent of AMI and below).
- Scattered site homes, a total of 12 lots on which will be built self help 3-4 bedroom homes averaging \$92,000 per unit.
- St. Genevieve's apartments. These are 1 bedroom, elderly/disabled units priced to be affordable at 50 percent of AMI. There are 32 units.
- Alta Tierra apartments. This 57 unit complex was acquired from the FDIC in 1992. These units are all 2-bedroom family units.

Habitat for Humanity. Like Tierra del Sol, Habitat for Humanity uses a sweat equity model to build affordable housing. Habitat focuses on homeownership housing. Since 1987, Habitat has built 70 homes. Through sweat equity, Habitat is able to build lower priced market units at about half of what the market price would be. Habitat also provides loans for their homes, with the terms of no interest, a 25+ year payment period and a downpayment of one month's mortgage.

In 2008, Habitat will build 5 houses in Las Cruces; its goal for 2009 is 6 houses. The process from application to occupancy is about 5 years. Habitat's unique program and loan terms mean that households with median incomes as low as 30 to 50 percent of the AMI can afford to buy a home. Habitat gets between 150 to 200 applications for its homes each year. Most applicants have lived in Las Cruces for more than one year and show job stability and good credit, the exception due to medical/health issues.

Community Action Agency. The Community Action Agency of Southern New Mexico works to reduce poverty in the Las Cruces area. To this end, the agency is engaged in housing activities that assist low-income households. CAA has worked with the city and the State of New Mexico to conduct housing rehabilitation. About 2 years ago, they acquired 100 apartments in the City that are rented to low-income households, many to single persons.

CAA has also been involved in the affordable component of Sierra Norte and plans to begin construction of homes on these lots that will sell for approximately \$110,000.

CAA also offers temporary housing to teen parents for up to 18 months. They currently can support five women, each with one child, at any one point in time.

Special needs providers. There are several organizations in Las Cruces that provide targeted affordable housing to populations with certain needs and persons who are homeless. These organizations include:

FYI. Families and Youth, Inc. (FYI) provides emergency shelter (15 beds) for up to 90-days and transitional housing (7 beds) for up to 18 months for youth. The apartments are leased from the HACLC, and were purchased by the housing authority to ensure preservation of these units.

Mesilla Valley Community of Hope. The Mesilla Valley Community of Hope (MVCH) is the umbrella organization for the following resources that serve people experiencing homelessness in Las Cruces: St. Luke's Health Clinic, Jardín de Los Niños and EL Caldito Soup Kitchen. All services are provided to persons experiencing homelessness or are near to homelessness and some programs include those who qualify as low-income.

MVCH/YWCA (through the Family Shelter) provides emergency shelter and transitional housing, primarily to families and women. Their facilities include 9 rooms—6 rooms for families and 3 rooms for singles. Additionally, they provide some rental assistance involving case management and life skills training. St. Luke's Health Clinic offers health care to the working poor and homeless who have no other resource for health care such as Medicaid/Medicare or other health insurance. Jardín de Los Niños provides childcare and after school programs for children who are homeless or near homeless. Caldito Soup Kitchen supplies meals to persons who are homeless and low-income. Also included in the Community of Hope alliance are Casa de Peregrinos (providing basic food services) and the Mesilla Valley Clothes Closet.

Community of Hope, along with the HACLC, also provides housing to homeless veterans through the Oak Street Apartments. These units were purchased by the housing authority for preservation, and then renovated to be used as transitional housing for homeless veterans.

The **Las Cruces Gospel Rescue Mission** operates an emergency shelter for persons who are homeless. Persons experiencing homelessness are allowed three nights stay every 30 days, provided they are clean and sober. Fourteen slots are available for longer stays up to 90 days, where clients perform employment duties in return for food and shelter. Those who hold jobs or are students qualify for extended stay. Transition into the 90-day program requires a client evaluation, which includes a discussion of church service attendance if clients do not currently attend. Gospel Rescue Mission provides a total of 120 beds, the majority of which are reserved for single homeless men.

Other resources include La Casa, Inc., which provides short-term transitional housing (37 beds) and counseling for domestic violence victims and their children. Southwest Counseling Center's Transitional Living Center is the largest provider for persons with mental illnesses who are homeless, supplying 29 beds for transitional living and one bed reserved for crisis situations.

Summary Impact

This section summarizes the impact of the City's primary housing programs. It also demonstrates where there are gaps in the resources available v. existing needs.

Home Rehabilitation Program. The Home Rehabilitation Program is administered by the City of Las Cruces. In 2007, the City assisted 6 households with homes in severely substandard condition for a per household costs averaging \$35,780. In 2007, the number of households assisted was lower than in past years because of the complexity and severity of needs of the households who received funding.

The most recent Las Cruces Consolidated Plan estimated that as many as 550 Las Cruces renters and owners live in units that are in severely substandard condition; about half are renters, half are owners. If the City assisted 10 low-income owners per year on average, the program could continue to meet needs for at least *25 years*. If the program were expanded to multifamily rental properties, the demand would be higher.

Affordable housing development. On average, as shown in Exhibit II-2, the City has been able to assist with the purchase of 15 lots for development of affordable for sale housing per year, in addition to supplement the development of affordable rental housing (where the average number of households assisted each year varies widely depending on the rental development). These units are then sold to organizations like Tierra del Sol, Habitat for Humanity, Community Action Agency and the HACLC for new home construction.

In 2005, only about 1,000, or 8 percent of renter households in the City could afford to buy the average-priced home for sale. Recognizing that not all renters desire or are at a point in their lives where they should be homeowners, we estimate that there are as many as 900 renters earning between \$35,000 and \$45,000 for whom homeownership is not attainable because units are not available to buy. There are another 900 renters earning between \$45,000 and \$50,000 in the same situation. If the City is only able to make 15 lots available per year for these potential homebuyers, it will take 120 years to satisfy this demand!

In addition, there are 3,600 renters earning less than \$15,000 per year who can't find affordable rental housing. If the City were able to fund 100 deeply affordable rental units per year to serve such renters (along with other, larger funding sources such as the tax credit program), the City could fund deeply subsidized rental housing for 36 years without running out of needs.

Section 8 voucher program. The Housing Authority of the City of Las Cruces (HACLC) administers the Section 8 program in the City, which provides subsidized rental housing for low-income households. The HACLC receives \$1.2 million on average annually for the program, which enables them to assist 900 households at a per household cost of \$1,333.

HACLC units. HACLC also owns and operates 249 of low-cost rental units in Las Cruces. The housing authority receives \$355,000 in capital assistance annually from HUD for this program, resulting in a per unit subsidy of \$1,425 on average. Also, approximately 102 household are assisted each year through the project based Section 8 program that provides low-cost rentals and is managed through the housing authority.

Other low-cost rental units. The HACLC, Community Action Agency and Tierra del Sol have all acquired and/or developed affordable rental units through the Low Income Housing Tax Credit program, the Section 202 program, the Section 811 program and through various other subsidies. Although these units add a considerable number of units to the City's affordable rental stock, the subsidies available for such units are often not enough to provide rents low enough to address the City's greatest need: units for households earning less than \$15,000 per year.

The City's 2005 Consolidated Plan found a shortage of more than 3,600 units for renters earning less than \$15,000 per year—the target population for the housing authority's rental programs. The housing authority assists approximately 1,250 households assisted per year, meaning that the HACLC's programs could more than double before the Section 8 and public housing program were able to fully meet the needs of existing renters without affordable housing—not accounting for new growth.

Shelter+Care. The City administers this program in partnership with Housing Authority of the City of Las Cruces, Southwest Counseling Center, and the Mesilla Valley Community of Hope (MVCH). This funding provides Tenant Based Rental Assistance for the disabled homeless population of Las

Cruces with required match in the form of supportive services being provided to the tenants. Annually, \$65,412 of S+C funds are designated to assist 12 households with rental housing and services.

The 2005 Las Cruces Consolidated Plan estimated that as many as 240 disabled households in the City have housing needs. It is unclear how many of these individuals are housed in safe and sanitary conditions.

The Consolidated Plan also estimated that, at any point in time, 13 households in the City are homeless and have a mental illness. Given the limited resources for homeless disabled households in the City and the significant needs these households have, it is safe to conclude that the City could benefit from an ongoing Shelter+Care program and find demand for assisting more than 12 households per year.

Mortgage lending assistance. Since 2005, mortgage lending assistance has been provided through the state with MFA’s PaymentSaver program. PaymentSaver is offered through local institutions in Las Cruces. The program provides a below-market interest rate first mortgage loan as a second mortgage loan at zero-percent interest to cover up-front costs (the down payment and other costs related to the purchase). During 2007, 25 Las Cruces families received PaymentSaver assistance. The level of assistance ranged from \$6,500 to \$15,000.

Exhibit II-4 summarizes the per household funding, projected need and years to meet the need at current funding rates for the City’s annual programs that fund affordable housing needs. As the exhibit demonstrates, the need far outweighs the funding available.

**Exhibit II-4.
Summary of Production v. Needs**

Program	Avg. No. of Households Assisted/Year	Avg. No. of Dollars per Household	Projected Need	Number of Years to Meet Need	Dollars to Meet Need Per year
Housing Rehabilitation	10	\$ 35,780	250	25	\$ 8,945,000
Affordable Housing Development:					
Low- to Moderate Income Homebuyers	15	\$ 20,000	1,800	120	\$ 36,000,000
Low-Income Renters	90	\$ 5,000	3,600	40	\$ 18,000,000
Shelter+Care	12	\$ 5,417	Ongoing	Ongoing	\$ 65,000
Mortgage Lending Assistance	25	\$ 10,750	Unknown		

Note: Affordable Housing Development funding rotates each year between assisting homebuyers and renters. Subsidy for development of low-income rental units assumes City dollars subsidize LIHTC funding.

Source: City of Las Cruces and BBC Research & Consulting.

SECTION III.

Development Regulations Review

As part of the consulting team’s review of Las Cruces’ affordable housing programs, Clarion Associates reviewed the city’s zoning and impact fee ordinances. Experience shows that while financial subsidies and thoughtful public-private investments are often needed to meet affordable housing demands, it is also important to review basic governmental regulations to ensure that they are not inadvertently discouraging needed forms of housing. More specifically, it is important to review zoning regulations and development fees to identify:

- Barriers to private production of affordable housing, and
- Potential additional tools that could spur private production of affordable housing.

Stated another way, private market construction of a wider range of land-efficient, space-efficient, and cost-efficient housing types can result in “private” solutions to a portion of affordable housing demand and reduce the need for financial subsidies in some cases.

The following recommendations build on two of the key guiding principles identified by the Ad Hoc Committee which oversaw this study:

- Las Cruces needs to increase its supply of affordable housing, both for low income renters and moderate income renters who want to be homeowners.
- Affordable housing should be dispersed throughout the City.

Recommendations

This regulatory review resulted in the following recommendations, each of which is discussed in the sections that follow. These recommendations are also summarized in the full report’s Recommendations section (V).

Proactively rezone land into the R-4 zone. Proactively rezone lands along bus routes and major one-way street pairs into the R-4 zone to encourage construction of multi-family housing.

Adjust the R-4/C-3 Zone height and density. Raise the height limit in the C-3 and R-4 zones from 60 feet to 75 feet and revise minimum density requirement.

Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones. Adopt minimum density regulations for key zone districts.

Refine R-1-b Zone and provide templates. Revise the dimensional standards for the R-1-b district and prepare template examples of smaller single-family housing on 3,500 square foot lots in order to encourage wider use of this existing zoning tool.

Reduce residential parking requirements. Reduce the minimum off-street parking requirement for accessory dwelling units (ADUs) and multi-family dwelling units to 1 space per unit.

Refine Accessory Dwelling Unit regulations. Remove the requirement that ADUs be occupied by a member of the same family that occupies the primary housing unit, and that the ADU be contained within a primary structure.

Expand impact fee exemption. While the existing exemption from park, water, and sewer fees is good, it covers too few units to make a significant difference in affordable housing supply.

Discussion

Proactively rezone land into the R-4 Zone. While Las Cruces has significant unmet demands in both single-family and multi-family affordable housing, the city has focused largely on site-specific single-family housing supply. Over time, a rising share of unmet demand for affordable housing may need to be met through multi-family rental and ownership units, simply because the per unit land and construction costs are lower, and an increasing share of families in need of affordable housing may only be able to afford purchases or rentals of attached and multi-family units. Las Cruces’ zoning ordinance includes the R-2, R-3, and R-4 multi-family districts, which are fairly well designed to permit potentially affordable development. The R-4 district regulations—which include a minimum density high enough to help support bus/transit service and no maximum density—is particularly well suited for use in constructing affordable multi-family units. Unfortunately, only 7.1 percent of the developed land in the city is zoned into multi-family districts, and only 1.3 percent of the developed land is zoned in the R-4 category—which is the only one that requires (rather than allows) multi-family construction. The table below summarizes the amounts of land in selected Las Cruces zone districts.

**Exhibit III-1.
Percent of Developed Land by Zone District**

District	Min. Lot Size (sq. ft.)	Density Limits	Acres	Percent of Developed Land
R-1-c	10,000	4/acre	52	0.1%
R-1-a	5,000	8/acre	8,733	19.6%
R-1-b	3,500	12/acre	4,087	9.4%
R-2	5,000	15/acre	978	2.2%
R-3	5,000	20/acre	1,580	3.6%
R-4	8,500	10/acre min 40/acre max for pre-2001 No max for newer rezones	545	1.3%
C-1	5,000	N/A	438	1.0%
C-2	10,000	N/A	1,214	2.8%
C-3	21,780	N/A	2,374	5.4%

Source: Clarion Associates.

We recommend that Las Cruces proactively rezone more lands into the R-4 zone district in order to encourage production of multi-family rental and ownership units. The rezoned lands should be located along key one-way pairs of streets or other major arterials that serve as major transportation corridors connecting downtown and the university area with other major activity centers in the city. Although the city's current looped bus routes are not focused on those corridors, experience shows that as bus systems mature and expand those are logical routes for expanded service because (a) they can help relieve traffic congestion and (b) there is less community opposition to bus routes in those locations. Adding housing density along those corridors can also help support future bus system expansions and contribute to housing affordability, since the combined costs of housing and transportation can be reduced when bus service is available. In addition, Las Cruces should consider pro-actively rezoning land into the R-4 category in other activity centers or near major arterial-arterial and collector-arterial intersections currently served by the looped bus routes. Several other western city plans—including Albuquerque's Centers and Corridors plan – have recognized this symbiotic relationship between public transit and affordable housing.

Adjust the R-4/C-3 Zone height and density. In general, the dimensional standards in the Las Cruces zoning ordinance are reasonable for their intended purposes. The few exceptions include the 60 foot height limits on development in the R-4 and C-3 districts which limits the achievable density of multi-family rental and ownership units. In both of these districts, the 2001 zoning ordinance limits density to 40 dwelling units per acre for land previously zoned in these districts, but offers unlimited density for those who rezone into these districts and become subject to other 2001 development standards. However, in both of these cases the 60 foot height limit serves as an effective cap on density. Because of the high cost of constructing underground parking, many affordable housing projects accommodate parking in surface or above-ground structures (i.e., by stacking dwelling units over a parking deck or “podium”). Either way, the 60 foot height limit is a barrier to development. If surface parking is chosen then the builder needs to accommodate housing units on less site area (avoiding the parking lot), which tends to require taller buildings. If a structured parking podium is used, then the housing can cover more of the site but needs to be accommodated in the remaining available height above the parking structure. In general, a 60 foot limit restricts structures to no more than six floors (including parking) and perhaps less.

In order to allow for the construction of more affordable units, we recommend that the city raise the height limit in the R-4 and C-3 districts to 75 feet (roughly the height at which fires can be fought without the use of high-rise firefighting equipment). In addition, we recommend that the city consider lifting the 40 unit/acre maximum density for lands zoned R-4 or C-3 before 2001 if the resulting dwelling units are affordable housing units with occupancy subject to income limits.

Finally, we recommend that the minimum density calculation in the C-3 be revised to require that the combined residential and non-residential density be equivalent to at least 10 dwelling units per acre. The C-3 zone is already a mixed use district (i.e., both residential and non-residential uses are allowed), but as a practical matter it is sometimes difficult to construct ground floor commercial or office uses (and their required parking) plus an additional 10 dwelling units per acre. By providing a conversion factor—for example, by giving the builder “credit” against the 10 unit/acre minimum for the non-residential floor area constructed—the city could encourage the type of mixed use development that C-3 zoning anticipates. For example, if the residential portions of a mixed use building have an average gross floor area (including hallways, elevators, and fire stairs) of 2,500 square feet per unit, then the builder would be “credited” with the equivalent of one dwelling unit

per 2,500 square feet of commercial and office development constructed. This is important because many modern affordable housing developments use the income from ground floor commercial and office uses to indirectly subsidize the construction costs of the upper floor housing.

Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones. Like many cities, Las Cruces requires that new annexations and development proposals be consistent with the city's adopted master plans for the area, which means that the proposed development must meet minimum as well as maximum development densities. Unfortunately, over the last decade the city has faced numerous requests to amend the master plan simply to accommodate individual projects (or to amend previously approved development plans for the site) in order to allow for development at lower densities. While these requests have apparently been market driven—i.e., the builder believes that fewer homes at lower densities will sell faster and for higher prices than those called for by the plan—they have the effect of driving up housing prices and reducing the potential supply of affordable housing. This impact is compounded by the fact that once lower-density housing is constructed residents of the area often resist efforts to construct higher density housing nearby – so one plan amendment may lead to requests for similar plan amendments on nearby properties in the future.

We recommend that Las Cruces amend its residential zone districts to establish minimum densities for the R-1-b, R-2, and R-3 districts, and that those minimum densities correspond to those shown in the applicable plans for each area. This could increase the supply of both affordable ownership units (at the lower end of the density range) and rental units (at the upper end of the range). This would affect approximately 15.2 percent of the developed land in the city but would not affect the 19.7 percent of developed land in the R-1-a and R-1-c districts. In addition, we recommend that the authority of the Planning and Zoning Commission be revised to prohibit variances to the minimum zoning requirements. If the city wants to provide some avenue for relief from the minimum densities we suggest that a super-majority vote of city council (i.e., a 2/3 or 3/4 majority) should be required.

Refine R-1-b Zone and provide templates. In addition to establishing a minimum density, the effectiveness of Las Cruces' current R-1-b district as an affordable housing tool could be improved by revising some of the other dimensional standards applicable to that district. The R-1-b district currently allows the platting and development of lots with a minimum size of 3,500 square feet and a maximum density of 12 units per acre (which is probably high enough to help support future bus/transit service). As a point of reference, minimum lot sizes actually platted and developed in Las Cruces and other western cities often run between 5,000 and 10,000 square feet (which are not high enough to build support for bus/transit service). Several studies have shown that large minimum residential lot sizes are the single form of regulation most responsible for increasing housing prices. Zone districts with single family lot sizes smaller than 5,000 square feet have proven useful tools in helping reduce the cost of housing in many cities, and the housing industry has developed several innovative housing products that work well on these smaller lots. The R-1-b district avoids that problem by making smaller lots available.

**Exhibit III-2.
Las Cruces Requirements v. Other Cities**

City	Zone	Min. Lot Size (sq.ft.)	Front Setback (ft.)	Side Setback (ft.)	Rear Setback (ft.)	Max. Height (ft.)	Lot Width (ft.)	Lot Depth (ft.)
Las Cruces	R-1-a	5,000	15	0-5	20	35	50	70
<i>Comparison Cities</i>	<i>Similar Zones</i>	<i>2,000 – 7,000</i>	<i>15-25</i>	<i>5-20</i>	<i>10-25</i>	<i>16-35</i>	<i>50</i>	<i>N/A</i>
Las Cruces	R-1-b	3,500	15	0-5	15	35	40	70
<i>Comparison Cities</i>	<i>Similar Zones</i>	<i>3,000 – 4,000</i>	<i>7-15</i>	<i>0-10</i>	<i>15</i>	<i>24-26</i>	<i>40</i>	<i>N/A</i>

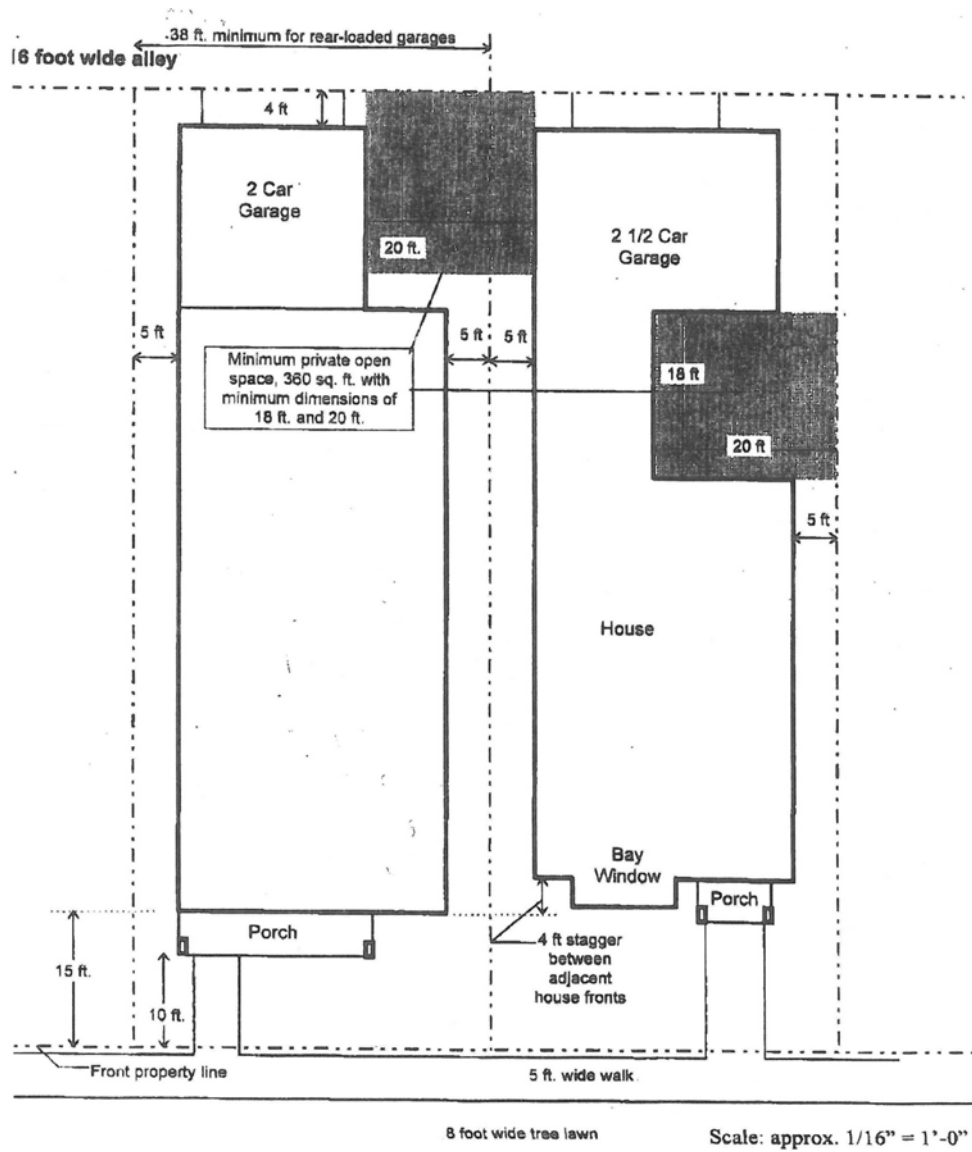
Note: Comparison cities include Santa Fe, NM; Albuquerque, NM; Silver City, NM; Tucson, AZ; and Boulder, CO. Since dimensions vary from city to city, ranges were used for comparison..

Source: Clarion Associates.

Unfortunately, the R-1-b district dimensional standards now work against its small minimum lot size to discourage affordable housing. As the table above shows, the district currently requires a minimum lot width of 40 feet and a minimum lot depth of 70 feet. Experience shows that efficient, livable housing products can be developed on 37.5 foot wide lots, and some larger and older cities are developing templates to allow housing development on 25 foot wide lots. Because narrower lots allow the builder to spread infrastructure costs (particularly roads and the water, sewer, and drainage pipes located in the streets) over more property owners, the per unit infrastructure cost can be lower, which promotes affordability. In addition, many cities do not regulate minimum lot depths. We recommend that Las Cruces reduce the minimum lot widths in the R-1-b district to 37.5 feet (but also limit front driveways on those lots to a maximum of 12 feet wide) and remove the minimum lot depth requirement. We also recommend that the city allow 25 foot wide lots with reduced front setbacks of 10 feet if alley access to parking is provided (i.e., if the lots will not have front driveways). Often wider lots and deeper front setbacks have been required to accommodate the dimensions of a car (or two cars) parked in a front driveway, but if rear access is provided in lieu of front driveways those larger dimensions should be reduced accordingly.

Unfortunately, even though 9.4 percent of the developed land in Las Cruces is zoned R-1-b, lots in the 3,500 square foot range are not often platted or developed. Instead, owners of R-1-b land tend to plat lots in the standard 5,000 square foot range, apparently to meet perceived market demand. In order to help meet demands for more affordable single family housing it is important that smaller lot products actually be platted and constructed. In order to encourage this, we recommend that the city collect or develop “templates” showing efficient and financially successful housing products on 3,500 square foot lots and work with builders to encourage their use. Some cities have even “pre-approved” template developments for small lots, meaning that applicants who submit housing products designed to meet the templates get minimal review or can proceed directly to obtain a building permit. An example of a simple template from Aurora, Colorado, is shown below.

**Exhibit III-3.
Reduce Residential Parking Requirements**



Source: Clarion Associates.

In addition to minimum lot sizes and maximum development densities, minimum on-site parking requirements are often a significant barrier to affordable housing development. That is because minimum parking requirements are actually indirect limits on development density—every square foot of lot area devoted to parking is a square foot that cannot be used to provide housing, landscaping, walkways, or recreation areas. Las Cruces’ zoning ordinance follows the standard past U.S. practice of requiring 2 off-street spaces for each single family unit and townhouse, regardless of size or affordability restrictions. In addition, the code requires between 1.5 and 2 spaces per apartment unit and between 1 and 2 spaces per unit for accessory dwelling units (so-called “granny flats”).

Increasingly, U.S. cities are reviewing their minimum parking standards to require only 1.5 parking spaces per unit for smaller housing units, attached units, or apartment units (or providing a sliding scale based on number of bedrooms). While some of the occupants of these units will no doubt have more than one car, some will not, and some of the “extra” cars can be accommodated through on-street parking or public parking areas. More importantly, experience suggests that lenders and developers will provide additional parking over the city-established minimums if those spaces are needed to rent or sell the units being constructed. For medium and higher priced housing, additional units are often provided, but for smaller and more affordable housing, 1 or 1.5 parking spaces per unit is often adequate. Similarly, for accessory dwelling units, 1 parking space per unit is generally adequate.

We recommend that Las Cruces reduce the minimum off-street parking requirements for multi-family housing to 1.5 spaces per unit, and the minimum for accessory dwelling units to 1 space per unit. Further, we recommend that when dwelling units are part of the city’s managed affordable housing pool (i.e., that occupancy is subject to income limits) the minimum be reduced to 1 space per apartment or townhouse unit. This change could encourage additional supply of affordable rental units.

Refine Accessory Dwelling Unit regulations. Las Cruces permits accessory dwelling units in all single family zoning districts, which is admirable. However, it then requires that ADUs meet a number of conditions and restrictions that limit their potential for both general housing and affordable housing. In particular, Section 38-53 of the zoning code defines ADUs as “a self-contained living quarter containing independent kitchen (cooking/culinary) facilities attached to and under the same roof as the main dwelling” and requires that “accessory dwelling units shall be created solely to accommodate those related to the family.” Several cities permit accessory dwelling units to be located not only within the main dwelling structure but in permitted accessory buildings — such as a second story or attic space over an existing garage or barn. In addition, most cities do not limit occupancy of an ADU to family members, which significantly limits their usefulness as a source of low cost housing units. In reality, the impacts of an accessory dwelling unit on the neighborhood do not depend on whether a family member is occupying the unit. Administratively, it is also difficult to enforce “family-only” restrictions, since that requires regular record-keeping on ADU occupants and (potentially) inspections to confirm who is living in the unit. Most local governments do not want to engage in that type of enforcement, and most property owners would prefer not to have to report to the city government about who is occupying the unit.

For all of the above reasons we recommend that Las Cruces remove the requirements that ADUs be located in the primary dwelling structure and that occupancy be limited to family members.

Expand impact fee exemption. Las Cruces currently imposes development impact fees of \$800/unit for parks, \$1,855/unit for water infrastructure, and \$1,165/unit for wastewater infrastructure. When compared to municipal fee structures, these are fairly low fees, and they may not cover the city’s actual costs of expanding park, water, and wastewater services to new development. Chapter 13 of the Las Cruces Municipal Code provides a process whereby affordable housing builders can apply for and receive exemptions to each of these fees, which removes approximately \$3,820 from the builder’s cost per unit. As part of Las Cruces’ budget process, the city adopted a resolution that currently limits the exemption to \$20,000 in park fees and \$75,000 in water and sewer fees annually. As a practical matter, this means that no more than 25 affordable dwelling units can take advantage of the exemption each year. This is a very small number when compared to the estimated unmet affordable housing demand of 3,600 low income rental units and 1,800 low- and moderate income ownership units (see Exhibit II-4). We recommend that the city expand the development impact fee exemption so that it covers at least the average number of affordable housing units produced in these categories each year—or 105 units annually.

Other topics considered. In the process of developing the recommendations above, Clarion Associates also reviewed several other aspects of the Las Cruces zoning ordinance. More specifically, we reviewed the menu of available zoning districts and overlay districts; the uses available by right, with conditions, and by special permit in each district; landscaping standards; and other development standards applicable to new development and redevelopment in the city. While there are many improvements that could be made to the ordinance, we do not believe that those shortcomings constitute significant barriers to the construction of affordable housing (except as noted above).

For example, although the city does not have any “mixed use” districts listed in the ordinance, many of the existing districts in fact allow mixed uses. In addition, the city’s practice of allowing “pancake” zoning—i.e., the application of more than one base zone district to a property—provides another way to allow mixed use development. If the zoning ordinance is revised in the future, we would probably recommend that these approaches to mixed use be revisited and that new mixed use districts be developed—but it does not appear that the absence of those types of zones is in fact discouraging affordable housing at this time.

Similarly, we received suggestions that perhaps the Las Cruces zoning ordinance would benefit from one or more new zone districts designed only for affordable housing—i.e., zones in which the only permitted development would be affordable housing. Most cities do not adopt single-purpose affordable housing districts (with the exception of some very high cost resort communities), because the creation of special purpose districts tends to concentrate rather than disperse affordable housing and tends to take focus away from integrating affordable housing tools throughout the zoning ordinance. For those reasons, we do not recommend the creation of new special purpose affordable housing districts at this time.

Another possible way to promote affordable housing is by “streamlining” the development review and approval process. Almost all zoning ordinances can be improved in this area—through better internal staff coordination, clearer approval criteria, and delegation of decision-making authority to reduce the number of steps in the process. Some cities have begun to use “ombudsmen” to speed up processing and resolve issues that arise in affordable housing proposals. Although we heard criticism of Las Cruces’ review procedures from housing builders, it appears that the city’s timeframes for development review and approval are no longer than many comparable cities (and shorter than

many). In light of those preliminary findings, we did not pursue a detailed evaluation of the review process. If the zoning ordinance is significantly revised in the future, however, we recommend that this issue be reviewed to identify ways to improve both the efficiency and predictability of the development review process.

Finally, the current zoning ordinance does not incorporate several recent trends in zoning practice, including sustainable development, Smart Growth, transit-oriented development, New Urbanism, some of the form-based principles articulated in the Smart Code, or incentives in the proposed LEED-ND rating system (such as incentives for ADUs and smaller primary housing units). Each of those trends is worthy of careful consideration as implementation tools after Las Cruces updates its comprehensive plan. We have not focused on those broader zoning reforms in this review simply because they address planning issues much broader than affordable housing and because the changes recommended above will target specific barriers to affordable housing more directly.

SECTION III.
Development Regulations Review



Las Cruces Affordable Housing

Policy and Program Development — Regulatory Barriers Review Meeting

Presented to:



Affordable Housing
Ad HOC Committee

Presented by:



Heidi Aggeler

BBC Research & Consulting
3773 Cherry Creek N. Dr., # 850
Denver, Colorado 80209-3868
303-321-2547 X:256
haggeler@bbcresearch.com

In conjunction with:

Don Elliott,
CLARION ASSOCIATES

and

Jim Williams
Williams Demographics

November 18, 2008

WHY ARE WE HERE TODAY?

Project Goal: Put the right tools in place to address affordable housing needs in Las Cruces.

**Thank you for your commitment
to this very important issue!!**

WHERE WE LEFT OFF

- **Last meeting conclusions / areas for more research:**
 - **Community Loan Funds/CDFIs—Unsure if there is a market for in Las Cruces. Explore interest with key funders (lenders, title)**
 - **Inclusionary Zoning—Like the idea of a voluntary program or IZ “light.” Explore feasibility with developers/builders.**
 - **Land Banking—Worth keeping on the table despite concern about tying up much needed funds with land purchases. Since Las Cruces has land, land banking is more viable than in other high-cost communities.**

AGENDA FOR DISCUSSION TODAY

- **Review Las Cruces' existing regulatory framework**
 - Zoning regulations
 - Fees and Charges

- **To identify**
 - Barriers that may be discouraging affordable housing
 - Missing tools and incentives that might encourage more production of affordable housing

- **Group discussion**

ZONING REGULATIONS

Key Parameters: Residential Development

District	Min. Lot Size	Max. Density	Acres	% of Total
R-1a (SF/TH)	5,000 sf	8/acre	8,733	20%
R-1b (SF/TH)	3,500 sf	12/acre	4,087	9.4%
R-2 (SF/ TH/ AP)	5,000 sf	15/acre	978	2.2%
R-3 (SF/ TH/ AP)	5,000 sf	20/acre	1,580	3.6%
R-4 (AP)	8,500 sf	10/acre min./ no	545	1.3%
C-1 (SF)*	5,000 sf	max. N/A	438	1.0%
C-2 (SF/AP)*	10,000 sf	N/A	1,214	2.8%
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R-3 (SF/ TH/ AP)	5,000 sf	20/acre	1,580	3.6%
R-4 (AP)	8,500 sf	10/acre min./ no max.	545	1.3%
C-1 (SF)*	5,000 sf	N/A	438	1.0%
C-2 (SF/AP)*	10,000 sf	N/A	1,214	2.8%
C-3 (SF/AP)*	21,780 sf	N/A	2,374	5.4%

ZONING REGULATIONS

Key Parameters: High-Density Districts (Res. & Comm.)

District	Density	Height	Lot Width	Lot Depth	Lot Size	Setbacks
R-1b	12/acre	35'	40'	70'	3,500 sf	F = 15' S = 5' or 0' R = 15'
R-4	10/acre min. no max.	60'	100'	N/A	8,500 sf	F = 20' S = 7' R = 7'
C-3	N/A	60'	60'	70'	21,780 sf	F = 15' S = 5' or 0' R = 15' or 0'

CLARION

ZONING REGULATIONS

Key Parameters: High-Density Districts (Res. & Comm.)

District	Density	Height	Lot Width	Lot Depth	Lot Size	Setbacks
R-1b	12/acre	35'	40'	70'	3,500 sf	F = 15' S = 5' or 0' R = 15'
R-4	10/acre min. no max.	60'	100'	N/A	8,500 sf	F = 20' S = 7' R = 7'
C-3	N/A	60'	60'	70'	21,780 sf	F = 15' S = 5' or 0' R = 15' or 0'

CLARION

ZONING REGULATIONS

■ Other Key Residential Development Standards

➤ Parking Spaces Required

- Single Family Dwelling: 2 / unit
- Apartment: 1.5 – 2 / unit
- Townhouse: 2 / unit
- Accessory Dwelling Unit: 1 – 2 / unit

➤ Landscaping Requirements

- Single family dwellings/ townhouses/duplexes have no landscaping requirements;
- Multi-family housing (R-2, R-3, R-4): Minimum area equal to 15% of total parking area must be landscaped.

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ZONING REGULATIONS

Comparison of Standards with other Cities: Single Family Districts

(Santa Fe, NM; Albuquerque, NM; Silver City, NM; Tuscon, AZ; Boulder, CO)

District	Lot Size	Front	Side	Rear	Height	Lot Width	Lot Depth
R-1a	5,000 sf	15'-25'	20'	5' or	35'	50'	70'
Other Cities	2k – 7k sf	7'-25'	5'-20'	0'-10'-	16'-35'	50'	NA
R-1b	3,500 sf	15'-25'	15'	5' or	35'	40'	70'
Other Cities	3k – 4k sf	15'-25'	0'-10'	0'-15'	24'-26'	40'	NA

ZONING REGULATIONS

Comparison of Standards with other Cities: Multi-Family Districts

District	Lot Size	Front	Side	Rear	Height	Lot Width	Lot Depth
R-2	5,000 sf	20'	7'	7'	35'	50'	50'
Other Cities	2k – 5k sf	15'-	5'-	10'-	26'-35'	22'-	N/A
R-3	5,000 sf	20'	7.5'	7.5'	35'	50'	50'
Other Cities	2k – 6k sf	15'-	0'-10'	15'	24'-26'	22'-	N/A
R-4	8,500 sf	20'	7'	7'	60'	90'	100'
Other Cities	1.6k – 3k	10'-	0'-	15'-	24'-40'	150'	150'

OTHER REGULATIONS

■ Infill Overlay District is Underutilized

- Only 11 residential infill projects in the past 5 years;
- Majority of infill projects involved city assistance to developer (funding, expedited processing and/or deviations from standards).

■ Is Flexible Development Standards Process a Barrier to Affordable Housing?

- Developers possibly deterred by negotiating process related to “public benefit” requirement (i.e., easier to build conforming non-affordable project).
- And, because variances are hard to obtain, flexible standards process is often only option for affordable projects that may need flexibility.

FEES AND CHARGES

- **Impact Fees for Residential Development**
 - City currently imposes the following impact fees on residential development:
 - Parks: \$800/unit
 - Water: \$1,855/unit
 - Wastewater: \$1,165/unit
 - Impact fees cannot be assessed or used to create affordable housing.

FEES AND CHARGES

■ Summary of AH Impact Fee Waiver

- Chapter 13: Allows City to waive or pay for impact fees for qualifying affordable housing projects
- Waiver Process: Park fees can be waived without repayment, but City pays for waived water/wastewater fees (from General Fund usually) to pay down existing bonds;
- Annual Waiver Limit: City must establish an annual funding maximum or waiver limit for each type of impact fee:
 - ❑ **Current Park Fee Waiver Limit:**
\$20,000 (approx. 25 units)
 - ❑ **Current Water/Wastewater Fee Waiver Limit:**
\$75,000 (approx. 25 units)

PRELIMINARY THOUGHTS

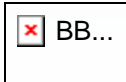
■ Barriers

- Zoning does not contain obvious barriers to affordable housing;
- 3,500 sf lot size is reasonable -- 9.4% of land is good;
- Multifamily zone densities are reasonable, and uncapped R-4 density is good;
- 7.1% of land zoned for multi-family housing could be higher;
- 60' height limit in R-4 is low, possibly a constraint to AH
- Residential lot dimensions, setbacks, and parking regulations are reasonable.

■ Incentives and Regulations

- Infill Overlay is an incentive – though apparently time consuming to use;
- Fee waivers are a good tool but constrained by budget limitations.

CLARION



- Fees are pretty low to begin with

DISCUSSION

- What barriers have we missed or misunderstood?
- Additional incentives offered by other cities include:
 - Special affordable housing zone districts with increased density and height and reduced setbacks;
 - Reduced parking requirements;
 - Broad availability of accessory dwelling units
- What are your thoughts on possible incentives?
- Many cities are moving towards inclusionary housing ordinances
 - But they're always controversial

NEXT STEPS

- Outside of meetings, project team will continue engaging community leaders and industry to build support for potential solutions. Interviews with Mayor and City Council, affordable housing developers. Meetings with private developers, Realtors, lenders and title companies.
- **December meeting:** Peer cities presentation and begin recommendations discussion.
- **2009:** Recommendations and implementation plan.

SECTION IV.
Peer Cities Comparison

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Peer Cities Comparison

This section provides an overview of how cities similar to Las Cruces are addressing their affordable housing needs. It is meant to answer the question of: What do other cities do to address their affordable housing needs?

The cities examined in this section include:

- Albuquerque, New Mexico
- Santa Fe, New Mexico
- Tucson, Arizona
- Yuma, Arizona
- Fort Collins, Colorado
- Boulder, Colorado
- El Paso, Texas
- Lubbock, Texas

The peer cities were chosen by using the following criteria: Location in the west or southwestern U.S., presence of college town and/or a military facility and housing that is costly relative to median household income. Each city's programs and policies are described in detail below.

Albuquerque, New Mexico

Albuquerque's primary focus on workforce and affordable housing has been on the approval of the public to use general obligation (GO) bonds for housing activities. The bond issue has the potential to provide \$25 million of funding for affordable housing activities in the city.

Another significant source of funding in the city is CDBG (\$4.7 million annually) and HOME (about \$2.5 million). The city uses its CDBG and HOME funds for a wide variety of activities, including:

- Owner-occupied rehabilitation;
- Affordable housing development, including rental acquisition and rehab and transitional housing;
- Public services;
- Downpayment assistance; and
- Affordable homeownership development.

Albuquerque is also a direct recipient of the federal Emergency Shelter Grant (ESG).

Albuquerque also has an active community land trust. The city is exploring a land banking and rental rehabilitation program, as well as how to preserve the affordability of mobile home parks.

The city does not have an inclusionary zoning program. However, the annexation of Mesa del Sol—a new planned development community in Albuquerque—did include provisions for a percentage of the developed units to be affordable.

Workforce Housing Opportunity Act (Housing Trust Fund). In 2006, the City Council in Albuquerque passed a bill that authorized a set aside of up to \$10 million in general obligation bonds issued by the city to be used for affordable housing activities. The set aside was required by the bill to be presented as a separate bond question for Capital Improvement Program (CIP) bond issues; the bill was approved by voters in 2007. The set aside expires in 6 years unless reauthorized by council.

The enabling legislation contains a number of requirements, which include:

- A housing needs assessment be conducted and updated every 5 years to demonstrate the city’s housing needs.
- An Affordable Housing Committee is established to serve as the advisory committee for development of the housing needs assessment and conduct an annual review of the progress of meeting housing needs.
- Affordable housing should be integrated throughout the city and are evaluated on design and location criteria that include access to transportation, jobs, community services and schools and incorporation of Universal Design features.
- Housing that is developed should contain resale restrictions to preserve affordability.

The housing plan should be linked to the city’s growth management plan.

Land trust. The Sawmill Community Land Trust was formed as a community development effort to protect low-income residents living in a downtown Albuquerque neighborhood as well as to strengthen their role in redevelopment of the area. The stated vision of the organization is to “be a New Mexico and national model of revitalization.”

According to the organization’s mission statement, the Sawmill Land Trust is a “community-based development corporation whose principal purpose is to promote community ownership, long-term affordability and economic opportunity through the community land trust model.”

The cornerstone of the Land Trust’s efforts is Arbolera de Vida, a mixed-use, master planned community in the center of the Sawmill neighborhood. This 27-acre parcel was purchased by the city of Albuquerque in 1995 and rezoned for mixed, compatible uses, including affordable housing, community amenities, open space and commercial/retail space. The Sawmill Advisory Council (SAC)—which is a neighborhood advisory group—assisted with the development vision for the parcel.

Parcels are deeded from the city to the Land Trust as each phase of the development is built. The city sells the land to the Land Trust for \$1.05 per square foot (well below market value. Total cost of the 27-acre parcel at \$1.05 per square feet will be approximately \$1.2 million).

Homebuyers. People who purchase homes rent the land from Sawmill Community Land Trust. The fee for homeownership units is \$19 per month (the ownership units are basically on the same size lots). The Trust reports that demand for the homeownership units is high, but that it is difficult for residents to qualify for purchasing the units. The Land Trust has a relationship with several local financial institutions who underwrite the loans for homebuyers. Buyers of the Land Trust units are restricted on how much appreciation they can gain when they sell the unit. The gain is pro-rated according to how long they have occupied the unit, and is capped at 30 percent of the total appreciation.

Renters. All of the rentals are live/work units; residents of these units earn between 40 and 60 percent of AMI. The units are in high demand and have a waiting list.

The Arbolera de Vida development has developed a Property Owners Association (POA), which represents the homeowners and manages the common areas in the community. Residents pay \$31 per month for POA activities, including upkeep of common properties. Three representatives of the POA serve on the Sawmill Land Trust's Board of Directors, and the Land Trust appoints representatives to the POA Board.

Funding for the project has been contributed by the City of Albuquerque, the State of New Mexico in addition to federal CDBG and HOME monies.

In addition to its role developing Arbolera de Vida, the Sawmill Land Trust has been working with the Wells Park community, located near the Arbolera de Vida project, to revitalize the neighborhood. Specifically, the Land Trust plans to acquire and rehabilitate 30 scattered site homes for low- and moderate-income homebuyers and renters. The Land Trust has also taken a lead role in working with the city and residents on a master redevelopment plan for Sawmill area neighborhoods.

Mesa del Sol. During the next 30 years, as many as 38,000 housing units will be developed in Albuquerque on a parcel of land owned by the New Mexico State Land. As many as 7,600 of these units could be affordable.

Mesa del Sol is a future master planned community that is a partnership between the State Land Board, the University of New Mexico and the City of Albuquerque. The State Land will receive payment for the cost of the land upon with Mesa del Sol is built in addition to a 14 percent return on the land value.

This mixed-use community is projected to produce 60,000 jobs. Businesses have been attracted to the development by the state's economic development incentive programs. Mesa del Sol is unique in that the developer focused first on luring businesses to locate within the development and will build the housing later.

Mesa del Sol received tax increment financing (TIF), a condition of which was the development of workforce and affordable housing within the community. The agreed upon Workforce Housing Plan for Mesa del Sol contains the following:

- 15 percent of the units in Mesa del Sol will be “affordable workforce units.” These units are affordable to households earning 80 percent of the AMI and less.
- 5 percent of the units will be “mid-range housing units.” These units are affordable to households earning between 80 and 130 percent of the AMI.

The price ranges of these units will be:

- 2 percent of the units affordable to households earning less than 50 percent of the AMI;
- 3 percent affordable to 50-60 percent of the AMI;
- 5 percent affordable to 60-70 percent of the AMI;
- 5 percent affordable to 70-80 percent of the AMI; and
- 5 percent affordable to 80-130 percent of the AMI.

The Workforce Housing Plan specifies how the affordable units will be phased in to the overall development. It also specifies how the affordable units should be integrated into the overall development—in general, the affordable developments must contain 15 percent market rate units, or, if they are multifamily products with 100 percent affordable units, must be located within market rate neighborhoods.

The developer receives a one-for-one density bonus for the affordable units. That is, for each affordable unit that is developed, the developer is allowed one additional market rate unit.

Santa Fe, New Mexico

In May 2008, Santa Fe completed a Five Year Strategic Plan for housing. This plan describes the city’s current programs, sets goals for the number of households to assist in the future and estimates what it will cost to address the city’s housing needs.

Currently, the city’s housing resources include:

- CDBG (Community Development Block Grant) of about \$575,000 annually;
- HOME through Santa Fe County of \$2.4 million countywide (allocated from the State MFA);
- The Housing Opportunity Program (old inclusionary zoning ordinance);
- Santa Fe Homes (new inclusionary zoning ordinance);
- Recently adopted Affordable Housing Trust Fund;

- Fee waivers and providing water for affordable homes; and
- General fund support for affordable housing (\$570,000 in 2008).

The city's proposal for a real estate transfer tax (RETT) to support its Housing Trust Fund has met with opposition. (Currently the fund is supported by cash-in-lieu contributions by developers for compliance with the city's inclusionary zoning ordinance). Staff will also explore the possibility of other tax initiatives including a property tax for rentals and a gross receipts tax for homeownership production. A special tax on second and third home buyers using an occupancy test will be reviewed as well as a tax on larger homes. In the reverse, tax waivers and/or reductions for production of rental housing will be explored.

The city's core programs include the following:

- **Homebuyer training.** Described as one of the most successful programs that the city has funded (based on the almost negligible foreclosure rate among homebuyers and attendees of the program), this program teaches credit counseling, the responsibilities of homeownership and post purchase counseling and education. The city projects that nearly 900 individuals have attended the program at an average cost of about \$450 per attendee.
- **Downpayment assistance.** Provided through the PaymentSaver program.
- **Workforce housing development.** The city uses a variety of resources to support rental and homeownership development. A recent, innovative program is the proposed Caretaker Housing in City Parks rental housing program. Under this program, seven homes will be constructed on five City parks. These homes will be used to recruit and retain municipal employees with an initial emphasis on police officers especially new recruits. The construction cost of this program is estimated \$1.4 million. A combination of resources will be used for the initial phase of this project, including a one-time allocation of general funds, and support from the MFA under Housing Trust Fund, as well as a potential workforce housing grant from the MFA.
- **Home rehabilitation.** The city uses HOME dollars from the State MFA for home rehabilitation activities, which include major renovations (\$25,000 per home) as well as smaller, weatherization projects and accessibility improvements (averaging \$800 per home).

Other major initiatives that are used in the city to produce affordable housing are described in detail below.

Tierra Contenta. Tierra Contenta is a nonprofit that owns and master plans land for the Tierra Contenta (TC) development. The organization was formed by Santa Fe City Council in the early 1990s. City Council at that time was very proactive about wanting to address its affordable housing crisis.

TC is not subsidized by federal or local sources. The “subsidy” in the development is in the form of the land that was obtained by the city when land was less expensive and sold to TC with a zero interest loan.

The city obtained the land for TC from the local electric utility company during the Savings & Loan crisis. Because of the state anti-donation law, the land was sold to Tierra Contenta Corporation at the appraised price. The city carries a zero-interest mortgage on all of the developable acres. The mortgage states that TC must pay back the city the appraised price / developable acres, or for \$10,600 per developable acre.

TC was able to obtain an interest-free mortgage as a condition for developing as an affordable project. (This was a test of anti-donation clause, and it survived).

TC currently contains 2,300 homes, 1,000 of which are affordable. Staff at TC report that it has the highest percentage of affordable housing of any master planned community in the United States. The site is made up of 1,000 acres, 36 percent of which are developable. Much of the land contains huge arroyos and/or elevation constraints; this land has been deeded to the city as open space.

TC works like this: TC develops a phase of property and goes through the approval process with the city. After the phase is approved, TC finds builders, establishes pricing goals and the number of affordable units and sells the land to the private sector builders. TC has its own design standards which staff believe are streamlined and easy to follow, enabling builders to get through development process faster. With each lot sale, TC pays the city back for the land.

TC has defined for pricing tiers for developers, three of which are affordable:

- Under 65 percent of AMI,
- 65 to 80 percent of AMI,
- 80 to 120 percent of AMI, and
- Market rate (anything above 120 percent).

Buyers must take a non-amortizing, zero interest soft second mortgage held by TC for the difference between 90 percent of the appraised value of the unit at the time of sale and the purchase price. This must be paid upon resale.

The units are not deed restricted, and therefore do not maintain permanent affordability. However, this pricing structure allows families to build wealth and move up to more expensive housing units in the city if they desire.

Housing trust fund (attempt). Santa Fe has established a trust fund, but it is lacking an ongoing source of revenue. In June 2008, the Santa Fe City Council passed an ordinance that proposed to fund affordable housing programs by levying a 1 percent tax on the portion of any home purchase in excess of \$750,000. (For example, a home that sold for \$1 million would be subject to a \$2,500 tax). Voters will be asked to approve the measure in a special election in March 2009.

In June, the Santa Fe Association of Realtors, along with four homeowners, filed a lawsuit challenging the proposed tax, claiming the tax is “unlawful and unenforceable.” The lawsuit is currently outstanding.

During the state legislative session in 2008, the state association of Realtors promoted a bill that would have prohibited municipalities from imposing such taxes. The bill passed the Senate, but failed to make it out of the House of Representatives.

Land trust. The Santa Fe Community Housing Trust was formed in 1991. The organization started as a land trust and over time, has evolved into a certified Community Housing Development Organization (CHDO) and recently became a Community Development Financial Institution (CDFI).

The Santa Fe Housing Trust typically uses the land trust model to integrate for sale units affordable to very low-income homebuyers (50 percent of the area median income and less) into its mixed-income developments. The organization has developed 95 land trust units within the city and county, which is equivalent to about 19 percent of the 500 units developed by the Santa Fe Housing Trust.

Staff of the Trust said that although the land trust component to their developments has been very important in getting very low-income buyers into homes, it is not without its challenges. These include:

- There has been a stigma with some of the Trust homes, particularly when they are grouped together. The Housing Trust has faced some upkeep issues with residents, which has had a negative effect in the neighborhood. Since the Santa Fe Housing Trust owns the land upon which the homes are placed, it has a strong incentive to ensure that the units are well maintained. The Housing Trust has a policy that they will only do land trusts with homes they build themselves.
- Some appraisers and lenders do not understand the land trust model and require education to be comfortable with the program.
- People who occupy the trust homes sometimes forget they do not own the land and that there is a lien against their home (e.g., they are surprised when they apply for a home equity loan that they have an outstanding lien).

The biggest issue with the land trust model, however, is that it “ties up resources...the subsidy is in the ground and you can’t get it back.” The Housing Trust prefers to use second mortgages to reduce the cost of housing for low-income homebuyers. With a second mortgage, when the home is sold and/or the loan is paid off, the “subsidy” comes back to the Housing Trust in cash, which can be reinvested in other housing programs as needed. Land trusts are less flexible than a revolving loan program.

That said, the Santa Fe Housing Trust recently used a land trust on a rural project that was an “ideal use” of the land trust model. Two affordable homes were built on an existing large parcel of land with a residential home and a historic working farm. The land was subdivided and two additional homes

were built on the farm as land trust properties. This achieved higher density and preserved the farm as well as adding some conversation easements for wildlife.

The Santa Fe Housing Trust is unique in that it has a broader role than just a trust fund: the organization was founded, in part, to be an umbrella organization to bring together parties to obtain land, raise funds and facilitate more affordable housing production in Santa Fe.

Homewise, Inc. Homewise is a nonprofit, community development financial institution in Santa Fe, dedicated to helping New Mexicans become homeowners by offering home purchase, home improvement and educational programs. Through a partnership with the Santa Fe School District called Teacherwise, Homewise offers a special program designed to help teachers and other school employees buy or repair homes in Santa Fe, through downpayment assistance and low-interest mortgage loans. Homewise also operates as a housing developer and recently developed an 80-unit affordable homeownership development in Santa Fe.

Inclusionary zoning. Santa Fe's inclusionary zoning program, established in 2005, is called Santa Fe Homes. It requires that 30 percent of housing units developed as part of a new residential development be affordable. The program applies to all residential subdivisions with 10 or more lots. Fifteen percent of the units developed must be rental units.

Pricing of the constructed homes and manufactured home lots developed through Santa Fe Homes must be as follows:

- 10 percent of the total units or lots must be sold at a price of between \$74,500 and \$122,000 per unit, depending upon family size, or \$27,250 per lot (pricing at the time the ordinance was created);
- 10 percent must be sold at a price of between \$100,500 to \$158,000 per unit or \$35,500 per lot; and
- 10 percent must be sold at a price of between \$125,500 and \$194,000 per unit, or \$43,750 per lot.

Santa Fe's ordinance also specifies the minimum number of bathrooms and square feet by unit size (e.g., studios must have at least 750 square feet and 1 bathroom). Twenty-five percent of the units must be studios, 1 or 2 bedroom units; 50 percent must be 3 bedroom units; and 25 percent must be 4 bedroom units.

The ordinance also provides pricing for rental units and minimum sizes per unit type.

Preserving affordability. Units created through the inclusionary requirement of Santa Fe Homes are deed-restricted for affordability. Santa Fe Homes uses a shared equity approach when the deed-restricted units are sold. The city's share of appreciation is equal to the proportion of subsidy (difference between market and affordable price) divided by the initial market value. Proceeds from the sale of the home are placed in a housing trust fund.

Development incentives. Developers are provided with a number of options to offset the cost of the program, including:

- Density bonuses—15 percent over allowable density in a district;
- Fee waivers—Development review and building permit fees are reduced proportionate to the number of Santa Fe Home units developed; and
- Nonprofit developers may also request waivers from impact fees and utility expansion charges (private sector developers can request reimbursements).

Other specifications. Units that are exempt from the program include those that were agreed to before the adoption of Santa Fe Homes in 2005 and dwelling units or manufactured home lots that are used exclusively by employees of a school, hospital or similar institution.

In the case of an annexation, the city and entity proposing the annexation negotiate the number and type of affordable units, which are included in the annexation agreement. The annexation must contain at least the same number of units or cash-in-lieu amount required under Santa Fe Homes.

Prior to enacting the Santa Fe Homes program, the city had a program called the Housing Opportunity Program (HOP). The HOP used a more complex formula than Santa Fe Homes to determine the inclusionary requirement; the Santa Fe Homes legislation is much more transparent. According to the city, Santa Fe Homes was adopted because the city felt that HOP had “limited effectiveness in stemming the growing affordable housing crisis” in the city.

Tucson, Arizona

Tucson’s General Plan (Comprehensive Plan) has a goal that 10 percent of units in the city should be affordable. The city monitors this through an annual production report.

Tucson largely relies on federal block grant programs to fund its affordable housing activities. The city recently established a trust fund; however, funding is limited at this point. The city’s primary resources for affordable housing currently include:

- \$6.3 million in CDBG funds;
- \$4 million per year in HOME funds as part of a county consortium (most of which are spent within the city); and
- \$475,000 from a new housing trust fund.

The city is also a direct recipient of the Emergency Shelter Grant (ESG) and Housing Opportunities for Persons with Aids (HOPWA).

The city has been constrained by lack of support locally and at the state level for resources such as inclusionary zoning and real estate taxes to fund the city’s new housing trust.

The city will seek approval from City Council to start a land trust in October 2008. The plan is for the city to “nurture” the land trust for a few years and then evaluate if the trust should be converted into a nonprofit. The city may use administrative money from the national Housing Recovery Act to

get the fund up and running. A land trust might also be supported by a state effort to stimulate trust funds in Arizona communities.

The city has not explored inclusionary zoning with much effort because the state legislature has tried to make such programs illegal in the state twice (both efforts met with vetos by the governor). In the future, the city will likely explore case-by-case negotiations as part of subdivision agreements—e.g., requiring developers to dedicate a portion of each sale of market rate units to the trust fund.

Housing trust fund. Tucson’s mayor and council unanimously approved establishment of a trust fund in fall 2006. A committee was formed to recommend revenue sources and implement the fund. According to staff, the city established the trust fund to bring in “local creativity” and local sources of funding.

The trust fund was originally funded with a multifamily conversion fee (conversion of rental to homeownership product) and unexpended funds from the Utility Services Low Income Assistance Program. Funds were to be targeted as follows: approximately 1/3 for home repair; 1/3 for homeownership and 1/3 to rental programs.

The trust fund also gets revenue through development agreements: When the city agrees to development agreements where a developer asks for city land or infrastructure assistance, Tucson is negotiating arrangements where in return for city assistance, the developer provides 1 percent of the sales price to the trust fund.

As of January 1, 2008, the trust fund had a balance of approximately \$475,000. The conversion fee is the only dedicated source of revenue for the fund. The fund’s oversight committee has determined that the original sources of funding are “not sufficient to support an ongoing meaningful effort to address housing issues in Tucson.” The city is still trying to identify additional sources of funds.

The trust fund enabled the city to start an employer-assisted housing program for downpayment assistance and to provide assistance to households earning up to 100 percent of AMI (higher than what federal programs allow).

Tucson is the only municipality in Arizona with a housing trust fund.

Programs for homeowners. The city operates a variety of homeowner repair loan and grant programs, has a downpayment assistance program and funds affordable housing development.

Home repair. Tucson’s Community Services Department operates several home rehab programs, which target different populations and neighborhoods. The bulk of the city’s CDBG allocation (about \$2 million) is spent on home rehabilitation. Together these programs assist approximately 200 families annually, and provide reinvestment in some of the community’s most needy neighborhoods.

- Below Market Interest Rate program—Low or zero percent loans for owner occupied properties, including modular/mobile homes if affixed to land. Households must earn less than 80 percent of AMI and cannot have more than \$20,000 in liquid assets. Minimum loan amount is \$5,000; highest is \$40,000.

- **Lead Hazard Control program**—A program to remove lead from homes occupied by eligible low-income households with children under 6 years old. Testing for the children is also provided if lead is detected in the home.
- **Repair/demolition**—This program specifically addresses low-income homeowners who have been cited by code enforcement. Up to \$30,000 in grant funds can be used to make substantial repairs (e.g., water line, sewer line, roof) or demolish a home. A maximum of 4 homeowners can be assisted each year.
- **Elderly home repair program**—Up to \$4,000 in grant funds are provided for low-income elderly. Repairs are for health and safety hazards and to improve accessibility (this is not a full rehab program).
- **Deferred loan program**—A 10 year deferred, forgivable loan for low-income homeowners to make needed repairs. The loan is required to be repaid if the property is sold within a 10 year period. The loan is amortized at 10 percent per year and requires no interest or periodic payments. Minimum loan amount is \$2,000; maximum is \$15,000. After rehab, the property must meet local building codes and zoning ordinances. Households must earn less than 80 percent of AMI and cannot have more than \$20,000 in liquid assets.
- **Emergency assistance**—This program is specific to homeowners in a certain geographic area (downtown) who have urgent repair needs. Assistance ranges from \$500 to \$9,000. Households must earn less than 80 percent of AMI and cannot have more than \$10,000 in liquid assets. Homeowners are referred to the program through local housing and service providers.
- **Citywide sustainability**—This emergency repair program is eligible to all homeowners and contains two components: a \$7,500 grant with no repayment required and a \$7,500 deferred loan with 2 percent interest. Households must earn less than 80 percent of AMI and cannot have more than \$20,000 in liquid assets.

Property tax relief. The city has a concerted effort to redevelop its downtown area. To help existing homeowners in downtown manage potential increases in property taxes as a result of the development, the city offers a limited number of refunds to qualifying owners. The average refund is \$35 per household; 11 households received refunds in 2007.

Downpayment assistance. The city provides downpayment assistance through its Industrial Revenue Development Authority bonding capacity with Pima County. In this program, up to 7 percent of the first mortgage amount is available as a second lien mortgage loan and can serve as downpayment. About 200 households are assisted per year.

Affordable housing development. The city's affordable housing development is mostly funded by HOME dollars. In 2008, the city allocated \$1.2 million to rental housing development and preservation, \$550,000 to develop affordable homeownership units and \$400,000 to its El Portal program.

The city's community development department is also the housing authority. As such, the city manages its share of the Section 8 program and owns and operates public housing.

The city also owns and rents affordable properties separate from its public housing authority. This is called the El Portal program. Units are acquired through direct purchase by the city through various funding mechanisms as they become available, including HOME. The city uses a private management firm to rent and manage the properties. The city's portfolio of non-PHA properties between 200 and 300 units.

Yuma, Arizona

The City of Yuma offers a standard assortment of homeownership assistance and rehab programs to its residents. In 2007, Yuma received \$953,202 in CDBG entitlement grants as well as \$281,872 in CDBG program income. In sum, Yuma had \$1.24 million in funds available. The city also receives HOME funding from the State of Arizona Department of Housing.

These funds are spent on a variety of programs, such as transportation services for elderly residents, fair housing education and youth counseling services. These programs include:

Individual Development Account Home Ownership program. The Yuma Neighborhood Development Organization (YNDO), in partnership with the City of Yuma, leverages IDA funds to increase homeownership opportunities. First time homebuyers are able to set up Individual Development Accounts (IDA) and make monthly deposits. After they have reached their savings goal, YNDO and/or the City will match the amount they have saved. This money will be used as a downpayment on a loan from a private lending institution to purchase a home or to start a business. In 2007, 11 new accounts were opened through this program.

SMILE program. This program is designed to help fund home accessibility modifications for elderly and disabled homeowners within the City of Yuma. The home must be owner-occupied, single family housing. All improvements must be completed by licensed contractors. This program received \$50,000 in CDGB funding in 2007. In 2007, this program assisted 11 elderly and disabled households.

Housing Rehab program. This program includes two separate sub-programs: the Home Improvement Loan program and the Emergency/Minor Rehab program. The Home Improvement Loan program issues 10-year deferred loans in the Yuma High neighborhood (maximum value of \$45,000), while the Emergency/Minor Rehab Loan program offers 5-year deferred loans to all households within Yuma (maximum value of \$10,000). These loans are used to address accessibility issues, code violations, overcrowding and safety issues. In addition to the \$50,000 of CDGB funding, this program also received a State of Arizona Housing Trust Fund grant of \$75,000. In 2007, this program assisted 26 families.

At this time, Yuma does not provide any incentives for developers to encourage affordable housing construction. However, the Housing Element found in the City's General Plan states "The City shall help mitigate the constraints to housing development through financial and regulatory incentives." This indicates the City could provide incentives in the future through methods such as density bonuses and reduced permitting fees.

Fort Collins, Colorado

Fort Collins combines federal block grant funds with a handful of progressive programs to address its affordable housing needs. These include significant developer incentives, a housing trust fund and a land banking program. The trust fund and land banking programs are not as productive as they might be if they were more aggressively used, but the city has the structure in place to make use of these tools when/if funding increases.

The city's core programs funded by CDBG and HOME include:

- Homebuyer downpayment loan program—A loan to eligible households to cover downpayment and closing costs up to a maximum of 6 percent of the sales price. The assistance is in the form of a loan which is paid back when the house is either sold, transferred out of the buyer's name, rented, or if buyer seeks another second lien (like a home equity loan) on the property. A simple interest charge of 5 percent of the loan amount will be added to the payment which is also due at sale, rental or transfer.
- Housing rehabilitation and accessibility improvements for nonprofit housing providers.
- Lot acquisition for affordable housing development.
- Occasionally provide tenant based rental assistance through the local housing authority.

Developer incentives. When asked to describe the city's primary housing programs, staff first cited the "bunch of incentives for developers." Developers of affordable housing in the city receive:

- Reduced planning application fees (reduced by the proportion of affordability, so a development that is 100 percent affordable pays nothing for entitlement fees).
- Priority processing—reduced city staff turnaround time (project goes to top of workload).
- Once entitlement is achieved and the development is in the building permit process, the city delays development impact fees until certificate of occupancy. The city does not waive these fees, although CDBG and HOME are available for eligible developers to pay impact fees.
- Density bonus in one of the city's residential zones—for example, if the current zoning maximum is 8 units/acre, an affordable development would be allowed 12 units/acre.
- Reduced landscaping requirements (e.g., gallon sized shrubs v. three gallons).

The city does not have an inclusionary zoning ordinance. The city considered adopting an ordinance, but was dissuaded by Colorado's prohibition from including rental units as part of IZ.

Housing trust fund (sort of). The city has a housing trust program that is funded through general fund contributions. The "city budget" is the trust's sole source of revenue. Because of budget

cuts, the annual contributions have dropped from \$875,000 to \$285,000 currently. The trust fund dollars are used to supplement federal grants (CDBG and HOME).

Land banking. Fort Collins established its land banking program 5 years ago, with a general fund contribution of \$1 million. The city's program is specifically designed to acquire property for development of affordable housing units—it is basically a hedge against rising land costs. Under the program, the city acquires property and holds it long-term (a minimum of 5 years, but more likely in the realm of 7-10 years). After a holding period, the city issues an RFP for property development. However, the city is not permitted to use the land bank as an investment vehicle (e.g., to generate monies to fund affordable housing development).

As of 2008, no units have been produced as a result of the program. According to city officials, when properties are sold they will be sold for more than the city paid for the land—enabling the city to realize a small profit—but for less than market value.

Boulder, Colorado

The City of Boulder has a fairly broad but typical menu of affordable housing resources. The biggest difference between Boulder and the other peer cities in this section is that most of the city's programs were adopted very early, prior to 2000.

The city's menu of resources includes:

- Annual general fund support (about \$400,000 per year);
- A housing trust fund (\$1.5 million per year for affordable housing);
- Inclusionary zoning (has generated about 280 units since adopted in 1999);
- Special downpayment assistance programs;
- Owner occupied rehab, including mobile homes; and
- Use of federal block grant funds for affordable housing activities, including affordable housing development, property acquisition, owner-occupied rehab and public services (\$950,000 in CDBG annually and \$1 million in HOME).

In 1990, the City of Boulder set a goal of having 5 percent of its housing stock be permanently affordable. Two years later after adopting this goal, the city established a housing trust fund. In 1995, the city revised its goal of permanently affordable housing stock to 10 percent. The city currently has 2,800 permanently affordable properties and has another 1,700 to go before reaching its goal (4,500).

In addition to the resources discussed below, Boulder has a handful of nonprofit development partners and a local housing authority that produce much of the city's affordable housing. The city works closely with these housing providers and developers

General fund contributions. The city supports affordable housing activities with a General Fund contribution of approximately \$400,000 each year. The funds are allocated as follows: \$95,000 for

reimbursement of development fee waivers; 5 percent for administration; the balance for acquisition and rehab and new construction of affordable homes.

Housing trust fund. Boulder’s Community Housing Assistance Fund Program (CHAP) is funded by property taxes. The CHAP receives .8 mills of a property tax level, equivalent to about \$19 per year on a \$300,000 home. Additionally, the city levies an excise tax on all new non-residential and residential development of:

- \$.0092 per square foot of floor area for new, annexed or additional non-residential area;
- \$73.92 for new and annexing detached residential units; and
- \$50.10 for new and annexing attached residential units or mobile homes.

These funding sources mill levy generates about \$1.5 million annually for affordable housing activities.

CHAP funds have helped create 186 affordable homeownership units since 1991, making the CHAP the second most productive homeownership affordable housing program in the city (inclusionary zoning is first at 241 units). CHAP contributed \$2.7 million in subsidies to affordable homeownership in the city.

CHAP had produced more affordable rental units than any other program at 510 since 1990 (HOME is second with 480 units). CHAP has contributed more than \$6.6 million in subsidies to affordable rental units since its inception. CHAP has also been used to create 39 shelter beds/group home units.

Inclusionary zoning. Boulder’s IZ ordinance requires that 20 percent of a residential development be affordable. All sizes of residential developments are included. The 20 percent requirement can be met by onsite or offsite development, land donation or cash-in-lieu payments. For-sale developments must provide at least half of the requirement onsite. Rental projects may fulfill the requirement through for sale units only, onsite or offsite development.¹

The sales prices for the affordable units are set by the city on a quarterly basis. The units must be affordable to low-income households as defined by HUD.

A developer who wishes to fulfill their IZ requirement “offsite” has a number of options:

- Contribute to the city’s affordable housing fund through a cash-in-lieu payment;
- Dedicate land within the City of Boulder boundary to the city. The value of the land must be equivalent to the cash-in-lieu payment plus an additional 50 percent (to cover the carrying costs associated with the land) or of equivalent value to the land upon which the units would have otherwise been constructed to satisfy the IZ requirement.

¹ This is due to Colorado law, which inhibits the creation of rental units under IZ programs due to a prohibition of rent-controlled units. Developers do have an option of forming not-for-profit corporations to develop and manage rental units in satisfaction of their IZ requirement.

- Restrict existing dwelling units as affordable. The units must be equivalent to the units that would have otherwise been constructed to satisfy the IZ requirement.

Detached IZ units must be equal to 48 percent of the average size of the market rate units, up to a maximum average of 1,200 sq. ft. per affordable unit. Attached IZ units must be equal to 80 percent of the average size of the market rate units, up to a maximum average of 1,200 sq. ft. per affordable unit. The type of IZ units must resemble the distribution of market rate units (e.g., if all of the market rate units are single family detached, all of the IZ units must be single family detached).

To keep the units affordable, the IZ units are deed-restricted in appreciation, the amount of which is determined by the city. Sellers of IZ units must make a good faith effort to select another low-income household to purchase the unit. The city maintains a list of eligible households if needed by the seller.

Downpayment assistance. In addition to programs offered by the state housing finance authority, the City of Boulder offers its own downpayment assistance programs. These include:

- The city's **First Home** program provides a grant of up to 20 percent of the purchase price of market rate homes located in the city. The maximum grant is \$56,000, although household of 3 persons or more purchasing a home with 3 or more bedrooms the grant can extend to 30% or a maximum grant of \$90,000. Homes become permanently affordable and are deed-restricted in future resale.
- Boulder also partners with a local CDFI called Funding Partners to offer a deferred loan program (H2O) of up to 15 percent of the purchase price of a home. The loan is repaid after 10 years, upon refinancing or when the home is sold. The loan accrues interest at a fixed rate of 3 percent for the first two years and then is indexed to appreciation in housing prices. There is no price ceiling or deed restriction when the homebuyer sells the home.
- Finally, the city offers an alternative downpayment program for households that do not qualify for programs offered through the local housing finance authority. This program, called the "3% Solution," is offered in conjunction with the H2O program or through a city nonprofit's land trust program. To qualify, the purchaser must first be denied a loan through the state housing finance authority and have less than \$12,500 in assets. Homes become permanently affordable and are deed-restricted in future resale.

Housing rehab. Through Longs Peak Energy Conservation of Boulder County, Boulder residents can get low interest loans (1 to 3 percent) for health, safety, code repairs and energy conservation subject to a maximum of \$25,000.

The city also offers a Mobile Home Rehab Program which provides health and safety repairs and energy conservation to mobile homes within Boulder City limits. This is a 2-year forgivable loan limited to \$7,500 in repair work.

El Paso, Texas

El Paso utilizes a small number of grant sources to fund its limited housing programs. While the city hopes to expand its housing programs in the future, its current offerings are fairly standard:

The primary grants El Paso receives are:

- CDBG (\$8.7 million);
- HOME (\$3.7 million); and,
- ESG (\$376,400).

In addition, the city receives approximately \$2.6 million in CDBG Revolving Loan Fund income, HOME program income and American Dream Down Payment funds. The city hopes to receive HOPWA funding for the first time in the near future, but has yet to receive official notification. Similarly, the city expects to receive Neighborhood Stabilization Program funding in the near future.

First Time Homebuyer. El Paso’s “First Time Homebuyer Program” assists low and moderate income individuals and families in achieving their goal of homeownership, as well as promotes housing affordability. These goals are achieved through two primary programs: 1) a principal reduction assistance program and 2) a downpayment and closing costs assistance program.

To qualify, a family’s gross household income must fall between 60 and 80 percent of the median income for the city. Other applicants may be considered if other secondary financing is being utilized (i.e., Section 8 Homeownership, IDA’s, FHLB, etc.) as long as the housing cost ratio does not exceed 35 percent of applicants’ monthly gross income. In addition, eligible families may not own any real property.

For the principal reduction program, the maximum assistance provided is \$35,000 in the form of 3 percent interest loan amortized up to thirty years. For the downpayment and closing costs assistance program, the maximum assistance provided is \$5,000 in the form of a 3 percent interest forgivable loan with a term of 10 years.

Housing rehab. El Paso’s Single Family Owner-Occupied Rehabilitation Program assists low- to moderate-income homeowners bring their dwelling unit into compliance with the International Residential Codes and local ordinances. To qualify, the gross annual household income of the applicant’s family may not exceed 80 percent of the median income for the city. Each qualified unit is eligible for up to \$65,000 in loans and/or deferred loans through the program. These loans can be used to bring a dwelling unit into code compliance as well as for improvements related to accessibility, energy conservation, lead/asbestos abatement and historic preservation.

Developer incentives. El Paso does not currently provide developer incentives that encourage the construction of affordable housing. However, the city hopes to incorporate such incentives into its strategic plan in the future.

Empowerment Zone. A 10.8 square mile area of El Paso was designated by HUD in 1999 as an Empowerment Zone. This designation indicates the area is federally recognized as being distressed and in need of sustainable community development. While El Paso does receive federal funding for community development projects within the Empowerment Zone, all projects are related to the establishment and revitalization of businesses; none of the funding is directed towards housing programs. It is unclear whether this trend will change in the future.

Lubbock, Texas

The City of Lubbock provides a fairly typical range of housing programs. These programs include downpayment assistance and rehab loans. Lubbock anticipates to receive the following federal grants in 2008-2009:

- \$2.41 million in CDGB grants;
- \$1.35 million in HOME grants;
- \$10,150 in American Dream Downpayment Initiative grants; and,
- \$101,900 in ESG grants.

In addition, each non-profit project considered for HOME or ESG funding must provide a minimum of 25 percent of the total project costs from non-Lubbock Community Development funds. This matching requirement stimulates cooperation and partnership between public and private entities and is a reflection of the community support for and involvement in the project.

In addition, Lubbock receives state funds in the forms of Community Services Block Grants, funds from the Comprehensive Energy Assistance Program and Weatherization Assistance Program.

HEELP program. The principle purpose of this program is to improve neighborhoods by helping low to moderate-income families and individuals within the city limits by making limited exterior repairs and/or to provide energy efficient improvements to the home. Approximately 30 households benefit from this program each year. The program provides Below Market Rate Loans (BMRL) at 3 percent interest with a flexible term of up to 10 years and No-Interest Deferred Payment Loans (NIDP) with a term of 5 years. Both types are capped at \$15,000. Eligible households must be at 80 percent or less of the median income for its specific family size.

Barrier Free program. This program is designed to assist citywide, low-income homeowners in obtaining handicapped accessible items within single-family structures. Eligible repairs include building/installing wheelchair ramps; grab bars, accessible showers, handicap toilets, sinks/faucets and widening of doors. Approximately four homes benefit from this program annually. The program provides one-time grants to eligible households of up to \$7,500, plus costs to address lead paint issues.

New Construction program. The New Construction Program is designed to build quality affordable housing in the targeted areas and/or in Lubbock Community Development eligible areas by providing infill of newly constructed houses on vacant lots. Low-income families and individuals, who have not owned a home in the last three years (or if the current home has been determined to be

substandard), have the opportunity to become first-time homeowners through this program. The houses are constructed of insulated concrete forms, brick exterior, metal siding on fascia and insulated aluminum glass windows, which make them highly energy efficient and low maintenance. Houses average 1,100 to 1,400 square feet consisting of 2 to 4 bedrooms, 1 to 2 baths and a one-car attached garage.

The program offers New Construction Loans at 3 percent interest for 20 years and NIDP at zero-percent interest for 20-years. New Construction Loan payments are determined on a sliding-scale based on family size and family income, while NIDP requires no payments as long as the homeowner lives in the home.

Community Housing Resource Board program. This program was established through a non-profit applying for HOME funds. The applicant proposed to purchase existing single-family homes, rehabilitate them and then lease them to prospective homebuyers who may not be ready to buy a home. Participants must be income eligible and the proceeds from the sale of these homes is reused to purchase more homes. The Lubbock Community Development department approved this application and provided \$170,000.

Comprehensive Energy Assistance Program. One component of this state-funded program is co-payment of energy related expenses. The purpose of the co-pay component is to reduce the energy cost burden of low-income households through case management. Households must be enrolled for a minimum of three months and attend workshops.



LAS CRUCES AFFORDABLE HOUSING

POLICY AND PROGRAM DEVELOPMENT—PEER CITIES DISCUSSION

Presented to:



**Affordable Housing
Ad HOC Committee**

Presented by:



Heidi Aggeler

BBC Research & Consulting
3773 Cherry Creek N. Dr., # 850
Denver, Colorado 80209-3868
303-321-2547 X:256
haggeler@bbcresearch.com

In conjunction with:

Don Elliott,
Clarion Associates

and

Jim Williams
Williams Demographics

December 9, 2008

WHY ARE WE HERE TODAY?

Project Goal: Put the right tools in place to address affordable housing needs in Las Cruces.

**Thank you for your commitment
to this very important issue!!**

AGENDA FOR DISCUSSION TODAY

Peer cities to discuss today:

- Albuquerque, New Mexico
- Santa Fe, New Mexico
- Tucson, Arizona
- Yuma, Arizona
- Fort Collins, Colorado
- Boulder, Colorado
- El Paso, Texas
- Lubbock, Texas

ALBUQUERQUE

Affordable housing goal: through Consolidated Plan goals

Funding: General obligation fund (up to \$25 million)
CDBG (\$4.7 million); HOME (\$2.5 million)

Major Programs

- 1) Housing trust fund—Funded by general obligation bond (recycling bond funds. Did not involve a property tax increase). Can use up to \$25 million for affordable housing activities. Funds are used for gap financing, rental development, property acquisition for affordable housing
- 2) Land trust community (Sawmill Land Trust)
- 3) Owner-occupied rehab program
- 4) Affordable housing development program
- 5) Downpayment assistance program

ALBUQUERQUE (CONT'D)

Other program notes:

- 1) No inclusionary zoning except through negotiated agreements (e.g., annexation into city of planned unit developments)
- 2) City has goals to explore: Rental rehab program, mobile home park preservation and land banking program
- 3) Mesa del Sol, the city's large scale master planned urban community, has the potential to bring 7,600 affordable units to the city.

ALBUQUERQUE (CONT'D) — WHAT'S NOTABLE?

- General obligation bond recycling program with affordable housing component. Affordable housing piece was met with some opposition but passed public vote with a comfortable margin. Grass roots campaign important
- Mesa del Sol—Partnership with State Land and UNM. The workforce housing plan that was agreed on through the TIDD requires:
 - 2% of units at less than 50% of the AMI
 - 3% of units at 50-60% of AMI
 - 5% of units at 60-70% of AMI
 - 5% of units at 70-80% of AMI
 - 5% of units at 80-130% of AMI
- Large community land trust program that also has a neighborhood revitalization component

Local leadership spearheaded all of these efforts

SANTA FE

Affordable housing goal: meeting 25% of need would require subsidizing 1,650 units

Funding: CDBG (\$575,000); General Fund Allocation (\$575,000); HOME (county allocation); production and cash-in-lieu from inclusionary zoning

Major Programs:

- 1) Homebuyer training
- 2) Workforce housing development
- 3) Home rehabilitation
- 4) Downpayment assistance (through MFA)

SANTA FE (CONT'D) — WHAT'S NOTABLE?

- **Tierra Contenta (TC)** — Land sold to a nonprofit from city at a zero-interest loan for a mixed-income development. To date, 1,000 of the 2,300 units developed to date are affordable. TC is the master developer and selects (mostly private sector) builders to develop units. City is paid back \$10,600 per acre when the lots are sold to the builders. Primary subsidy is in the low cost of land. Buyers take a soft second mortgage (non-amortizing, zero interest) that represents the difference between 90% of the appraised price and the purchase price. No deed-restriction

- **Affordability tiers:**
 - Under 65% of AMI
 - 65% to 80% of AMI
 - 80% to 120% of AMI
 - Market rate (anything above 120%)

TUCSON

Affordable housing goal: 10% of stock affordable

Funding: Affordable housing programs are mostly block grant funded (\$8-10 million in CDBG and HOME annually); Small trust fund (\$475,000) established in 2006

Major Programs:

- 1) Home rehab—many options from lead-based paint mitigation to emergency assistance to program targeting the elderly
- 2) Housing trust fund—Funded by fees on condo conversions. Seeking additional revenue sources. Have used to target workforce (100% AMI), gap financing and to start an employer-assisted downpayment program
- 3) Property tax relief program (minimal)
- 4) Downpayment assistance program

TUCSON (CONT'D) — WHAT'S NOTABLE?

Major Programs:

- 5) Affordable housing development — City and housing authority are one and the same. City acquires multifamily developments, and owns and operates (much like public housing but with more flexibility)
- Uniqueness: El Portal program. City operates like a nonprofit housing provider
 - Future initiatives:
 - Land trust to be brought to Council for approval.
 - Inclusionary zoning likely negotiated through development agreements. No citywide program

YUMA

Affordable housing goal: through Consolidated Plan goals

Funding: CDGB (\$950,000) and State Housing Trust (\$75,000)

Major Programs:

- 1) IDA Home Ownership – Matching funds to purchase home.
- 2) SMILE – Funds home accessibility modifications for elderly and disabled homeowners.

NOTE: Yuma does not receive HOME funds, HOPWA grants or offer developer incentives.

FORT COLLINS

Affordable housing goal: through Consolidated Plan goals

Funding: CDBG (\$1 million); HOME (\$650,000).
Small “trust fund” (general fund contributions)

Major Programs:

- 1) Homebuyer assistance/downpayment loans
- 2) Housing rehab, accessibility improvements for nonprofit housing providers. Lot acquisition for affordable housing development
- 3) Land banking

Fort Collins also has a progressive CDFI nonprofit, which is independent of the city.

FORT COLLINS (CONT'D) — WHAT'S NOTABLE?

Development incentives for affordable production:

- 1) Reduced planning application fees (reduced by the proportion of affordability, so a development that is 100% affordable pays nothing for entitlement fees)
- 2) Priority processing—reduced city staff turnaround time (project goes to top of workload)
- 3) Delayed development impact fees until certificate of occupancy. The city does not waive these fees, although CDBG and HOME are available for eligible developers to pay impact fees
- 4) Density bonus in one of the city's residential zones—for example, if the current zoning maximum is 8 units/acre, an affordable development would be allowed 12 units/acre
- 5) Reduced landscaping requirements (e.g., gallon sized shrubs v. three gallons)

BOULDER

Affordable housing goal: 10% of housing units permanently affordable

Funding: Trust fund (\$1.5 million), HOME (\$1 million), CDBG (\$950,000), General Fund transfers (\$400,000)

Major Programs:

- 1) Housing trust fund—funded by property taxes. Very important for affordable rental development and special needs housing.
- 2) Inclusionary zoning—Adopted in 1999, requires 20% of units be affordable. Cash-in-lieu, land donation, buy-and-restrict options.
- 3) Downpayment assistance—innovative programs, provide generous assistance and require deed-restriction on assisted properties.

BOULDER (CONT'D)

Major Programs (cont'd):

- 4) Home rehab — Low interest loan program administered by county program. Option for mobile home owners (health and safety repairs up to \$7,500)

- 5) Federal block grant funds used for affordable and special needs housing development.

BOULDER (CONT'D) — WHAT'S NOTABLE?

- Serious about 10% affordable housing goal. Monitors annually. Terrific data about which programs produce affordable housing
- Innovative downpayment assistance programs → preservation of homeownership units through deed restriction exchange
- Very limited ability to use land banking or land acquisition to produce affordable housing because of anti-growth policies and residents' preferences for open space

EL PASO

Affordable housing goal: through Consolidated Plan goals

Funding: CDGB (\$8.7 million), HOME (\$3.7 million) and ESG (\$375,000)

Major Programs:

- 1) **First Time Homebuyer** – provides loans for principal reduction and downpayment/closing costs
- 2) **Housing Rehab** – provides up to \$65,000 in deferred loans for households earning less than 80% of median

A portion of El Paso is a federally identified “Empowerment Zone.” However, all federal funds received due to this designation are spent on economic revitalization of the area

LUBBOCK

Affordable housing goal: through Consolidated Plan goals

Funding: CDGB (\$2.4 million), HOME (\$1.35 million), ADDI (\$10,150) and ESG (\$102,000)

Major Programs:

- 1) New Construction Program – funds construction of quality affordable housing in targeted Lubbock neighborhoods
- 2) Community Housing Resource Board – program purchases existing single-family homes and leases them to low-income families

Lubbock requires each non-profit project considered for HOME or ESG funding must provide a minimum of 25% of the total project costs

SUMMARY

	Albuquerque	Santa Fe	Tucson	Yuma	Ft. Collins	Boulder	El Paso	Lubbock	Las Cruces
Housing trust fund	X	X	X	X (State)	X	X	X (State)	X (state)	X (State)
Financing source	GO Bond recycling. No property tax increased involved with issuance	Cash-in-lieu from inclusionary zoning			General fund	Property tax, cash-in-lieu from inclusionary zoning			
Owner-occupied rehab program	X	X	X	X		X	X	X	X
Rental rehab program				X					
Local downpayment assistance			X	X		X	X	X	
Inclusionary zoning	No	Yes	No	No	No	Yes	No	No	No
Land banking	Potential Through GO Bond activities				X				Potential through GRT Bond Cycle Activities
Land trust	X	X				Through a nonprofit			
General fund support	Through GO Bond	X			X	X			Impact fee payments for water and wastewater for affordable housing projects

DISCUSSION QUESTIONS

- Is there a menu of programs you like best? Least?
- If we had to decide right now about what to recommend to City Council, which programs would you choose?
- Recommendations and implementation plan — to be continued in 2009 (Happy New Year!)

NEXT STEPS

- January 2009:** Agree on recommendations for program and policies, including zoning changes. Discuss implementation plan
- February 2009:** BBC will present draft recommendations chapter and report. Committee to comment and discuss. Final report preparation in late February
- Rest of 2009:** Presentations to Planning Commission, City Council, timing TBD

SECTION V.
Ad Hoc Committee Recommendations
on Affordable Housing Strategy

SECTION V.

Ad Hoc Committee Recommendations on Affordable Housing Strategy

During summer and fall 2008, the Las Cruces Ad Hoc Committee on Affordable Housing met on a monthly basis to consider solutions to the affordable housing needs in Las Cruces. The goal of the Committee was to develop recommendations of housing policies and programs that would enable the City to better meet housing needs.

The overall vision of the Committee was to: *Provide an adequate supply of housing for Las Cruces residents of all income levels, now and as the community grows.*

Identification of needs. The committee discussions began with an overview of the top affordable housing needs in Las Cruces, as well as existing programs and policies the City has in place to meet needs. These needs are documented in the City's 2006-2010 Consolidated Plan, specifically the housing market section.

The City's greatest housing needs include the following:

1. It is very difficult for renters to buy in Las Cruces, both low and moderate income renters. Only 8 percent of renters could afford to buy housing in 2005; just 5 percent could afford to buy a newly built home. This means that more than 12,000 renters cannot afford to buy a home in Las Cruces.

A household earning 80 percent of the Median Family Income (MFI)—a common measure of a low to moderate income household—could afford to buy a home priced at \$109,000. This compares to an average price of homes on the market of \$226,000 and new construction of \$192,000.

2. Renters earning less than \$15,000 per year have 3,600 too few affordable rental units. These renters are “cost burdened” meaning they are living in rental units that are more expensive than they can afford. In addition, 2,300 renters report having “significant trouble paying rent” and 2,000 cannot cover the monthly cost of utilities alone without being cost burdened. Finally, an estimated 850 are living in rental units that are in “unlivable” condition.
3. An estimated 700 owners have significant trouble paying their monthly mortgage costs, and 200 are in housing that is in “unlivable” condition.
4. Many Las Cruces residents have special needs. This ranges from 1,100 residents with severe developmental disabilities to 3,000 elderly with disabilities to 5,000 residents with mental illnesses. The City has a shortage of units to adequately serve these residents.

Policies and programs considered. To address these needs, the Committee considered a wide variety of programs and changes to land use policies to reduce regulatory barriers to housing development.

The programs considered were:

- Land banking;
- Community loan funds/community development financial institutions;
- Inclusionary zoning;
- Community land trusts;
- Housing trust funds; and
- Development incentives and issues.

The regulatory barriers review conducted for this study examined the City's zoning regulations and development fees to identify:

- Barriers that may be discouraging affordable housing, and
- Missing tools and incentives that might encourage the production of affordable housing.

This section contains the Committee's agreed-upon recommendations for addressing Las Cruces' affordable housing needs.

Guiding Principles in deciding upon Recommendations

The Committee agreed upon the following guiding principles in crafting its recommended strategies to meet affordable housing needs:

1. There is no perfect solution to addressing the City's needs and all solutions involve some level of compromise. We believe that housing is a community benefit, the provision of which should be shared throughout the community. In an ideal situation, the responsibility for meeting housing needs should be spread throughout the City.
3. The City of Las Cruces needs more than its current revenue sources, which are largely federal sources, to address its housing needs. Additional revenue is necessary to build more housing that is safe, decent and affordable, as well as ensure that the City's needs do not worsen as it continues to grow.
4. Affordable housing should be dispersed throughout the City.
5. Las Cruces needs to preserve and augment its supply of affordable housing, both for low income renters and renters who want to become homeowners. The City also desires to increase the supply and adequacy of housing for residents who have special needs. Finally, the City needs to sustain its current affordable housing stock.

Programs/Policies the Committee Desires To Recommend

1. Set production and preservation goals. The City should set a goal for an overall proportion of affordable rental and units for sale. It should also set annual production goals to meet these overall goals and monitor the affordable stock on an annual basis, through a report to Planning Commission and City Council.

Rental units: Approximately 40 percent of the City’s renters earn less than \$15,000 per year. Fifteen percent of the City’s rental units (including voucher subsidies) are affordable to these renters. The Committee recommends this proportion be increased to a minimum of 20 percent in the next 3 to 5 years, so at least half of these renters have an opportunity to avoid being cost burdened. This would require development and/or subsidies of approximately 750 rental units that are priced under \$375 per month.

If the dollars available—federal, state and local—to address affordable housing needs grow and as the economy improves, the Committee recommends that this target percentage be increased beyond 20 percent so the City will more aggressively address this very acute housing need. The Committee recommends that the target percentage be reevaluated as part of the City’s next Five-Year Consolidated Planning process.

Affordable homeownership units: At the time the City’s market study was completed, just 12 percent of the units for sale were affordable to moderate income households (earning \$38,880). The Committee recommends that the City establish a goal that between 15 and 20 percent of units on the market in any given year are affordable to moderate-income households.

How should these goals be monitored? The City should begin with the inventory of rental units in the 2006-2010 Consolidated Plan, add new units developed since the Plan was published and, on an annual basis compare the number of units affordable to households earning less than \$15,000 per year (rents of \$375 and less) to the total number of rental units to calculate the proportion. If not available internally, an estimate of the total number of rental units is published on an annual basis by the Census American Community Survey¹.

The proportion of for sale units affordable to moderate income households can be monitored annually through the MLS with assistance from the Board of Realtors.

2. Establish a land bank. Land banking is a program whereby land is acquired by a division of government or nonprofit with the purpose of developing affordable/workforce housing or engaging in revitalization activities. After a holding period, the land is sold to a nonprofit or private developer, often at a price lower than market, who agrees to the land use conditions (e.g., creation of affordable/workforce housing).

Land bank programs can serve dual purposes. While some programs are created solely for the acquisition of land for future affordable housing development, others have broader long-term

¹ www.census.gov, American Community Survey, tables B25003 for renter occupied units plus C25004 for vacant rental units.

community planning goals. In distressed communities, land banking programs allow cities to acquire vacant and underperforming parcels, be a catalyst for redevelopment, and to benefit from increased tax revenues from the properties. In communities with rapidly rising land costs, land banking programs promise a long-term savings to taxpayers: for example, when public buildings need to be constructed, they can be built at less than the current market cost due to the earlier acquisition of the property by the land bank.

Las Cruces should establish a land bank to which private property may be donated (with potential tax benefits) and public property may be held for future affordable housing development. The City can also purchase appropriate parcels to add to the land bank as they become available. The City should explore partnerships with the school district, utility companies and other public landowners to donate the land for affordable housing in exchange for a certain proportion of the units that have first right of refusal to public sector employees (e.g., teachers).

3. Make the following changes to development policies. Experience shows that while financial subsidies and thoughtful public-private investments are often needed to meet affordable housing demands, it is also important to review basic governmental regulations to ensure that they are not inadvertently discouraging needed forms of housing. More specifically, it is important to review zoning regulations and development fees to identify any existing barriers to private production of affordable housing and potential additional tools that could spur private production of affordable housing.

Stated another way, private market construction of a wider range of land-efficient, space-efficient, and cost-efficient housing types can result in “private” solutions to a portion of affordable housing demand and reduce the need for financial subsidies in some cases.

The following recommendations build on two of the key guiding principles identified above:

- Las Cruces needs to increase its supply of affordable housing, both for low income renters and moderate income renters who want to be homeowners.
- Affordable housing should be dispersed throughout the City.

A technical discussion of these recommendations is contained in Section III of the full report.

Proactively rezone land into the R-4 zone. Proactively rezone lands along bus routes and major one-way street pairs into the R-4 zone to encourage construction of multi-family housing.

Adjust the R-4/C-3 Zone height and density. Raise the height limit in the C-3 and R-4 zones from 60 feet to 75 feet and revise the minimum density requirement.

Adopt minimum density regulations for the R-1-b, R-2, and R-3 Zones. Adopt minimum density regulations for key zone districts.

Refine R-1-b Zone and provide templates. Revise the dimensional standards for the R-1-b district and prepare template examples of smaller single-family housing on 3,500 square foot lots in order to encourage wider use of this existing zoning tool.

Reduce residential parking requirements. Reduce the minimum off-street parking requirement for accessory dwelling units (ADUs) and multi-family dwelling units to 1 space per unit.

Refine Accessory Dwelling Unit regulations. Remove the requirement that ADUs be occupied by a member of the same family that occupies the primary housing unit, and that the ADU be contained within a primary structure.

Expand impact fee exemption. While the existing exemption from park, water, and sewer fees is good, it covers too few units to make a significant difference in affordable housing supply.

4. Establish a housing trust fund. A top priority of the City should be to establish a housing trust fund in the next 1 to 2 years. Housing trust funds are specific funds that are developed by legislation, ordinance or resolution to dedicate a source of public revenues to affordable housing activities. There are now more than 500 housing trust funds at the local and state level.

Housing trust funds create their own policies to determine how the funds generated will be used (e.g., downpayment assistance v. new construction). The trust funds are usually governed by a board of directors, which has a role in determining the allocation process.

The two main benefits of housing trust funds are 1) The cost of affordable housing is shared throughout the community, supporting the idea that affordable housing is a community benefit; and 2) The dollars can be used for a variety of affordable housing activities and can be tailored and changed to meet the needs of the market.

The Committee recommends that the Las Cruces Housing Trust Fund be funded through one of two sources:

- **A General Obligation (GO) Bond.** In this case, the public would support a GO Bond (resulting in a property tax increase) that would fund affordable housing activities.
- **Recycling of existing bonds.** In this case, existing bond revenues would be extended with the revenue dedicated to affordable housing activities. The downside of this revenue source relative to a new bond dedicated to affordable housing is that the activities would need to be completed within 3 years and in some cases the development of affordable housing can take longer.

The City of Albuquerque passed a GO Bond for affordable housing in 2006 worth about \$25 million. Pro rated for Las Cruces' size, the Committee recommends that the City of Las Cruces aim for a \$5 million bond. At 39,700 housing units, such a bond would be equivalent to a cost of about \$109 per housing unit (although the actual cost for an individual unit would depend on its assessed value).

The Trust Fund should be structured so it can accept donations and enable the contributor to receive a tax benefit. The Trust Fund should also contain a revolving component (e.g., low interest loans that are repaid) in addition to offering grant funds so that a portion of the Fund is replenished over time.

The City should work with the development community, including developers, Realtors, lenders and title insurance providers to campaign for such a fund.

Programs/Policies the Committee Wishes To Table for Future Consideration

Inclusionary zoning. At this time, inclusionary zoning is not a recommended tool for production of affordable units. We recommend that the City reconsider inclusionary zoning as a production tool in 3 to 5 years, after it has an opportunity to apply the changes to development policies, development incentives and housing trust fund programs recommend in this report.

If the City were to require inclusionary zoning, it should consider requiring a contribution in the form of inclusionary zoning *for annexations*. For example, as part of the annexation agreement with the City, a developer would need to demonstrate that they are making at least 10 percent of the units in their planned development affordable. This contribution might be made through a land donation (on or offsite), a payment to the City representing the value of the affordable subsidy, constructing the affordable units on site or constructing the affordable units offsite. In turn, the City could offer incentives to offset the cost of this requirements such as density bonuses, reduced parking and street requirements and faster track approval.

What should the City monitor during the next 3 to 5 years to determine the need for additional production tools such as inclusionary zoning?

- Creation of a Housing Trust Fund to raise additional revenues for production of affordable housing.
- Increases in federal and state dollars to support affordable housing creation.
- Attainment of the goals of increasing the stock of deeply affordable rentals and affordable starter homes (see Recommendation No. 1).
- How much the private sector is able to contribute to the affordable housing stock (mostly affordable for sale units) with the changes in development policies and incentives.

What should the city do now?

- We recommend that the City engage private sector developers in a discussion about how they can more readily contribute to the affordable housing stock. This discussion would include a review of the incentives the City has in place (e.g., impact fee waivers, changes to development regulations), articulation of the City's goals related to affordable housing and how the development community can support the establishment of a land bank and housing trust fund.
- The City should also actively encourage and be open to creative development strategies to create more affordable housing and sustainable communities, including solar energy, small lot housing, narrower streets and walkable communities integrated with neighborhood services. More incentives should be provided to annexations that embrace these concepts.

Vacant building ordinance. As part of its affordable housing strategies tasks, the Committee researched vacant building ordinances in other communities. Since vacant (particularly neglected and vacant) properties can contribute to deterioration of neighborhoods and are unproductive uses of existing development which could be used for affordable housing in some cases, the Committee felt it was appropriate to explore potential ordinances for Las Cruces.

Many communities are enacting such ordinances which require commercial and, in some cases, residential owners, to file an improvement plan with a city once their property becomes vacant. This plan must detail how the property owner will improve the property, either through leasing the space, redeveloping the space or selling the property. Many communities require that a property must be improved within a certain amount of time (e.g., 90 days in Wichita) or the property owner is fined. In Wichita and San Diego, owners are fined \$250 for every 90 days a property is vacant for a maximum of \$5,000 in fines. Fresno's fees are much higher (exceeding \$10,000 depending on the time period of vacancy). Fresno also has a foreclosure ordinance where banks and real estate agents can notify the city that the property will be vacated and submit a maintenance and disposal plan.

The Committee believes such an ordinance could improve conditions in Las Cruces, particularly that of commercial properties and recommends that the City consider implementing a vacant building ordinance in the next 3 years.

Mobile home park redevelopment. Mobile homes provide some of the most affordable homeownership option in the City of Las Cruces. The City wishes to have in place an incentive for the redevelopment of mobile home parks so that not all of the units are lost from the affordable housing stock. The City should consider adopting an ordinance similar to a recent ordinance adopted in Bend, Oregon, which provides incentives for developers to include affordable housing into the redeveloped stock of mobile home parks.

Programs/Policies the Committee Wishes Not To Recommend

The Committee considered the following programs and does not wish to recommend them for implementation at this time:

Community loan funds/community development financial institutions. Such a program would require a regional effort, and it is unclear if there is a gap in the market for the capital that would be provided by such a fund. In addition, a regional fund has already been proposed and is awaiting designation as a community development financial institution from the U.S. Department of Treasury.

Community land trusts. The Committee recognizes the value—and deep level of affordability, especially for homeownership—that a land trust can bring. The Committee believes land trusts should be introduced into the market on a case by case basis in small quantities (e.g., a small number of trust units integrated into new subdivisions). Larger scale land trusts may come in time depending on the market response to such beginnings.

APPENDIX A.
Program Discussion Chapters

APPENDIX A.

Program Discussion Chapters

This appendix contains all of the program chapters, discussion questions and accompanying presentations that were presented to the Affordable Housing Ad Hoc Committee throughout its strategic planning meetings. They are arranged by program topic and include:

- Land banking;
- Community loan funds/community development financial institutions;
- Inclusionary zoning;
- Community land trusts;
- Housing trust funds; and
- Development incentives and issues.

LAND BANKING

Las Cruces Affordable Housing Study

Land banking is a program whereby land is acquired by a division of government or nonprofit with the purpose of developing affordable/workforce housing or engaging in revitalization activities. After a holding period, the land is sold to a nonprofit or private developer, often at a price lower than market, who agrees to the land use conditions (e.g., creation of affordable/workforce housing).

Land bank programs can serve dual purposes. While some programs are created solely for the acquisition of land for future affordable housing development, others have broader long-term community planning goals. In distressed communities, land banking programs allow cities to acquire vacant and underperforming parcels, be a catalyst for redevelopment, and to benefit from increased tax revenues from the properties. In communities with rapidly rising land costs, land banking programs promise a long-term savings to taxpayers: When public buildings need to be constructed, they can be built at less than the current market cost due to the earlier acquisition of the property by the land bank.

Interest in land bank programs is growing, particularly in areas with high foreclosures. San Diego formed a task force in February to study how to implement such a program, and Fairfax County, Virginia set up such a program on July 1, 2008. In addition, on July 26, 2008 the U.S. Congress passed a housing rescue bill that contained a budget for federal grants made to states for the land banking of foreclosed properties.

Case studies of land banking programs follow.

Eugene, Oregon

Eugene has one of the oldest land banking programs in the country. In 1968, city council adopted a broad platform to address housing needs, including directions to purchase and land bank sites for lower-income housing. The city's current Land Banking for Affordable Housing program was formally adopted in 1983, when the city was in an economic downturn. When the economy recovered, the city was uniquely positioned to offer banked land parcels to developers. The first development using a land banked parcel was completed in 1990.

Forty years later, almost 90 acres have been purchased for affordable housing. This acquisition has resulted in 510 units of affordable housing, mostly multifamily units (25 single family detached units have been created). More than 200 units are in the pipeline for development. The vast majority of units serve very-low income households (those earning less than 50 percent of the AMI).

The city's goal is to maintain 10 acres of land in the bank for future development. City staff take the lead in identifying and analyzing the feasibility of potential sites. Site selection is overseen by the Intergovernmental Housing Policy Board (IHPB), comprised of elected officials and citizens, although city council has the final say in land purchases.

Land has been purchased from private individuals and businesses as well as schools (lower and higher educational institutions). Several parcels were already owned by the city and were transferred to the land bank at no cost.

The assessment process for purchasing land parcels examines the following factors:

- 1) Location related to jobs, services, amenities and public transportation;
- 2) Dispersal of affordable housing;
- 3) Site environmental conditions;
- 4) Cost;
- 5) Allowed density (ideally, zoned multifamily with the capacity of 40 to 80 units);
- 6) Existing on-site structures and improvements; and
- 7) Existing utility and street infrastructure.

The city offers land bank sites, one at a time, for development through a Request for Proposals (RFP) process. The proposals are evaluated by city staff and the HPB. City Council makes the final decision, choosing the development application that best meets the goals of the program and is most appropriate for the particular land parcel.

Fort Collins, Colorado

Fort Collins established its land banking program 5 years ago, with a general fund contribution of \$1 million. The city's program is specifically designed to acquire property for development of affordable housing units—it is basically a hedge against rising land costs. Under the program, the city acquires property and holds it long-term (a minimum of 5 years, but more likely in the realm of 7-10 years). After a holding period, the city issues an RFP for property development. However, the city is not permitted to use the land bank as an investment vehicle (e.g., to generate monies to fund affordable housing development).

As of 2008, no units have been produced as a result of the program. According to city officials, when properties are sold they will be sold for more than the city paid for the land—enabling the city to realize a small profit—but for less than market value.

Dallas, Texas

In 2003, the State of Texas passed the Urban Land Bank Demonstration Act. The act enables large metropolitan areas in the state to establish pilot land banking organizations.

The land banks have the authority to take ownership of unimproved tax-foreclosed properties, which they must sell within 3 years for the purpose of affordable housing development. The developers that can buy the properties must meet certain eligibility requirements, and the number of properties they can buy is limited based on their recent housing production experience. The developer must apply for a building permit, and construction financing must be in place within 24 months of acquiring the property or it reverts back to the land bank.

The properties sold by the land bank must be deed restricted for the development of affordable housing and the occupants of the developed housing have income restrictions. If the property is sold for development of rental housing, the rental property owner must file annual occupancy reports. Nonprofit community housing development organizations have the first right of refusal on the purchase of the properties, as long as they provide housing within the same area as the land bank's properties.

The land banks created are required to adopt an annual plan—and subject to a public hearing—for the program's operation. In addition, the state bill requires the land bank to comply with open meetings and open records requirements for governmental bodies and to meet certain recordkeeping and reporting requirements.

The City of Dallas recently used its authority under the 2003 Act to create its own Urban Land Bank Demonstration Program. The stated purpose of its program is to acquire unproductive, vacant, and developable lots and/or substandard homes to be “banked” for affordable housing development in the future. The goal of the lot acquisitions is to enable new single family development to house low- and moderate-income homeowners, in addition to stabilizing distressed communities.

At least 25 percent of land bank properties in Dallas must be deed restricted for sale to households with gross household incomes less than 60 percent of the AMI, and not more than 30 percent of land bank properties may be deed restricted for sale to households with gross household incomes greater than 80 percent of the AMI.

The City of Dallas' Urban Land Bank program has a goal of selling up to 250 properties per year to benefit low- and moderate-income families of the metro area. The properties are offered for sale at \$3,000 for the first 7,500 square feet of land plus \$0.133 for each additional square foot plus any regulatory and contractual costs (e.g., maintenance, post foreclosure property taxes). Buyers are required to submit development plans for the parcels along with their requests for purchase.

Flint, Michigan

The Genesee County Land Bank Authority (LBA) was formed in 2002, a result of an inter-local agreement between Genesee County and Flint, Michigan.

The Genesee County LBA was enacted prior to the actual passing of the State of Michigan's Land Bank “Fast Track” Act in 2004. The Act enables local governments to create land bank authorities with independent powers to acquire, hold, and distribute vacant, abandoned, and tax-delinquent properties.

The Genesee County LBA uses its land banked properties first for residential redevelopment, secondly for park and open space, and lastly for retail, commercial and industrial purposes. The main goal of the Genesee County Landbank is to get properties back on the tax roll, through both affordable housing and commercial development and redevelopment. The Landbank is not a developer; it partners with local nonprofits for construction of affordable housing.

Since its inception, the Genesee County LBA has acquired over 4,400 properties into its land bank holdings and transferred 200 of the properties to nonprofits for revitalization.

The Genesee County LBA acquires most of its property through tax foreclosure. It also accepts gifted properties and purchases for redevelopment.

To fund its operations, the LBA received an initial injection of land reutilization funds from the treasurer's office. For its ongoing operations, the Genesee County Land Bank is funded through three main mechanisms:

1. Revenues generated through the sale of Landbank properties;
2. 5 year/50 percent tax capture of Landbank properties returned to the tax roll; and
3. Monies given to the Landbank by the County Treasurer. This amount is a percentage of the amount taken in for the increased fees generated through the changes from the enabling legislation.

Other sources of funding include appropriations, sales of properties, and grants. No general fund dollars are appropriated for the Landbank.

One of the biggest challenges of the Landbank is maintenance of the sites. The LBA has found that properties that are publicly labeled and marked as Landbank properties become public dumping sites due to the apparent lack of private ownership. In response to this challenge, the LBA has stopped publicizing the locations of their properties and has tried to establish several "Clean and Green" programs which emphasize community assistance in the maintenance and redevelopment of these properties. The LBA has generally found wide support in the community.

Cary, North Carolina

This city near the Research Triangle, very recently established a land banking program with a \$23 million seed to reserve land for future public uses, including schools, post offices, parks, greenways, open space, community centers and fire stations. The current plan is to purchase 700 acres for public use, including up to 500 acres for parks, 250 acres for public schools, 12 acres for a post office and 3 to 4 acres for a fire station. The motivation for the program is to "insulate...taxpaying citizens...from rising land costs." Development in Cary consumes as much as 1,000 acres per year.

The city is mostly looking at acquiring large, un- or under-developed parcels that are ideal for "community uses in the future."

The sites will be acquired through purchase by the town solely or with a partner agency. Land might also be acquired through donations, developer set asides or preservation easements.

Land Banking Group Discussion Questions

1. List the pros and cons of establishing a land banking program in Las Cruces.
2. If the City of Las Cruces were to establish a land banking program, what would be the program's purpose—affordable housing creation, community revitalization, neighborhood stabilization/foreclosure mitigation? A combination of all?

What would be the criteria for the purchase of land?

3. Outline a vision for how such a program in Las Cruces might be structured:
 - How long would the city hold property?
 - What organizations would get first right of refusal to purchase the property?
 - At what cost would the city sell the parcels—cost plus a small profit? Deep discount? Cost plus carrying costs?
4. Who would manage such a program? The city, the downtown redevelopment organization, or someone else?
5. Do you see an opportunity to match such a program with the city's current home rehabilitation program and/or downtown revitalization efforts?
6. Think about the tradeoff of buying land and restricting funds v. allocating funds to develop affordable housing now. Would this be a major barrier to passing such a program in Las Cruces?
7. Given the challenges faced by other land banking programs (small amounts of funding, delay in developing units, maintenance of property), do you think these challenges can be overcome in Las Cruces?
8. Do you have follow-up questions for BBC to research to help you make a decision about land banking as a program to recommend in Las Cruces?

What is your recommendation for continuing to explore this potential program at this point?

GO or NO GO

Community Loan Funds

Las Cruces Affordable Housing Study

Community Development Financial Institutions (CDFIs) are lending institutions with a specific purpose of serving a particular community by increasing the amount of loan capital in an underserved area. The services offered by CDFIs differ—some operate much like a traditional bank or credit union and offer consumer as well as commercial products; others operate only to make loans for creation of affordable housing.

According to the general definition by the U.S. Department of the Treasury, a CDFI has a primary mission of community development, serves a target market, is a financing entity, remains accountable to its community and is a nongovernment entity. CDFIs can be regulated institutions, such as community development banks, or unregulated institutions, such as community loan funds, community development venture funds or micro-enterprise funds. CDFIs can be for-profit or non-profit entities.

Depending on the type of institution, CDFIs generate revenue in different ways. In many cases, CDFIs make money much like traditional banks do—by charging a higher interest rate on the money they lend than what they pay for the funds. They might also receive contributions from the private sector and government (see CDFI Fund below).

Nonprofit CDFIs are limited by their ability to raise capital, since they do not issue stock like for-profit companies. The ability to have a strong capital base allows CDFIs to better reach their target markets by allowing them to make higher-risk and longer-term loans. To address this issue, in 1995, Citibank and the National Community Capital collaboration invented an investment product called an equity equivalent investment, or EQ2. An EQ2 is a long-term, deeply subordinated loan with some equity features (carrying interest rates of between 2 and 4 percent). Regulated banks can receive community development credit for compliance with the Community Reinvestment Act (CRA) if they invest in EQ2s.

The U.S. Department of the Treasury has a CDFI Fund with the mission of expanding the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities in the U.S. The Fund provides monetary awards for financial assistance and technical assistance to support economic development (job creation, business development, and commercial real estate development); affordable housing (housing development and homeownership); and community development financial services (provision of basic banking services to underserved communities, financial literacy training, and predatory lending alternatives).

CDFIs in New Mexico

New Mexico has a handful of CDFIs, the vast majority of which are dedicated to micro-business and small business development through access to credit. New Mexico's CDFIs include:

ACCION New Mexico (Albuquerque). ACCION is a nonprofit organization that makes loans to small businesses and provides training to emerging entrepreneurs. ACCION New Mexico offers loans ranging from \$200 to \$150,000 to support self-employed individuals who have limited or no access to traditional business credit. ACCION New Mexico uses a "stepped lending" model in which many clients start with a smaller first-time loan and, once they establish a strong repayment history, apply for larger loans.

Wells Fargo Bank in Las Cruces is a partner bank to ACCION. For more information, see <http://www.accionnewmexico.org/>

Homewise, Inc. (Santa Fe). Homewise is dedicated to helping New Mexicans become homeowners by offering home purchase, home improvement and education programs. Through a partnership with the Santa Fe School District called Teacherwise, Homewise offers a special program designed to help teachers and other school employees buy or repair homes in Santa Fe, through downpayment assistance and low-interest mortgage loans. Homewise also operates as a housing developer and recently developed an 80-unit affordable homeownership development in Santa Fe. For more information, see <http://www.homewise.org/>.

The Loan Fund. The New Mexico Community Loan Fund, located in Albuquerque, is a nonprofit that provides financing and business consulting for entrepreneurs, business owners and nonprofit organizations.

The loan fund receives low-interest loans from traditional financial institutions, units of local governments, individuals and nonprofit organizations. The interest rate on these loans range from 0 to 4 percent; the notes are secured by loans receivables. The loan fund uses these monies to provide below-market rate loans to entrepreneurs and business owners.

The Loan Fund has also received Community Development Block Grant (CDBG) funds from the City of Santa Fe to operate the city's Revolving Loan Fund (RLF). The RLF provides loans to start up and existing businesses to begin/expand their activities, particularly for low and moderate income and minority persons in Santa Fe.

See <http://www.loanfund.org/index.htm> for more information about The Loan Fund.

New Mexico Community Capital. This organization is a community development venture capital fund. The objective of the organization is to promote economic development in New Mexico communities—particularly outside the Albuquerque/Santa Fe/Los Alamos areas—while generating returns for the fund's investors.

The fund typically invests \$500,000 to \$1,000,000 in qualified companies in exchange for preferred stock. Industry preferences include artisan and tourism related products and services, consumer and business services and products, food processing, light manufacturing and sustainable energy and environmental remediation. See www.nmccap.org for more information.

Case studies of other CDFIs follow.

Low Income Investment Fund

The primary goal of the Low Income Investment Fund (LIIF) is to alleviate poverty. The organization aims to do this by providing capital and technical assistance to low-income communities to finance and build facilities for education, affordable and supportive housing, childcare and other community revitalization programs.

LIIF has three market areas: Northern California, Southern California and New York.

LIIF has several lending products:

- **Predevelopment.** Organizations can get short-term (up to 2 years) predevelopment loans and lines of credit for affordable and supportive housing, childcare centers and educational facilities.
- **Acquisition, construction loans and mini-perm loans.** These loans are a maximum of \$750,000 (unsecured) and can be used for site/building acquisition and construction of affordable and supportive housing developments, childcare centers and educational facilities and permanent financing for up to 10 years.
- **Permanent loans.** These loans must be a minimum of \$500,000 and a maximum of \$7 million and are fully amortizing, up to 30 years.

LIIF also provides operating and facility grants to childcare centers and technical assistance to housing, childcare and educational organizations.

LIIF is a very large organization, with assets exceeding \$135 million in 2007. LIIF gets the money it loans and grants from individuals, religious organizations, banks, mutual funds, foundations and corporations. Its list of donors is extensive and includes many high-profile organizations such as Citigroup and the Annie E. Casey Foundation.

To date, LIIF has achieved the following:

- **Childcare.** LIIF has provided \$51 million in loans, grants and technical assistance to child care providers, supporting nearly 52,000 childcare spaces to-date.
- **Education.** To date, LIIF's education program has provided 117 education loans to benefit students in low income neighborhoods totaling nearly \$210 million; this activity created 46,000 quality classroom spaces for low income children.
- **Housing.** Nearly 80 percent of the 55,000 affordable housing units LIIF has financed since 1984 are occupied by very low-income households.

Mile High Community Loan Fund

The Mile High Community Loan Fund (formerly the Mile High Housing Fund) was established in Denver, Colorado in 1999. The fund was an outgrowth of a joint initiative of the City and County of Denver, Fannie Mae Foundation, Enterprise Foundation and U.S. Bank. These four founders provided the initial capital including \$3 million in grant funds from the City of Denver.

MHCLF provides loans to nonprofit and private sector developers to support the development of affordable housing and community facilities.

MHCLF is capitalized through equity investments, low-interest loans and grants from local, regional and national funders including U.S. Bank, Wells Fargo Bank, Key Bank, the Community Development Financial Institutions Fund of U.S. Treasury Department, Enterprise Foundation, Fannie Mae Foundation, the Colorado Housing and Finance Authority, and the cities of Denver, Arvada, Boulder, Englewood, and Lakewood. The fund has approximately \$10 million in assets.

To date, MHCLF has made 97 loans totaling more than \$33 million and has helped finance more than 3,000 units of affordable housing and more than 50,000 square feet of nonprofit community facilities space in the metro area. MHCLF recently entered into an agreement with Habitat for Humanity to service the organization's loan portfolio.

Funding Partners

Funding Partners for Housing Solutions (Funding Partners), located in Fort Collins, Colorado, is a nonprofit that was incorporated in 1996. It became a CDFI in 1999.

Funding Partners has several programs:

- **Mammel Affordable Housing Loan Fund.** This fund provides loans for acquisition of property, predevelopment work, construction and gap financing for affordable residential and mixed-use developments. The loan terms are usually 24 months or less and carry a below market interest rate; the loan terms might also include deferred interest and/or principal repayments.
- **House to Homeownership (H2O).** This program provides downpayment and closing cost assistance to qualified first-time homebuyers—up to 5 percent of the purchase price. It was introduced as a private sector alternative to governmental downpayment assistance programs. The program is marketed through mortgage and real estate professionals.
- **Employee Homeownership Program.** An employer-sponsored downpayment assistance program, this program is offered by employers (through Funding Partners) to their employees. Funding Partners works with specific employers to define the objectives they would like to achieve, key staff positions to target, eligibility requirements and program procedures. The employer ultimately determines what the program offers and which employees are eligible to use the program.

The organization also provides third-party loan servicing and program and policy implementation for clients.

Funding Partners has a capital base of \$8 million. Its loan capital is provided by 27 organizations, 56 percent of which are financial institutions, 36 percent governmental units, with the remainder from the private sector.

Since its inception, the organization has financed 53 housing projects, creating or preserving 1,900 affordable units and financed 951 downpayment assistance loans.

Housing Development Project

Although not a CDFI, the Housing Development Project (HDP) in Denver functioned somewhat like a loan fund, except that it provided grants rather than loans. The HDP was developed in Denver, Colorado by Enterprise Community Partners (formerly The Enterprise Foundation). The purpose of the HDP was to support the development and preservation of affordable housing in the Denver metro area. The HDP was made up of a collaborative of funding organizations, including The Enterprise Foundation, the City and County of Denver, the United Way, financial institutions and construction companies, who provided annual grants to the program. Funders had representatives on the HDP Board who oversaw the administration of the program and evaluated the organizations that would receive funding.

There were two parts to the program:

- Three year funds provided to four nonprofit housing developers for operations and technical assistance. The organizations received \$100,000 for operations and an average of \$25,000 each year for technical assistance.
- One-year funds provided to nonprofits for special, one-time projects such as roof repairs on affordable rental developments, staff training and software system implementation.

During its existence, the HDP supported the development, rehabilitation and preservation of more than 5,000 affordable housing units and helped more than 1,400 families achieve homeownership through counseling, financial education and down payment assistance. Together, HDP funders have provided more than \$8 million in operating support and technical assistance to nonprofit developers in metro Denver. The program was active until 2008, when Enterprise began a new green initiative and reallocated funding.

University National Bank

This CDFI in St. Paul, Minnesota has a unique program called “Houses to Homes.” The program was created in May 2000 with the goal of financing the rehabilitation of 1,000 homes in the Twin Cities in five years. The goal was achieved over a year ahead of schedule. To date, more than 1,500 homes have been revitalized through the program.

The program operates like this:

- University Bank finances renovators with a successful track record of buying, fixing and selling homes in distressed communities;
- The bank lends 100 percent of the home's acquisition price. Renovation work is completed within a reasonable period of time; and
- Homes are targeted to first-time homebuyers or low- to moderate-income homebuyers.

The program is funded through the bank's social responsible deposit program, in which consumers and businesses can invest.

CDFI/Loan Fund Group Discussion Questions

1. Is there a role for a CDFI in Las Cruces?

2. If a CDFI were established, what type do you feel is most needed in Las Cruces?

- Community development bank or credit union
- Loan fund for affordable housing development
- Loan fund for small business development
- Loan fund for nonprofit facilities (childcare centers, special needs centers, nonprofit offices)
- A combination of the above (what type of combination?)

3. Would the CDFI cover a market area larger than Las Cruces?

What would the market area be? The county? Regional/multi-county?

4. Would local financial institutions and other private sector businesses be interested in investing in a local or regional CDFI?

What businesses would be the most likely investors? Why? Any guess of how much capital might be raised?

5. What is your vision for how such a program in Las Cruces might be structured?

6. Do you have follow-up questions for BBC to research to help you make a decision about CDFIs as a program to recommend in Las Cruces?

What is your recommendation for continuing to explore this potential program at this point?

GO or NO GO

Inclusionary Zoning

Las Cruces Affordable Housing Study

Inclusionary zoning (IZ) is a very common tool for affordable housing development in high cost communities¹. In general, inclusionary zoning is the integration of affordable housing into an otherwise market rate residential development plan. The primary goal for inclusionary zoning is to increase the supply and economic integration of affordable housing in a community.

Inclusionary zoning programs may be voluntary or mandatory; most are mandatory (as a condition of permit approval) and have specific ordinances governing the program². The absence of an ordinance does not mean that developers are exempt from inclusionary zoning: Municipal governments without inclusionary zoning ordinances sometimes require affordable housing as part of subdivision approvals.

Most inclusionary zoning ordinances specify that a share of the units in developments of a certain size be affordable. Affordability, unit type and size, level of integration, allowance of offsite development of the affordable units and the option to pay cash-in-lieu or donate land to satisfy the IZ requirement are generally specified in the ordinances.

It is estimated that there are more than 200 inclusionary zoning programs in the U.S. The primary reason for the popularity of IZ is its relatively efficient and quick way of developing affordable housing. There are significant economies of scale realized by building affordable housing and market rate housing together. The units share land, infrastructure, construction costs, and predevelopment costs. Inclusionary zoning also has desirable social benefits, since (when onsite development is required) mixed-income communities are created.

However, inclusionary zoning can be a controversial tool for affordable housing production. Advocates for IZ argue that a casual relationship exists between the development of market rate housing and the increased for affordable housing in a community. As such, developers of market rate housing (and the buyers of market rate housing, since some or all of the cost is likely to be passed on to them) have an obligation to participate in the creation of affordable housing.

Builders/developers and Realtors are often opposed to inclusionary zoning, since they view this method for creating affordable housing as an undue burden on them. A recent quote from an article on inclusionary zoning summed up the concern well: “Isn’t the affordability problem the responsibility of all of us as citizens? The lack of public funding for affordable housing is a significant public policy issue that should concern more than Realtors and developers.” That is, since affordable and workforce housing is a community asset, the cost should be more widely borne by the members of a community (employers, general citizenry).

² Some communities start with voluntary programs and later convert to mandatory programs. Cambridge, Massachusetts converted its voluntary program to a mandatory program after it failed to produce any units over 10 years. The success of a voluntary program depends on how difficult it is to produce market rate v. affordable housing.

Successful IZ programs balance stakeholder interests and offer developers some assistance in fulfilling their IZ obligation. For example, inclusionary zoning programs need to have ways of adjusting to market conditions, so the units stay in demand even when the market is soft.

It is common for units developed under IZ programs to have some controls in place to ensure affordability. Some communities use deed restrictions, under which IZ units are limited to a certain amount of appreciation each year to preserve affordability over time. A modified approach is a shared equity model, where the owner of the IZ unit and the municipality overseeing the program share in the appreciation on the home, the amount of which varies depending upon the length of occupancy.

This section describes the IZ programs in key communities—programs in New Mexico communities, programs in similarly sized towns with universities, and programs in communities with other similarities to Las Cruces.

Santa Fe, New Mexico

Santa Fe's inclusionary zoning program, established in 2005, is called Santa Fe Homes. It requires that 30 percent of housing units developed as part of a new residential development be affordable. The program applies to all residential subdivisions with 10 or more lots. Fifteen percent of the units developed must be rental units.

Pricing of the constructed homes and manufactured homes lots developed through Santa Fe Homes must be as follows:

- 10 percent of the total units or lots must be sold at a price of between \$74,500 and \$122,000 per unit, depending upon family size, or \$27,250 per lot (pricing at the time the ordinance was created);
- 10 percent must be sold at a price of between \$100,500 to \$158,000 per unit or \$35,500 per lot; and
- 10 percent must be sold at a price of between \$125,500 and \$194,000 per unit or \$43,750 per lot.

Santa Fe's ordinance also specifies the minimum number of bathrooms and square feet by unit size (e.g., studios must have 750 square feet and 1 bathroom). Twenty-five percent of the units must be studios, 1 or 2 bedroom; 50 percent, 3 bedroom; and 25 percent 4 bedroom.

The ordinance also provides pricing for rental units and minimum sizes per unit type.

Preserving affordability. Units created through the inclusionary requirement of Santa Fe Homes are deed-restricted for affordability. Santa Fe Homes uses a shared equity approach when the deed-restricted units are sold. The city's share of appreciation is equal to the proportion of subsidy (difference between market and affordable price) divided by the initial market value. Proceeds from the sale of the home are placed in a housing trust fund.

Development incentives. Developers are provided with a number of options to offset the cost of the program, including:

- Density bonuses—15 percent over allowable density in a district;
- Fee waivers—Development review and building permit fees are reduced proportionate to the number of Santa Fe Home units developed.
- Nonprofit developers may also request waivers from impact fees and utility expansion charges (private sector developers can request reimbursements).

Other specifications. Units that are exempt from the program include those that were agreed to before the adoption of Santa Fe Homes in 2005 and dwelling units or manufactured home lots that are used exclusively by employees of a school, hospital or similar institution.

In the case of an annexation, the city and entity proposing the annexation negotiate the number and type of affordable units, which are included in the annexation agreement. The annexation must contain at least the same number of units or cash-in-lieu amount required under Santa Fe Homes.

Prior to enacting the Santa Fe Homes program, the city had a program called the Housing Opportunity Program (HOP). The HOP used a more complex formula than Santa Fe Homes to determine the inclusionary requirement; the Santa Fe Homes legislation is much more transparent. According to the city, Santa Fe Homes was adopted because the city felt that HOP had “limited effectiveness in stemming the growing affordable housing crisis” in the city.

Boulder, Colorado

Boulder’s IZ ordinance requires that 20 percent of a residential development be affordable. All sizes of residential developments are included. The 20 percent requirement can be met by onsite or offsite development, land donation or cash-in-lieu payments. For-sale developments must provide at least half of the requirement onsite. Rental projects may fulfill the requirement through for sale units only, onsite or offsite development³.

The sales prices for the affordable units are set by the City on a quarterly basis. The units must be affordable to low-income households as defined by HUD.

A developer who wishes to fulfill their IZ requirement “offsite” has a number of options:

- Contribute to the City’s affordable housing fund through a cash-in-lieu payment;
- Dedicate land within the City of Boulder to the city. The value of the land must be equivalent to the cash-in-lieu payment plus an additional 50 percent (to cover the carrying costs associated with the land) or of equivalent value to the land upon which the units would have otherwise been constructed to satisfy the IZ requirement.
- Restricting existing dwelling units as affordable. The units must be equivalent to the units that would have otherwise been constructed to satisfy the IZ requirement.

³ This is due to Colorado law, which inhibits the creation of rental units under IZ programs due to a prohibition of rent-controlled units. Developers do have an option of forming not-for-profit corporations to develop and manage rental units in satisfaction of their IZ requirement.

Detached IZ units must be equal to 48 percent of the average size of the market rate units, up to a maximum average of 1,200 sq. ft. per affordable unit. Attached IZ units must be equal to 80 percent of the average size of the market rate units, up to a maximum average of 1,200 sq. ft. per affordable unit. The type of IZ units must resemble the distribution of market rate units (e.g., if all of the market rate units are single family detached, all of the IZ units must be single family detached).

To keep the units affordable, the IZ units are deed-restricted in appreciation, the amount of which is determined by the city. Sellers of IZ units must make a good faith effort to select another low-income household to purchase the unit. The City maintains a list of eligible households if needed by the seller.

Burlington, Vermont

Home to the University of Vermont, this community of about 40,000, adopted inclusionary zoning in 1990. It was the first community to adopt an IZ program with requirements that are indexed to the price of market rate housing.

Burlington's IZ requirement applies to all new market rate developments of five or more units and to any converted nonresidential structures that result in 10 homes or more. The percentage of units required to be affordable varies depending on the pricing of the market rate units in a development, and ranges between 15 and 25 percent (higher percentages are required of the most expensive developments). The for sale units are targeted to households earning 75 percent or less of the AMI; rental units are targeted at 65 percent or less.

Burlington's ordinance does not allow cash-in-lieu payments or land donations to fulfill a developers IZ obligation. However, developers are allowed to provide the required affordable housing offsite if they provide 125 percent of their onsite obligation.

Developers required to comply with the IZ ordinance are eligible to receive fee waivers and a 15 to 25 percent density and lot coverage bonus.

The units created through the IZ ordinance are sold through the Burlington Community Land Trust and carry a 99-year land lease to preserve affordability.

Burlington's website offers the following "advice on inclusionary zoning: Make the program mandatory, but offer real incentives/bonuses/waivers that mitigate the impact to developers. Having a nonprofit partner to steward the covenant and leverage other subsidies to get the target population into the home is key."

Inclusionary Zoning Group Discussion Questions

1. List the pros and cons of establishing an inclusionary zoning program in Las Cruces.
2. Which would work better—a voluntary program, mandatory program or a mix?
3. Specify the program details:

- Threshold at which developments would qualify (e.g., developments of 30 units or more)
- Percentage of units required to be affordable (e.g., 15 percent of all units)
- Incentives/concessions developers would get for complying with the program (if any). For example, reduced parking requirements, density bonuses, reduced landscaping requirements.
- Requirement to build units onsite v. offsite
- Minimum square footage requirements, if required
- Tenure (renter/owners) split, if required
- Option for cash-in-lieu payment or land donation instead of constructing affordable units
- Option for acquisition and rehab of existing housing instead of constructing affordable units

4. How would the affordability of the units be preserved? Deed-restriction? Equity share?

5. In your judgment, would a mandatory IZ program drive development outside of the city, into the county?

6. Given the challenges faced by other communities with inclusionary zoning programs (fairness issues, resistance by the development community, market response to product), do you think these challenges can be overcome in Las Cruces?

7. Do you have follow-up questions for BBC to research to help you make a decision about inclusionary zoning as a program to recommend in Las Cruces?

What is your recommendation for continuing to explore this potential program at this point?

GO or NO GO

COMMUNITY LAND TRUSTS

Las Cruces Affordable Housing Study

Community land trusts are affordable homeownership programs that are becoming more common in communities throughout the United States¹. Land trust programs keep housing affordable by taking the rising cost of land out of the housing cost equation. The homeowner owns the home while a nonprofit owns the land upon which the home is built. The homeowner leases the land from the nonprofit for a small monthly or quarterly fee.

In addition to lowering the purchase price of a home, the land trust model helps the homeowner create equity by allowing the homeowner to realize a certain amount of appreciation when the home is sold. The amount of appreciation allowed is restricted, however, so that the home can be preserved as affordable for future low-income buyers.

Community land trusts can also be used for broader purposes, including acquiring and holding land to facilitate workouts for foreclosures.

Ten features of land trusts. The Institute for Community Economics defines the “classic” land trust model as having the following ten features (based on the federal definition of a land trust):

1. **Nonprofit.** A land trust is an independent, nonprofit corporation.
2. **Dual ownership.** The properties managed by the land trust have dual ownership, with the land trust owning the land and another entity (i.e., homeowner, land developer/ builder) owning the structures on the land.
3. **Leased land.** Land trusts never intend to sell their land (in contrast to a land bank). Land trusts provide long-term land leases to the homeowners who purchase the structures on their land.
4. **Perpetual affordability.** The land trust retains the option to repurchase any structures located upon its land should their owners sell. The resale price is set by a formula, documented in the deed-of-trust that typically shares the equity gain on the structure between the current owner and the land trust. That is, the land trust is structured to achieve perpetual affordability.
5. **Perpetual responsibility.** The ground lease requires owner-occupancy and responsible use of premises. If the owners of a home or commercial structure on land owned by the land trust do not keep up their property, the land trust can step in and force upkeep or repairs. Should property owners default on their mortgages, the land trust can step in and cure the default, avoiding foreclosure.

¹ A review of land trust lists on websites suggests that as many as 200 programs currently exist in the United States.

6. **Community base.** The land trust operates in a designated geographic area. Residents on land trust properties may be voting members of the land trust.
7. **Resident control.** In most trust models, the majority of the board of directors are elected by and/or comprised of residents of the land trust.
8. **Tripartite governance.** One-third of board members represent residents of the land trust; one-third represents residents of communities adjacent to the trust; and one-third is made up of public officials, nonprofit housing providers and other individuals presumed to speak for the public interest.
9. **Expansionist acquisition.** Land trusts operate to increase their holdings of land and the supply of affordable housing. They are not focused only on a single project.
10. **Flexible development.** Land trusts can be used to accommodate a wide range of income levels and housing types (e.g., single family and multifamily housing) and can provide land for community purposes (playgrounds, gardens) in addition to housing.

Land trusts in practice. A typical land trust model works as follows:

- A land trust organization is created as a nonprofit. A land trust may be a stand-alone organization or part of a larger affordable housing nonprofit.
- Land is acquired by the nonprofit through public or private donation or purchase. In the case of large land donation, the board members of the land trust might include a representative of the donating entity.
- The land trust develops housing (and perhaps community facilities or spaces) on the land. The housing is developed with a specific pricing strategy in mind, affordable to households in a low- to moderate-income range.
- The housing is marketed and sold to low- or moderate-income homebuyers. The terms of the sale include a ground lease agreement, which is a contract between the land trust and the homebuyers. The agreement specifies the terms of the lease including: the length (usually 99 years); use of the property (e.g., owner occupancy); amount of the ground lease fee; allowed improvements; and the “credit” the homeowner can receive upon resale, required insurance coverage and resale provisions.
- Once all of the units have been sold, the land trust continues to operate, acquiring property and developing housing in other geographic areas, as well as managing existing trusts.
- When a homeowner wants to sell, they must notify the land trust of their intent. The homeowner and the trust review the provisions of resale, so the homeowner has a full understanding of the process.

Land Trusts in New Mexico

We identified three land trust programs in New Mexico—two of the programs are pure land trusts and one (Santa Fe’s) is a nonprofit that has used the land trust model to create deeply affordable for sale housing.

Sawmill Community Land Trust (Albuquerque). The Sawmill Community Land Trust was formed as a community development effort to protect low-income residents living in a downtown Albuquerque neighborhood as well as to strengthen their role in redevelopment of the area. The stated vision of the organization is to “be a New Mexico and national model of revitalization.”

According to the organization’s mission statement, the Sawmill Land Trust is a “community-based development corporation whose principal purpose is to promote community ownership, long-term affordability and economic opportunity through the community land trust model.”

The cornerstone of the Land Trust’s efforts is Arbolera de Vida, a mixed-use, master planned community in the center of the Sawmill neighborhood. This 27-acre parcel was purchased by the city of Albuquerque in 1995 and rezoned for mixed, compatible uses, including affordable housing, community amenities, open space and commercial/retail space. The Sawmill Advisory Council (SAC)—which is a neighborhood advisory group—assisted with the development vision for the parcel.

Parcels are deeded from the city to the Land Trust as each phase of the development is built. The city sells the land to the Land Trust for \$1.05 per square foot (well below market value. Total cost of the 27-acre parcel at \$1.05 per square feet will be approximately \$1.2 million).

The development phases include:

Phase 1: 3.74 acres with 23 single family homes and a three-quarter acre neighborhood plaza. Twelve of the homes are detached single family homes; 11 are townhomes. Phase 1 was completed in 2001 and all homes are currently occupied. Ninety-percent of the households in the community earn less than 60 percent of the AMI.

Phase II: Currently being developed in two components, IIA and IIB. Phase IIA has 30 units and was completed in 2007, including a 2-acre park designed by the community. Phase IIB is the next phase to be completed. When built out, the total units constructed in this phase will be 170 and will include homeownership units, rental units and senior housing.

Phase III: Is planned to include commercial/industrial sites, a community center and a neighborhood park, as well as a community garden.

Homebuyers. People who purchase homes rent the land from Sawmill Community Land Trust. The fee for homeownership units is \$19 per month (the ownership units are basically on the same size lots). The Trust reports that demand for the homeownership units is high, but that it is difficult for residents to qualify for purchasing the units. The Land Trust has a relationship with several local financial institutions who underwrite the loans for homebuyers. Buyers of the Land Trust units are restricted on how much appreciation they can gain when they sell the unit. The gain is pro-rated according to how long they have occupied the unit, and is capped at 30 percent of the total appreciation.

Renters. All of the rentals are live/work units; residents of these units earn between 40 and 60 percent of AMI. The units are in high demand and have a waiting list.

The Arbolera de Vida development has developed a Property Owners Association (POA), which represents the homeowners and manages the common areas in the community. Residents pay \$31 per month for POA activities, including upkeep of common properties. Three representatives of the POA serve on the Sawmill Land Trust's Board of Directors, and the Land Trust appoints representatives to the POA Board.

Funding for the project has been contributed by the City of Albuquerque, the State of New Mexico in addition to federal CDBG and HOME monies.

In addition to its role developing Arbolera de Vida, the Sawmill Land Trust has been working with the Wells Park community, located near the Arbolera de Vida project, to revitalize the neighborhood. Specifically, the Land Trust plans to acquire and rehabilitate 30 scattered site homes for low- and moderate-income homebuyers and renters. The Land Trust has also taken a lead role in working with the city and residents on a master redevelopment plan for Sawmill area neighborhoods.

Santa Fe Community Housing Trust. The Santa Fe Community Housing Trust was formed in 1991. The organization started as a land trust and over time, has evolved into a certified Community Housing Development Organization (CHDO) and recently became a Community Development Financial Institution (CDFI).

The Santa Fe Housing Trust typically uses the land trust model to integrate for sale units affordable to very low-income homebuyers (50 percent of the area median income and less) into its mixed-income developments. The organization has developed 95 land trust units within the city and county, which is equivalent to about 19 percent of the 500 units developed by the Santa Fe Housing Trust.

Staff of the Trust said that although the land trust component to their developments has been very important in getting very low-income buyers into homes, it is not without its challenges. These include:

- There has been a stigma with some of the Trust homes, particularly when they are grouped together. The Housing Trust has faced some upkeep issues with residents, which has had a negative effect in the neighborhood. Since the Santa Fe Housing Trust owns the land upon which the homes are placed, it has a strong incentive to ensure that the units are well

maintained. The Housing Trust has a policy that they will only do land trusts with homes they build themselves.

- Some appraisers and lenders do not understand the land trust model and require education to be comfortable with the program.
- People who occupy the trust homes sometimes forget they do not own the land and that there is a lien against their home (e.g., they are surprised when they apply for a home equity loan that they have an outstanding lien).

The biggest issue with the land trust model, however, is that it “ties up resources...the subsidy is in the ground and you can’t get it back.” The Housing Trust prefers to use second mortgages to reduce the cost of housing for low-income homebuyers. With a second mortgage, when the home is sold and/or the loan is paid off, the “subsidy” comes back to the Housing Trust in cash, which can be reinvested in other housing programs as needed. Land trusts are less flexible than a revolving loan program.

That said, the Santa Fe Housing Trust recently used a land trust on a rural project that was an “ideal use” of the land trust model. Two affordable homes were built on an existing large parcel of land with a residential home and a historic working farm. The land was subdivided and two additional homes were built on the farm as land trust properties. This achieved higher density and preserved the farm as well as adding some conservation easements for wildlife.

The Santa Fe Housing Trust is unique in that it has a broader role than just a trust fund: the organization was founded, in part, to be an umbrella organization to bring together parties to obtain land, raise funds and facilitate more affordable housing production in Santa Fe. The Housing Trust was instrumental in establishing the Santa Fe Affordable Housing Roundtable and the Santa Fe Affordable Housing Trust Fund, which is a multi-million dollar fund used to enhance nonprofit housing production.

The trust also provides homeownership counseling and rental assistance for persons who are homeless and persons with disabilities, including people with HIV/AIDS. It recently became a CDFI in an effort to help potential homebuyers with very low-incomes purchase homes when they cannot qualify for traditional loan products. They offer first mortgages to homebuyers who have been denied loans using more traditional underwriting criteria.

Tierra Madre (Sunland Park). Tierra Madre is a nonprofit that provides a mix of self-help housing, straw-bale construction as well as a community land trust to develop affordable properties. The development is on land that is leased from the State of New Mexico.

Families build homes in groups of five and they must build these units at the same time. Tierra Madre provides all of the materials to build the homes (using straw bale construction methods), along with construction support (e.g., electrician, construction supervisor). Once the home is built and passes inspection, the families must get a mortgage (USDA finances all of their mortgages). The amount of each mortgage is equivalent to the cost of the materials and professional time spent on the home (usually \$60,000 to \$70,000). As the loan is paid down, Tierra Madre is reimbursed for their investment in each of the homes.

Tierra Madre has 32 buildings constructed and will build a total of 47. The infrastructure for the development was provided by a water and sewer grant.

Shared Equity

Land trust programs use a shared equity model to give homeowners an opportunity to share in any appreciation of their home while they occupy it. The model that most trusts use is simple: Upon the sale of the home, the difference between the current appraised value and the appraised value at the time of purchase is divided between the land trust and the homeowner/seller. Usually the homeowner/seller gets 25 to 30 percent of the equity gain plus the principal paid and the downpayment. The land trust keeps 70 to 75 percent of the equity gain.

In most land trust programs, the land trust has first right of refusal on the sale of land trust homes.

Rehabilitation Model

A land trust in Minneapolis has a program that enables homebuyers to choose an existing home to add to the land trust. Homeowners find qualifying properties, receive grant money to rehabilitate the home, up to \$65,000 in assistance to purchase the home and downpayment/closing cost coverage. The home then operates just like a newly constructed trust home, where the homebuyer owns the property and the trust owns the land.

The land trust also acquires and rehabilitates homes and then sells them as part of their trust portfolio.

Land Trust Group Discussion Questions

1. The land trust model seems to work best when it is applied to a specific development opportunity—something as large as the Sawmill Community Land Trust or as small as the Santa Fe working farm described above. Does Las Cruces have such opportunities? Where are they?
2. Do you think low- to moderate-income renters would be willing to purchase a home on leased land? In your opinion, how inexpensive would the homes need to be for people to make the trade-off between buying a market rate home without any restrictions v. a land trust home? For example, if the cheapest, decent quality market rate home they could find was \$180,000, how much less would a comparable land trust home need to be?
3. Who would be the likely homebuyers of a land trust home? Identify family type, income level and types of occupation.
4. Are rising property taxes an issue for low- to moderate-income households in Las Cruces? In a land trust model, the homeowner typically pays all of the property taxes (despite not owning the land). This could dampen the affordability of the land trust product. Would there need to be some type of program to adjust property taxes to retain affordability of the trust product?
5. What is your vision for how such a program in Las Cruces might be structured?
6. Do you have follow-up questions for BBC to research to help you make a decision about land trusts as a program to recommend in Las Cruces?

What is your recommendation for continuing to explore this potential program at this point?

GO or NO GO

HOUSING TRUST FUNDS

Las Cruces Affordable Housing Study

Housing trust funds are specific funds that are developed by legislation, ordinance or resolution to dedicate a source of public revenues to affordable housing activities. There are more than 275 housing trust funds at the local and state level.

Housing trust funds determine how the funds generated will be used (e.g., downpayment assistance v. new construction). The trust funds are usually governed by a board of directors, which has a role in determining the allocation process.

The Center for Community Change (CCC)'s definition of a housing trust fund is tied to the revenue source: CCC says that a true trust fund should receive *on-going* revenues from a dedicated source such as taxes, fees or loan repayments. In reality, however, trust funds differ in their approaches to raising revenue for housing activities.

The following section first discusses the typical revenue sources for trust funds and, then, provides case studies of local housing trust funds.

Revenue Sources

There are a number of revenue sources that are used to fund housing trust funds. This section provides an overview of the most common types of revenue sources and is organized by the type of contributor.

Taxes imposed on Private Sector

- **Cash-in-lieu payments**—Made by developers to satisfy inclusionary zoning requirements on new development. Usually, the per unit amount paid is equal to the subsidy required to “buy down” a market rate unit to make it affordable. This is multiplied by the number of units the developer is required to include in its development plan. For example, if 10 percent of units were required to be affordable and the developer built a 200 unit development, he/she would pay 20 * the cash-in-lieu amount per unit.
- **Permit fees on development/development impact fees**—Lump sum fees paid on a per unit basis by developers of new residential housing. Often waived for affordable units.
- **Linkage impact fees**—Fees paid by construction of new commercial property to mitigate the housing needs of the employees that will be needed when the commercial property is built. Usually applied on an employee per square feet of commercial space basis. Requires a “nexus” study, or a demonstrated connection between the construction of the commercial property and the need for employee housing.

- **Property tax**—A dedication of residential and commercial property taxes to trust fund revenues.
- **Excise tax**—A tax on a commodity (usually the construction of residential or commercial property).

Taxes imposed on Public Sector (including taxpayers)

- **General fund contributions**—Annual contributions from a local or state general fund.
- **General obligation bonds**—General obligation bonds (GO bonds) are bonds issued by municipalities that are repaid through a variety of revenue sources, mostly tax revenues. The benefit of GO bonds for affordable housing projects (rather than revenue bonds) is that the projects they fund are not expected to generate the revenue necessary to repay the debt. Therefore, the funds raised through a GO bond issue can be used for grants to develop affordable housing, enabling greater subsidies.
- **Property tax**—A dedication of residential and commercial property taxes to trust fund revenues.
- **Real estate transfer tax**—A percentage imposed on the sale of real estate, sometimes only imposed on high-cost homes. For example, a ¼ of a percent fee would mean that \$1,250 is added to closing costs of a \$500,000 home. Who pays the fee (buyer or seller) is usually negotiated as part of the sale.
- **Sales tax**—A dedication of a portion of sales tax to trust fund revenues.
- **Use fees** (parking garage, hotel)—Fees tacked on to parking or lodging costs.
- **Document recording fees**—Fees tacked on to the recording of real estate documents (e.g., deed of trust).

Local Examples

Albuquerque, New Mexico. In 2006, the City Council in Albuquerque passed a bill that authorized a set aside of up to \$10 million in general obligation bonds issued by the city to be used for affordable housing activities. The set aside was required by the bill to be presented as a separate bond question for Capital Improvement Program (CIP) bond issues; the bill was approved by voters in 2007. The set aside expires in 6 years unless reauthorized by council.

The enabling legislation contains a number of requirements, which include:

- A housing needs assessment be conducted and updated every 5 years to demonstrate the city's housing needs.
- An Affordable Housing Committee is established to serve as the advisory committee for development of the housing needs assessment and conduct an annual review of the progress of meeting housing needs.

- Affordable housing should be integrated throughout the city and are evaluated on design and location criteria that include access to transportation, jobs, community services and schools and incorporation of Universal Design features.
- Housing that is developed should contain resale restrictions to preserve affordability.
- The housing plan should be linked to the city's growth management plan.

Santa Fe, New Mexico. In June 2008, the Santa Fe City Council passed an ordinance that proposed to fund affordable housing programs by levying a 1 percent tax on the portion of any home purchase in excess of \$750,000. (For example, a home that sold for \$1 million would be subject to a \$2,500 tax). Voters will be asked to approve the measure in a special election in March 2009.

In June, the Santa Fe Association of Realtors, along with four homeowners, filed a lawsuit challenging the proposed tax, claiming the tax is “unlawful and unenforceable.” The lawsuit is currently outstanding.

During the state legislative session in 2008, the state association of Realtors promoted a bill that would have prohibited municipalities from imposing such taxes. The bill passed the Senate, but failed to make it out of the House of Representatives.

Salt Lake City, Utah. In 2000, the City of Salt Lake established the Salt Lake City Housing Trust Fund and the Trust Fund Advisory Board. The enabling legislation declared the trust fund as necessary to support the “policy of the city to address the health, safety and welfare of its citizens by providing assistance for affordable and special needs housing within the city.”

The trust fund is actually a restricted account within the city's general fund to which money can be allocated for housing activities.

The fund receives money from five revenue sources:

- Interest earned on the trust fund balance,
- Repayments from current housing trust fund loans (revolving funds),
- Contributions from the Salt Lake City Redevelopment Agency. This is the single largest contributor to the trust fund, generating about \$700,000 annually. In Utah, all redevelopment agencies in the state are required to spend at least 20 percent of their project revenues on affordable housing. The RDA also allocates a percentage of its revenues from each of its tax increment financing districts (TIFs) to the trust fund.
- Repayments from a previous HUD loan, and
- Mitigation fees assessed by the city to developers eliminating housing stock through demolition and new construction (negligible amount of revenue for the trust fund).

Activities funded by the housing trust fund can include the following:

- Acquisition, leasing, rehabilitation and/or new construction of housing units for ownership or rental, including transitional housing;
- Emergency home repairs;
- Accessibility improvements to units occupied by persons with disabilities;
- Downpayment and closing cost assistance;
- Construction and gap financing for affordable housing units;
- Land acquisition to be used for affordable housing;
- Technical assistance, and;
- Other activities and expenses that directly assist in the provision of affordable housing.

Funds may not be used for administrative expenses.

The Trust Fund Advisory Board makes recommendations on how to allocate trust fund monies, develops the application process for funds, monitors the activities of grantees and serves as the coordinating body for organizations interested in housing issues in the city.

Boulder, Colorado. Boulder’s Community Housing Assistance Fund (CHAP) is funded by property taxes. The CHAP receives .8 mills of a property tax level, equivalent to about \$19 per year on a \$300,000 home. Additionally, the city levies an excise tax on all new non-residential and residential development of:

- \$.0092 per square foot of floor area for new, annexed or additional non-residential area;
- \$73.92 for new and annexing detached residential units; and
- \$50.10 for new and annexing attached residential units or mobile homes.

These funding sources mill levy generates about \$1.5 million annually for affordable housing activities.

CHAP funds have helped create 186 affordable homeownership units since 1991, making the CHAP the second most productive homeownership affordable housing program in the city (inclusionary zoning is first at 241 units). CHAP contributed \$2.7 million in subsidies to affordable homeownership in the city.

CHAP had produced more affordable rental units than any other program at 510 since 1990 (HOME is second with 480 units). CHAP has contributed more than \$6.6 million in subsidies to affordable rental units since its inception. CHAP has also been used to create 39 shelter beds/group home units.

Santa Clara County, California. Santa Clara County is home to the epicenter of the American technology industry, the Silicon Valley and experienced rapid growth in the 1990s. By 1995, five jobs were created there for every one unit of new housing. The median home price in the county exceeds \$600,000.

In 1999, representatives of the Community Foundation Silicon Valley, Silicon Valley Manufacturing Group, the County Collaborative on Housing and Homelessness and the County of Santa Clara met to create the Housing Trust of Santa Clara County. The Trust was designed to serve as a rapid-response investment tool to aid the creation of new affordable housing developments and to help first-time homeowners buy affordable homes.

An ambitious fundraising plan was established for the fund and, within 2 years, \$20 million was raised. The Trust is unique in that more than 50 percent of its funding comes from private sector sources (30 percent comes from government)—for example, three homebuilders donated \$400,000 to the fund at its inception. Initially, the trust fund was planned to be financed through a ballot initiative. However, a poll found that residents would not support a tax to support the fund. As successful at the fund was at receiving its initial seed, there is no dedicated funding source for the Trust and donations do not renew annually.

The purpose of the Housing Trust of Santa Clara (Trust) is to administer three programs, each of which is targeted at different groups:

- First-Time Homebuyer Program—offers zero-interest loans to help cover closing costs;
- Multifamily Rental Program—provides short and long-term loans at low interest rates to nonprofit developers of affordable rental housing; and,
- Homeless and Special Needs Program—similar to Multifamily Rental Program, but loans designed for construction of developments targeted toward specific groups in need.

The three programs that make up the Trust have helped create a total of 5,310 housing opportunities for county residents. The Multifamily Program has lent \$6.1 million to developers of rental housing, which has led to the construction of 1,275 housing units. In addition to the increase in the county's affordable housing stock, the program has also fostered a stable workforce.

Housing Trust Fund Group Discussion Questions

1. List the pros and cons of establishing a housing trust fund program in Las Cruces.
2. In your opinion, what are the best choices of revenue sources for a housing trust fund in Las Cruces? Discuss the pros and cons of each source of revenue source, focus initially on how much each would be opposed by the contributors. (BBC will continue researching feasible revenue sources if the committee decides a trust fund is one of the programs to pursue).

- Real estate transfer tax
- Sales taxes
- General fund contributions
- General obligation bonds
- Private sector contributions, including from major employers

- Mandated cash-in-lieu funding generated from inclusionary zoning requirements
 - Housing excise tax
 - Increase in residential and commercial property tax mill levy
3. What would be the best way to reduce public and private opposition to establishing such a fund?
4. What types of housing programs would a trust fund provide monies to support?

**What is your recommendation for continuing to explore this potential program at this point?
GO or NO GO**

DEVELOPMENT ISSUES

Las Cruces Affordable Housing Study

This section discusses local policies that can affect affordable housing development and preservation. They mostly concern planning and code enforcement regulations and involve issues common in cities facing affordable housing challenges.

The policies and issues covered in this section include:

- **Developer incentives**—Is it common for cities to provide incentives to developers of affordable housing to help reduce the cost of development and encourage affordable housing? Which incentives are most effective? Least effective?
- **Mobile homes**—How do most communities view mobile homes in the context of affordable housing? Do they encourage or discourage mobile homes? How do communities deal with relocation issues when mobile home parks are purchased for redevelopment?

Developer Incentives

Many high-cost communities provide incentives to developers that build affordable housing. The purpose of providing incentives is to reduce the cost of housing development and, thus, make the housing more affordable. Common incentives include:

Streamlined development approval. Developers of affordable housing receive “fast track” treatment in the approval process. Their developments go to the top of the review pile, and, in some communities, developers are guaranteed a specific timeframe (e.g., 90 days) for consideration and negotiation of their proposal.

Developers pay interest each month on the money they borrow to purchase land and build homes. Reducing the time it takes to receive approval on their development plan in turn decreases the amount of interest they pay, in theory leading to reduced cost of housing. A faster approval process also reduces exposure to market fluctuations and changes in product demand over time.

Density bonuses and building variances. Density bonuses give developers the right to build more units on a parcel of land than what is currently allowed. Increasing allowable density means that developers can generate additional revenue by building more units. They then use that revenue to lower the per unit selling price, making all the units more affordable.

Other ways to decrease development costs are to grant building variances—for example, allowing fewer parking spaces than would otherwise be required by zoning ordinances to allow more land for development. If a developer can add units or reduce costs of a development through height variances, reduced parking requirements, reduced setbacks, and landscaping or design requirements, they can better afford to add cost-effective housing to the overall development plan.

Fee waivers. Waiving fees that cities/towns charge for development helps lower development costs and reduces the price of housing. These fees might be basic development fees, development impact fees and, in some cases, water and sewer fees. Some communities offer fee waivers that are proportionate to the level of affordability in a project (e.g., the more affordable the housing, the higher the fee waiver).

Las Cruces recently began offering fee waivers for affordable units (defined as those benefiting households earning 80 percent of the area median income and less). The city allows the waiver or city payment of development impact fees for affordable units. The savings to the developer is estimated to be as much as \$3,800 per affordable unit.

Challenges to implementing incentives. Developers are generally appreciative of the above development incentives. However, in practice, such incentives can be difficult to realize mostly because of public opposition to development. Density bonuses in particular are often challenged in public hearings by neighbors opposed to density.

Examples in practice. The community programs highlighted below all provide incentives to developers for the construction of affordable housing units.

Austin, Texas. Austin recently implemented its S.M.A.R.T. program—which stands for Safe, Mixed income, Accessible, Reasonably priced and Transit oriented—to encourage the development of affordable housing units in the city. The three basic incentives of this program are: fee waivers, expedited review and an advocacy consultant to resolve development-related issues with other city departments. For a new development to qualify for the S.M.A.R.T. program, it must conform to the following characteristics:

- **Safe:** Compliance with the city’s land development and building codes;
- **Mixed Income/Reasonably Priced:** A portion of the development must be affordable to households making up to 80 percent of the AMI and spending no more than 30 percent of their family income on housing;
- **Accessible:** Compliance with federal, state and local accessibility standards, some of which are specific to the S.M.A.R.T. Housing program;
- **Transit-oriented:** Location of new development either on a major bus line or a proposed light-rail line; and
- **Green:** Conformance to a minimum level of Austin’s green building standards.

Fee waivers (i.e., for the city’s capital recovery fee, development review and inspection fee, as well as other construction inspection fees) are linked to the percentage of reasonably priced units. For example, if a builder dedicates 20 percent of the new development to S.M.A.R.T. reasonably priced units, the city provides a 50 percent waiver on all fees. Forty percent S.M.A.R.T. reasonably priced units earns a full 100 percent fee waiver.

In addition to fee waivers, developments that meet S.M.A.R.T. housing standards receive an expedited review process performed by a special S.M.A.R.T. housing review team. This leads to a much faster approval time for S.M.A.R.T. developments, with the average completion time for plan reviews almost twice as fast as conventional reviews. The S.M.A.R.T. housing staff also acts as a mediator to resolve issues with other city departments regarding potential S.M.A.R.T. developments. This facilitates a faster approval process as well.

The results of the S.M.A.R.T. program have been very encouraging. In the first year of the program, the housing staff expected around 600 applications to build S.M.A.R.T. units. Instead, they received over 6,000. In the three years before the program was implemented, only 325 units were built that met S.M.A.R.T. standards. Within the first three years of the program being implemented, over 4,000 S.M.A.R.T. units were built. An internal review has also concluded that the fee waivers and expedited reviews are self-funding.

State of Massachusetts. In 1969, the Commonwealth of Massachusetts (State) enacted Chapter 40B of the Massachusetts Administrative Code (40B) with the goal of making 10 percent of the state's housing stock affordable to households earning 80 percent or less of the AMI.

For those municipalities containing less than 10 percent affordable housing, developers in that municipality can circumvent zoning ordinances if their planned development contains a certain percentage of affordable units. Those developers, instead of going through the conventional approval process, get approval for their projects through local zoning boards of appeal in a much faster streamlined process. Many regulatory and zoning roadblocks to affordable housing construction are avoided in this streamlined approval process. To qualify for approval under 40B, a development must adhere to the following criteria:

- Must be approved or funded by an affordable housing program administered by a state agency, federal agency or private housing trust fund;
- Must have long-term affordability controls on at least 25 percent of the planned units;
- Those units with affordability controls must be priced to be affordable to households earning 80 percent of the AMI; and
- The developer must be a nonprofit organization, a governmental or quasi-governmental agency or a limited partnership that agrees to less than a 20 percent profit margin on the project (any profit over 20 percent is paid directly to the municipality).

The program has been quite successful since its inception. Approximately 34 percent of the state's existing affordable housing stock was constructed under 40B regulations. However, only 31 of the state's 351 local jurisdictions presently have a housing stock with 10 percent or more affordable units. The state has also noticed an indirect effect of 40B: there has been a noticeable increase in other housing programs at the local level since 40B was enacted.

Santa Fe, New Mexico. Santa Fe provides density bonuses and impact fee waivers for affordable units (those required through the city's inclusionary zoning program). However, an interview with a mixed-income developer in town revealed that density bonuses are difficult to apply because of neighborhood opposition to growth.

Seattle, Washington. Seattle also provides a variety of financial incentives for developers to construct affordable housing units. Below is a list of a few of those programs:

- **Homes Within Reach Program:** This program encourages and stimulates the construction of new multifamily, affordable housing units in the city by providing a property tax exemption for a maximum of ten years for all residential units in the development. This tax exemption is transferable to new property owners as long as they continue to meet compliance requirements. Affordability requirements are based on the AMI and FHA mortgage limits for Seattle.
- **Downtown Residential Bonus Program:** The Downtown Residential Bonus Program allows additional residential gross floor area and height in developments in exchange for affordable housing. This affordable housing can be located either in the same building or adjacent to the property. The for rent units must be affordable to families earning less than 80 percent of the AMI and for sale units must be affordable to families earning less than 100 percent of the AMI. By allowing for additional floor area ratios¹ (FAR) and height, developers can theoretically fit more units into a building and therefore earn more revenue.

Mobile Homes

Mobile homes can be a controversial component of affordable housing provision. Opponents argue that mobile homes do not offer the same benefits as other types of homeownership since they are very unlikely to appreciate in value over time, are usually paired with a land lease for the parcel on which they are placed, and are difficult to maintain. Proponents argue that mobile homes offer homeownership at a price that cannot be found anywhere else in most municipalities.

Many communities allow mobile homes in areas specifically zoned for such use but do not promote or encourage such development. Mobile homes are thus a tolerated but not embraced method of affordable housing provision.

Mobile home relocation issues have grown recently as mobile home parks—particularly in resort areas—have become targeted for redevelopment. The owners of such parks are selling their land to private developers of higher-end residential and commercial properties. This leaves the folks occupying mobile homes with few choices, especially as more and more mobile home parks in the area are redeveloped into other uses.

Most mobile home relocation happens on a case-by-case basis. The following three communities have recently dealt with mobile home relocation issues in different ways.

Santa Fe, New Mexico. Santa Fe recently had a unique and successful relocation effort of residents living in single-wide manufactured homes. The land had been purchased for redevelopment containing commercial property, including a Target store. The current residents were very low-income; they owned their homes but lived on rented lots. The developer provided funds for relocation of all of the homes, including funds for the residents to buy their own lots in a new mobile home park (at \$40,000 to \$60,000 per lot).

¹ A floor area ratio (FAR) is a representation of the density of a building (or buildings) on a site.

Bend, Oregon. Redevelopment of mobile homes parks—and displacement of the low- and moderate-income residents who primarily reside in them—has been a particular issue in Oregon, where rapidly appreciating land values and population growth have led to park redevelopment. An estimated 2,736 families have been displaced by the closure of 71 mobile home parks since 1995 (about 5 percent of all parks in the state).

The City of Bend recently added a mobile home redevelopment overlay district into its land use code. The purpose of the ordinance is to provide incentives to mobile home park owners to continue the use of the land as a mobile home park and, when redevelopment does occur, to provide for a mechanism to capture a portion of the redeveloped residential units as affordable housing.

Under the ordinance, existing mobile home parks with at least an 80 percent occupancy rate can redevelop and increase their density to Urban Medium or Urban High Density designations (depending on existing density). The ordinance also allows for 10 percent of existing trees to be removed to accommodate the new density. (State law allows a maximum density for mobile home parks of 10 units per acre. Most mobile home parks are not developed at this maximum density).

Newport Beach. In Newport Beach, California, the city council is prohibited from removing a mobile home designation from its zoning plan unless several findings have been made, including a detailed “mobile home phaseout plan” that has:

- A time schedule and method for relocating existing mobile homes and attached structures; and
- Methods of mitigating housing impacts on tenants having low and moderate incomes, elderly tenants and tenants who are disabled.

State of New Hampshire. Although not a land use policy, this program is worth noting in this section. The New Hampshire Community Loan Fund, a nonprofit organization, has a program that offers residents of mobile home parks the option to purchase the park through loans, technical assistance and development expertise.

The Loan Fund's Cooperative Assistance Team helps homeowners in manufactured housing parks in New Hampshire buy the park as a cooperative through a process that:

- Assists homeowners in organizing as a cooperative and establishing a board of directors and committees;
- Helps to arrange financing and/or lending funds to the resident-owned cooperative for predevelopment work, deposit financing, purchase and rehab; and
- Provides ongoing technical support and training to cooperatively owned parks.

Housing Policies Group Discussion Questions

Development Incentives

1. Las Cruces recently began providing impact fee waivers to developers of affordable housing. In addition to such waivers, what else could the city be doing to encourage developers (particularly private-sector developers) to build more affordable housing?
2. Would density bonuses work in Las Cruces? Would variances from building code (e.g., reduced setbacks and landscaping requirements, reduced parking requirements) work?
3. Is there an opportunity to streamline the development approval process in Las Cruces to encourage more affordable housing? How could the system be modified to reduce development costs (e.g., affordable housing developments being reviewed first, before non-affordable developments)?
4. Should the city be more active in helping to build support for affordable developments in a community (helping affordable developers fend off NIMBYism)?

Mobile Homes

5. How does the group feel about mobile homes as a mechanism to provide affordable housing in Las Cruces? Should the city take an official position on mobile homes as affordable housing? The city recently made mobile homes eligible for rehabilitation under its home rehab program that benefits low- to moderate-income residents, and the city continues to allow mobile homes in areas zoned as such. Other than these, the city has not had an official position on mobile homes.
6. Should the city consider incorporating a mobile home redevelopment program into its zoning plan? If so, what is your vision of such a program?



LAS CRUCES AFFORDABLE HOUSING

POLICY AND PROGRAM DEVELOPMENT—PROGRAM REVIEW MEETING 1

Presented to:



**Affordable Housing
Ad HOC Committee**

Presented by:



Heidi Aggeler

BBC Research & Consulting
3773 Cherry Creek N. Dr., # 850
Denver, Colorado 80209-3868
303-321-2547 X:256
haggeler@bbcresearch.com

In conjunction with:

Don Elliott,
Clarion Associates

and

Jim Williams
Williams Demographics

August 12, 2008

WHY ARE WE HERE TODAY?

Project Goal: Put the right tools in place to address affordable housing needs in Las Cruces.

**Thank you for your commitment
to this very important issue!!**

WHO IS THE CONSULTANT TEAM?

BBC Research & Consulting

- Two Las Cruces housing market studies
- Las Cruces homeless counts and surveys
- Recent housing studies in:
 - Santa Fe and Albuquerque, New Mexico
 - Boulder and Fort Collins, Colorado;
 - Coeur d’Alene and Driggs, Idaho
 - Yuma and Glendale, Arizona
 - Southern Ute Reservation in Colorado

Clarion Associates

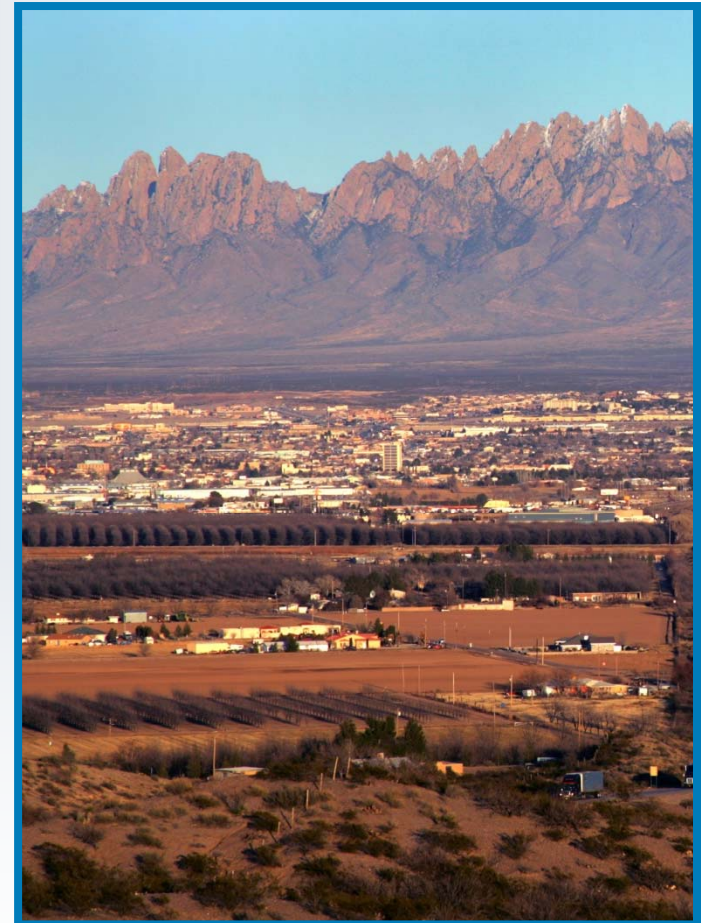
- Colorado Department of Local Affairs – Regulatory Barriers to Affordable Housing
- Aurora Colorado, Small Lot Development/Mix Standards
- Denver, Colorado, Affordable Housing Barrier Analysis
- Civic Results, “The Art of the Deal” Workshops
- Arvada, Colorado, Affordable Housing Zoning Regulations
- Detroit, Michigan, Small Lot Infill Development Zone
- Winnipeg, Manitoba, Lot Dimension Flexibility Reforms
- Pitkin County, Colorado, Affordable Housing PUD Reforms

Williams Demographics

- Local demographer
- Professor at New Mexico State University
- Surveys with farm workers
- Border population estimates
- Las Cruces homeless counts and surveys

WORKSCOPE

- Gaps analysis of existing programs and policies (needs v. resources)
- Review of existing barriers to affordable housing development
- Best practices analysis of peer communities
- Public input, stakeholder interviews
- Recommendations
- Implementation plan



AGENDA FOR DISCUSSION TODAY

- Introduction of three programs you will help us assess:
 - Land banking
 - Community loan funds/community development financial institutions
 - Inclusionary zoning
- Group analysis of pros and cons of programs in Las Cruces
- Full committee GO/NO GO decisions

LAND BANKING

Definition: Acquisition of land and/or infill parcels, generally by a public entity, for community and/or affordable housing development.

Land banking programs are usually either:

- 1) Acquisition of land for future affordable housing development (Eugene, Oregon and Fort Collins, Colorado); or
- 2) Acquisition of vacant parcels, substandard housing, properties in tax default and foreclosed residential properties for redevelopment. More common use of land banking.

LAND BANKING (CONT'D)

Land banking for affordable housing—How it works:

- Potential parcels are identified by city planning organization. Offers are made to owners. City might also engage a broker to identify potential parcels.
- Committee overseeing the program makes the decision to purchase and at what cost.
- Land might also be donated by public entities or private sector (tax benefits. Idaho recently established trust to facilitate such transactions).
- Land is held for a time period (Dallas < 3 years, Fort Collins, 5-7 years).
- Usually, an RFP is issued for development of affordable housing on the parcel. Oversight committee helps select developer; Council approves.

LAND BANKING (CONT'D)

Land banking for community development—How it works:

- Parcels are usually acquired through foreclosure. Might also be purchased. Eminent domain uncommon.
- Land might be held, but goal is to develop.
- Usually, an RFP is issued for commercial and residential development on the parcel. Oversight committee helps select developer; Council approves. (Dallas sells at a fixed price with first right of refusal to housing nonprofits).

LAND BANKING (CONT'D)



Funding mechanisms:

- General fund seed
- Revenues from sales of properties (usually higher than cost and less than market)
- CDBG
- Recapture of tax revenues

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

Definition: Lending institutions with a specific purpose of serving a particular community by increasing the amount of loan capital in an underserved area.

CDFIs are usually either:

- 1) Similar to traditional banks, offering consumer and commercial products and loans to target markets (best example is South Shore Bank in Chicago)
- 2) Loan funds only, offering below-market rate loans to support affordable housing, small business development and/or community development
- 3) Non-governmental entity. May be private or nonprofit.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CONT'D)

CDFIs typically have one or two areas of focus:

- **Microenterprise lending (common in New Mexico)—Small loans to entrepreneurs for business purposes**
- **Community development/community facilities—Below market loans for development of child care centers, schools, community centers for special needs groups, nonprofit office space**
- **Housing development—Below market loans for land acquisition, predevelopment financing, short term construction for affordable housing developments**

CDFIs are fairly new to the western U.S.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS (CONT'D)



Funding:

- Interest on loans, fees on products
- Grants and donations
- Equity equivalent (EQ2) investments from banks
- Opportunities for other real estate sectors to become investors?

INCLUSIONARY ZONING

Definition: The integration (mandatory or voluntary) of affordable housing into an otherwise market rate residential development plan.

Requirement: Usually residential developments of a certain size (e.g., 25 units and more) are required to have a percentage of the units set aside as affordable housing. Percentages generally range from 10 percent to 30 percent. Some communities base the percentage on the overall square feet of the development.

Affordability: Determined by the municipality, and is usually tied to the Area Median Income.

Alternatives: Some communities allow developers to pay “cash in lieu” of the development of units. Formula is determined by the municipality.

Some communities allow offsite development or donation of land in lieu of development.

INCLUSIONARY ZONING (CONT'D)

Specifications: Municipalities often dictate tenure (breakdown of rental/for sale units); minimum unit size; sometimes level of finish.

Preservation: Deed-restrictions, shared equity, community land trusts, first right of refusal upon sale and residency requirements.

Developer “Incentives”: Fee waivers, density bonuses, reduced parking/landscaping requirements, fast track approval.

Legality varies from state to state.

PROGRAMS DISCUSSION



- What do you like about the program?
- What do you dislike?
- Would this program work in Las Cruces? Why? Why not?
- Discuss your vision of the program if it were available in Las Cruces.
- “Go” / “No Go” decision and reasons for.

NEXT STEPS

- **September meeting:** Three more programs to consider
- Outside of meetings, project team will be engaging community leaders and industry to build support for potential solutions. Interviews with Mayor and City Council, affordable housing developers. Meetings with private developers, lenders and title companies.
- **October meeting:** Land use barriers presentation. Peer cities presentation.
- Recommendations and implementation plan.



LAS CRUCES AFFORDABLE HOUSING

POLICY AND PROGRAM DEVELOPMENT—PROGRAM REVIEW MEETING 2

Presented to:



Affordable Housing
Ad HOC Committee

Presented by:



Heidi Aggeler

BBC Research & Consulting
3773 Cherry Creek N. Dr., # 850
Denver, Colorado 80209-3868
303-321-2547 X:256
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WHERE WE LEFT OFF

- **Conclusions and areas for more research:**
 - **Community Loan Funds/CDFIs—**Unsure if there is a market for in Las Cruces. Explore interest with key funders (lenders, title)
 - **Inclusionary Zoning—**Like the idea of a voluntary program or IZ “light.” Explore feasibility with developers/builders.
 - **Land Banking—**Worth keeping on the table despite concern about tying up much needed funds with land purchases. Since Las Cruces has land, land banking is more viable than in other high-cost communities.

AGENDA FOR DISCUSSION TODAY

- Introduction of three programs you will help us assess:
 - Community land trusts
 - Housing trust funds
 - Development issues
- Group analysis of pros and cons of programs in Las Cruces
- Full committee GO/NO GO decisions

COMMUNITY LAND TRUST

Definition: Affordable housing development where land is owned by a nonprofit and leased to the buyer of the housing unit structure.

How a land trust works:

- 1) A land trust is formed as a nonprofit. May be a stand-alone organization or part of a broader nonprofit.
- 2) Land is acquired through public and private donation and purchase.
- 3) The land trust develops housing on the trust land. The housing is marketed and sold to low- and moderate-income buyers.

COMMUNITY LAND TRUST (CONT'D)

How a land trust works (cont'd):

- 4) The buyers have a lease on the land (usually 99 years) for a modest monthly fee (\$20 per month).
- 5) When an owner wants to sell their housing unit, they notify the trust of their intent. The trust has the option to buy the unit. The price of the unit is usually capped by a certain percentage gain and the trust shares in the equity gain (usually the trust gets 75 percent and the owner gets 25 percent).

COMMUNITY LAND TRUST (CONT'D)

Sawmill Community Land Trust (Albuquerque)

- Land obtained in 1995 by the city. Land trust formed to oversee the development.
- Three phases of development; mostly residential with some commercial and community amenities.
- Parcels are deeded to the land trust when developed.
- Homebuyers pay \$19/month for the land lease and \$31 to the homeowners association.
- Resale restrictions include a price cap. Owners get 30 percent of the total equity gain.

HOUSING TRUST FUND

Definition: Local or state fund created to fund a variety of affordable housing activities. Growing in popularity with reductions in federal funding for housing.

Revenue sources:

- Cash-in-lieu payments required as part of IZ ordinances
- Fees and taxes on new development (residential and commercial): permit, impact, linkage, excise
- Property taxes
- General fund contributions
- General obligation bonds (Albuquerque)
- Real estate transfer taxes (Santa Fe, maybe)
- Sales taxes
- User taxes
- Document recording fees

DEVELOPMENT ISSUES

Definition: Developer incentives to encourage developers/builders to build affordable housing. Also help offset inclusionary zoning requirements.

Common incentives:

- Fast track development approval
- Planning advocate
- Density bonuses
- Building variances
- Fee waivers
- Mobile home redevelopment
- Challenges in implementation: Incentives must be “meaningful.”
Neighborhood opposition can water down incentives.

NEXT STEPS

- Outside of meetings, project team will continue engaging community leaders and industry to build support for potential solutions. Interviews with Mayor and City Council, affordable housing developers. Meetings with private developers, Realtors, lenders and title companies.
- **October meeting:** State and local policy initiatives discussion.
- **November meeting:** Land use barriers presentation.
- **December meeting:** Peer cities presentation and begin recommendations discussion.
- **2009:** Recommendations and implementation plan.

APPENDIX B.

Model Ordinances

2.7.900 Manufactured Home Park Redevelopment Overlay

Sections:

- 2.7.910 Purpose and Applicability
- 2.7.920 Residential Density
- 2.7.930 Special Development Standards

2.7.910 Purpose and Applicability

A. Purpose. Manufactured homes located within Manufactured Home Parks provide a significant amount of the City’s affordable housing. When a manufactured home park redevelops, this type of affordable housing stock is lost, leaving the residents of those parks with few options. The purpose of the Manufactured Home Park Redevelopment Overlay is to implement the City ordinance No. NS-2036, by providing incentives to the Park owners to continue the use of the land as a Manufactured Home Park and when redevelopment does occur, by providing a mechanism for capturing a portion of the redevelopment potential as replacement affordable housing. The Manufactured Home Park Redevelopment Overlay creates overlay development standards for increased residential housing and, where appropriate commercial and mixed use development and designated open space within existing Manufactured Home Park boundaries. The overlay development standards will:

- Provide a variety of housing types for a variety of markets;
- Promote pedestrian and other multi-modal transportation options;
- Ensure compatibility of uses within the development and within the surrounding area;
- Create an interconnected system of streets with design standards appropriate to the intensity and type of proposed and adjacent uses.

If City ordinance No. NS-2036 is repealed, invalidated by a court of competent jurisdiction or preempted by State or Federal law, and then this subsection of the Bend Development Code shall automatically be repealed.

B. Applicability. The provisions of this overlay shall apply to all existing manufactured home parks at the date of adoption of this overlay. The provisions herein shall satisfy the *Waiver of Relocation Requirements Option, (2) Increased Density Alternative* referred to in the City Ordinance No. NS-2036, when implemented in conjunction with a Development Agreement with the City of Bend as required by City Ordinance No. NS-2036.

2.7.920 Residential Density

A. Residential Density Provisions. The Oregon State Law allows manufactured home parks to develop at a maximum residential density of 10 units per acre

regardless of the underlying zone. This overlay will provide special increased density incentives for existing parks that are redeveloped.

1. Manufactured Home Parks in existence at the date of adoption of this overlay with an occupancy rate of at least 80%, that are developed in accordance with the City ordinance No. NS-2036 and the provisions of the City of Bend Development Code shall be allowed to develop at a residential density consistent with the RM, Urban Medium Density Residential District. The property owner shall mitigate all impacts of such development including but not limited to those impacts related to sewer, water, transportation and compatibility issues.
 - a. Exception to density. Where an existing Manufactured Home Park already has a General Plan Density of Urban Residential Medium Density, the density bonus may be increased to RH, Urban High Density Residential District with the same provisions for redevelopment as described above.

2.7.930 Special Development Standards

- A. Permitted Land Uses.** The uses and special standards permitted by the implementation of the Manufactured Home Park Redevelopment Overlay shall supersede the standards of the underlying intended rezone. Where no special development standards are provided by the overlay, the applicable standards of the intended RM or RH rezone or previously approved refinement plan shall apply.
- B. Continued Use as a Manufactured Home Park.** Manufactured homes have reduced impacts on the land because the unit does not require a permanent foundation. However many existing Manufactured Home Parks are not developed at the maximum density. In order for the existing parks to develop at the allowable 10 units per acres park owners may take advantage of the following incentives:
 1. The average area of a mobile home site may be 3000 square feet provided all spacing requirements of the Building Code can be met.
 2. Park owners that receive displaced residents from redeveloping parks will not be obligated to relocate these displaced units when the park redevelops as required by Ordinance No. NS-2036.
 3. Up to 10% of the existing trees may be removed to accommodate new manufactured home placement, provided the trees being removed are not specimen trees. For the purpose of this code, a specimen tree would be a tree of any species which is determined by a certified arborist to be of an exemplary size or variety for the area;
- C. Redeveloping Manufactured Home Parks.** Redeveloping Manufactured Home Park owners that choose to take advantage of the provisions of this overlay shall initiate an "Intent to Rezone" with the City by filing an application for a plan amendment and zone change in conformance with Chapter 4.6 of the Bend Development Code. The application for "Intent to Rezone" shall be accompanied by an application for development.

In addition to the approval criteria for development found in Chapter 4.6 of the Bend Development Code, the applicant shall address the following general standards.

1. General Development Standards.

- a. Meet with the City of Bend Transportation Division to determine if a transit stop is needed with ¼ mile of the subject property along an existing or future transit route. If needed, design and construct the transit stop to City standards. The transit stop shall be accessible from the redevelopment site.
- b. Passive and/or active open space areas shall be incorporated into the redevelopment plan.
- c. Where a redeveloping Manufactured Home park adjoins a residential zone, the development along the perimeter of the site within 100 feet of the property boundary shall be subject to the development standards of the adjoining residential zone including but not limited to lot coverage, building heights and setbacks.

2. Building Height. To encourage innovative housing designs, provide more efficient use of land, encourage the preservation of open space and existing trees and to achieve greater allowable densities, an increase in building height not to exceed 10 feet above the height of the zone may be allowed provided the applicant's proposal meets all of the following criteria:

- a. The added height will provide for additional affordable housing units.
- b. The additional building height is needed to preserve existing trees and the added height and total building area proposed is equivalent to the area of significant trees being saved.
- c. The additional building height is buffered from view by existing preserved trees.
- d. The building requesting the added height has a required minimum 1:1 side and/or rear yard setback from an existing adjoining residential use based on the finished building height.

Example: a 40 foot tall building would have a 40 foot minimum side and/or rear yard setback from an existing adjoining residential use.

- e. The proposed building incorporates sustainable "Green" construction methods.

3. Building Setbacks. To ensure a safe livable environment, the following setbacks shall be observed:

- a. Front yard: 6 foot minimum for all portions of the structure, except garages shall be setback a minimum of 18 feet.
- b. Side and rear yard: The setbacks of the proposed RM or RH rezone shall apply.

Exception to side and rear yard setbacks:

- i. Attached single family townhome development shall have an interior side yard setback of zero (0) feet. End units not fronting on a street corner shall have the sum of the side yards equal to 12 feet. End units fronting on a street corner shall have a minimum setback of 10 feet, except as necessary to comply with the clear vision standards in Table 3.1.400(N) of the Development Code.
 - ii. Garages and on site parking shall take access from an alley or rear driveway
4. Lot Coverage. As a means of balancing the building mass on the land, the following lot coverage shall be applied based on housing type and / or use.

Standard	Residential Use	Mixed-use / Commercial
Lot Coverage	40%	50%

5. Standards for Non-residential Development. Portions of some Manufactured Home Parks may be suitable for non-residential use development that will support the increased overlay density.
- a. Location Standards. The following location criteria shall be met to allow a park owner to develop non-residential uses as a secondary use in conjunction with the allowable residential development.
 - i. Non-residential uses shall be subject to the location and size standards for Neighborhood Commercial Uses in Chapter 3.6.300(K).
 - ii. Access can be provided from an existing intersecting local street or a new local street can be developed in conformance with Chapter 3.1.
 - iii. The property is within ¼ mile of an existing or future transit stop.
 - iv. The surrounding property is developed at RS density or greater.
6. Development Standards for Non-residential Uses. Non-residential uses shall be subject to the development standards for Neighborhood Commercial Uses in Chapter 3.6.300(K)(6-10).
7. Non-residential Uses. The Neighborhood Commercial Uses identified in Table 2.1.200 shall be permitted or conditionally allowed as a component of a Manufactured Home Park Redevelopment. Some of the uses may have special development standards as identified in Chapter 3.6 of the Development Code.

NEGLECTED BUILDING ORDINANCE

WICHITA'S NEGLECTED BUILDING ORDINANCE

REGISTRATION REQUIREMENTS



When must I register a neglected building?

A neglected building must be registered with the Office of Central Inspection when one or more of the following triggering events occur:

- The owner has failed to take action after receiving two or more Notices of Violation
- The building has been boarded for more than 90 days
- The building is not secure and so is an attractive nuisance
- The building has sustained significant fire, wind or water damage and is uninhabitable
- The building fits the criteria of a criminal nuisance (as defined by State law)
- There is substantial deterioration due to lack of maintenance
- The owner has failed to appear and a warrant has been issued in municipal court for violations of Chapters 18 or 20 if the Code of the City of Wichita

Registration is required upon notification from the Superintendent of Central Inspection. The owner is responsible for registering the property.

- ✍ Registration fee is \$25
- ✍ Registration is not transferable

If the building is unoccupied, a Statement of Intent must be submitted to and approved by Superintendent of Central Inspection and must include:

- ✍ Description of premises
- ✍ Names and addresses of all owners, lien holders, and others with ownership interest
- ✍ Name and address of designated resident agent, if owner lives outside Sedgwick County
- ✍ If vacant, projected period of vacancy and plan and timetable to bring the property into compliance



CITY OF
WICHITA

Office of Central Inspection

www.wichita.gov

How can a **NEGLECTED BUILDING** be removed from registration requirements?

- ✗ Being brought into compliance with all health and safety standards
- ✗ Being removed or demolished by the owner
- ✗ Being abated or demolished by the City

Appeals

Appeals may be made in writing, within 10 days of receipt of the decision or penalty. The appeal must be filed with the Superintendent of Central Inspection, and will be heard by the Board of Code Standards and Appeals, within 30 days of the appeal.

What can happen if I fail to Comply?

If the owner fails to register a neglected building as required when notified, or if, once registered, the building does not meet any of the exceptions set forth in the Neglected Building Ordinance (Title 30) a penalty of \$250 may be assessed for every 90 days that the property continues to meet the definitions of a vacant or neglected building.

The penalty can be up to \$1000 per calendar year.

An owner of an unoccupied building will not be subject to penalties if the following apply:

A statement of intent has been filed and approved by the Superintendent of Central Inspection, and one of the following applies:

- ✓ The owner is proceeding diligently in good faith to complete the repair or rehabilitation of the building
- ✓ The building is the subject of an active building permit for repair or rehabilitation
- ✓ The building is maintained in compliance with Title 30 and is actively being offered for sale, lease or rent
- ✓ The property owner can demonstrate that they made a diligent and good faith effort to implement the actions and comply with the timeline set forth in the statement of intent

How do I file a statement of intent and where do I send the registration information?

Registration forms are available in the **Office of Central Inspection** at City Hall

455 North Main – 7th floor

Wichita, KS 67202

Forms are also available on the City Website: **www.wichita.gov/CityOffices/OCI**

For questions about these requirements, please call the Office of Central Inspection 268-4481

**CITY OF WICHITA
CITY CODE
Title 30
NEGLECTED BUILDINGS**

Sections:

- Section 30.01.010 Purpose.**
- Section 30.01.020 Public Nuisance.**
- Section 30.01.030 Enforcement of chapter--Applicability of chapter.**
- Section 30.01.040 Violation not exclusive.**
- Section 30.01.050 Inspection of property.**
- Section 30.01.060 Definitions.**
- Section 30.01.070 Duty to Register Neglected Building.**
- Section 30.01.080 Registration Fee.**
- Section 30.01.090 Resident Agent.**
- Section 30.01.105 Registration Penalty.**
- Section 30.01.108 Procedures for Registration Penalty.**
- Section 30.01.110 Reinspection.**
- Section 30.01.120 Removal from Registration.**
- Section 30.01.130 Registration nontransferable.**
- Section 30.01.140 Duty to File Statement of Intent for Neglected Buildings.**
- Section 30.01.150 Neglected Unoccupied Building Penalty.**
- Section 30.01.160 Procedures for Neglected Unoccupied Building Penalty.**
- Section 30.01.170 Appeals to Board of Code Standards and Appeals.**
- Section 30.01.180 Failure to Pay Penalties.**

Section 30.01.010 Purpose.

Neglected buildings are a major cause and source of blight in both residential and non-residential neighborhoods, especially when the owner of the building fails to actively maintain and manage the building to ensure that it does not become a liability to the neighborhood. Neglected buildings and/or substandard or unkempt buildings discourage economic development and retard appreciation of property values. It is the responsibility of property owners to prevent buildings from becoming a burden to the neighborhood and community and a threat to the public health, safety, and welfare. A neglected building that is not well maintained and managed can be the core and source of spreading blight.

Such buildings constitute a nuisance, and to adequately protect public health, safety and welfare, the establishment and enforcement of a registration system to monitor such buildings and to develop a means to decrease the number of neglected buildings within the city is necessary.

Section 30.01.020 Public Nuisance.

Neglected buildings shall constitute a public nuisance.

Section 30.01.030 Enforcement of chapter--Applicability of chapter.

The Superintendent of Central Inspection is designated to administer and enforce this chapter.

Section 30.01.040 Violation not exclusive.

Violations of this chapter are in addition to any other violations enumerated within the ordinances of the Code of the City of Wichita. This chapter in no way limits the penalties, actions or abatement procedures which may be taken by the City for a violation of this chapter which is also a violation of any other ordinance of the City or statute of the State of Kansas.

Section 30.01.050 Inspection of property.

(1) All officers authorized to enforce this chapter are hereby authorized and directed to make inspections to determine the condition of property located within the city, in order that he or she may perform his/her duty of safeguarding the welfare and safety of the general public and in order that he/she may ascertain that property as set forth in this title are properly maintained.

(2) Any officer or employee of the City charged with the enforcement of this title shall not, in the discharge of his/her duties, thereby render himself/herself liable personally. Pursuant to Section 2.62.130 of the Code of the City of Wichita, any suit brought against an officer or employee of the city because such act performed by him or her in the enforcement of any of the provisions of this title will be defended by the Department of Law until the final termination of the proceedings therein.

Section 30.01.060 Definitions.

(1) 'Boarded' means that some or all of the building's doors or windows have been covered with plywood, wood or metal sheeting, paneling or other similar materials, for the purpose of preventing entry into the building by persons, animals or the elements of weather.

(2) 'Building' means a building, accessory structure or other structure adapted to permanent or continuous occupancy or use for residential, public, institutional, business, industrial or storage purposes.

(3) 'City' means the City of Wichita, Kansas.

(4) 'Deterioration' means the condition or appearance of a building characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

(5) ' Dwelling' means any building, apartment building, mobile home or manufactured home which is wholly or partly used or intended to be used for living or sleeping by human occupants.

(6) ' Dwelling unit' means any room or group of rooms located within a building and forming a single habitable unit with facilities that are used or intended to be used for living, sleeping, cooking, and eating.

(7) ' Good state of repair' means sound, stable, free of deterioration, and performing the function for which intended.

(8) ' Good working condition' means the item is fully operable for the use for which it was intended.

(9) ' Neglected building' means a ' Neglected occupied building' and a ' Neglected unoccupied building'.

(10) ' Neglected occupied building' means an occupied building in which one or more of the following events have occurred within the preceding eighteen months:

a. The building is the subject of two or more notices of violation of the provisions of Chapter 18, Chapter 20 or the provisions of this chapter of the Code of the City of Wichita and the owner has failed to demonstrate that due diligence is being exercised in abating the violation;

b. The building has been declared to be a criminal nuisance pursuant to K.S.A. 22-3901, *et seq.*;

c. The owner has failed to appear and a warrant has been issued in municipal court for a violation of Chapter 18, Chapter 20, or the provisions of this chapter of the Code of the City of Wichita; or

d. The owner has refused to accept service of notices of violations of Chapter 18, Chapter 20, or the provisions of this chapter of the Code of the City of Wichita.

e. The building has sustained substantial deterioration due to lack of maintenance.

(11) 'Neglected unoccupied building' means an unoccupied building (whether or not boarded) in which one or more of the following events have occurred:

- a. Within the last eighteen months, the property is the subject of two or more notices of violation of the provisions of Chapters 18, Chapter 20 or the provision of this chapter of the Code of the City of Wichita and the owner has failed to demonstrate that due diligence is being exercised in abating the violation;
- b. The building is unsecured;
- c. The building has sustained significant fire, wind or water damage and is uninhabitable.
- d. The building has been declared a criminal nuisance pursuant to K.S.A. 22-3901, *et. seq.*
- e. The building has been boarded for a period of more than ninety days.
- f. The building has sustained substantial deterioration due to lack of maintenance.
- g. The owner has failed to appear and a warrant has been issued in municipal court for a violation of Chapter 18, or Chapter 20, of the Code of the City of Wichita; or
- h. The owner has refused to accept service of notices of violations of Chapter 18, or Chapter 20, of the Code of the City of Wichita.

(12) 'Occupancy' the purpose for which a building or portion thereof is utilized or occupied.

(13) 'Operator' means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

(14) 'Owner' means any person who is a holder of any legal or equitable interest in the premises, and alone or jointly or severally with others,

- a. Has record legal title to any dwelling or dwelling unit with or without accompanying actual possession thereof; or
- b. Has charge, care or control of any dwelling or dwelling unit which may include all persons who have an interest in a structure and any who are in possession or control thereof as owner or agent of the owner, contract purchaser, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

In the absence of substantial evidence to the contrary, records of the Sedgwick County Clerk's Office, Registrar of Deeds, certified copies of court records or judgments of any court, copies of lease agreements, contracts for deed, mortgages, tax records, rental agreements and other financial documents related to the property shall be conclusive evidence of the ownership of the property.

(15) 'Person,' as used in this chapter, means any individual, firm, association, company, syndicate, partnership, or other legal entity, or a natural person for the purposes of the occupancy standards hereof.

(16) 'Premises' shall mean a lot, plot or parcel of land including the buildings and structures located thereon.

(17) 'Resident Agent' means a natural person residing within Sedgwick County, Kansas, or a company or agency with a manager or agent who resides in Sedgwick County, Kansas, who is authorized to make or order repairs, to order or oversee service to dwellings and dwelling units, and to receive notices on behalf of the owner.

(18) 'Safe and Sanitary' for purposes of this chapter shall mean free from conditions that are dangerous or could cause injury and free from elements such as filth or bacteria that endanger health.

(19) 'Structurally Sound' means free of imperfections and/or deterioration that affect the intended use of a structure or the integrity of the footing, foundation, wall, roof, chimney, arch, window, door or porch/deck support systems.

(20) 'Superintendent of Central Inspection' means the superintendent or person in charge of the Office of Central Inspection of the City or his/her authorized representative.

(21) 'Supplied' means paid for, furnished or provided by or under the control of the owner or operator.

(22) 'Unoccupied building' means a building that is unattended and is not actively used as a place of residence or business, or is frequently open or unsecured so that unauthorized admittance may be gained without damaging any portion of the property.

(23) 'Unsecured' means that access to the building may be obtained through open, unlocked, broken or missing doors or windows of such building.

(24) 'Workmanlike manner' means installation or repair which meets the minimum recommended installation and maintenance requirements of the product manufacturer and meets all applicable code requirements.

Section 30.01.070 Duty to Register Neglected Building.

a. The owner or operator of a neglected building shall be required, after written notification from the Superintendent of Central Inspection, to apply for registration of such building with the Office of Central Inspection within thirty days of the date of notification from the Superintendent. Such notification shall be served on the owner or resident agent by personal service or by certified mail, return receipt requested. If the owner is a non-resident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner.

b. The registration shall include the following information:

1. A description of the premises;
2. The names and addresses of the owner or owners;
3. The names and addresses of all known lienholders and all other parties with a legal or equitable ownership interest in the building;
4. The name of the resident agent designated to act on the behalf of the owner to accept legal processes and notices and to authorize repairs as required; and
5. If such building is unoccupied, the period of time the building is expected to remain unoccupied and/or a plan and timetable to comply with applicable city codes.

Section 30.01.080 Registration Fee.

A registration fee of twenty-five dollars (\$25.00) per building shall be collected, at the time of application, by the City Treasurer.

Section 30.01.090 Resident Agent.

(a) The owner or operator of any neglected building, which is subject to the registration requirements of Section 30.01.070, shall designate a resident agent for the building. Any owner who lives within Sedgwick County may designate himself or herself as the resident agent.

(b) The owner of any neglected building who lives outside of Sedgwick County shall name a resident agent who lives within or whose place of business is within Sedgwick County, Kansas.

(c) The designation of resident agent shall constitute an authorization by the owner to act on behalf of the owner with regard to all requirements under this chapter and may accept all notices, including all notices pursuant to the Code of the City of Wichita, all notices of proposed abatements and all compliance orders and administrative orders.

(d) The owner's designation of a resident agent shall not relieve the owner or operator of any obligation to comply with the provisions of this chapter or any other provisions of the Code of the City of Wichita or laws of the state of Kansas.

Section 30.01.105 Registration Penalty.

(a) Any owner or operator who fails to register a neglected building, as required by this chapter, may be liable for a civil penalty not to exceed Two hundred fifty dollars (\$250.00).

(b) If the building continues to meet the definition of a neglected building for a period of ninety (90) calendar days, and the owner fails or refuses to register such building, the Superintendent may continue to assess a penalty of two hundred fifty dollars (\$250.00) for each ninety (90) calendar day

period the building continues to be unregistered. At no time may the amount of the assessment exceeds one thousand dollars (\$1,000.00) per building in a calendar year.

(c) All penalties assessed shall be payable directly to the City Treasurer.

The Superintendent of Central Inspection shall develop policies and procedures for the implementation of this penalty.

Section 30.01.108 Procedures for Registration Penalty.

(a) Whenever the owner or operator of a neglected building does not register such building, a Notice of Registration Penalty may be issued to the owner or operator.

(b) A separate Notice of Registration Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 30.01.105.

(c) The Notice of Registration Penalty shall be served upon the owner or operator by certified mail or personal service.

Section 30.01.110 Reinspection.

The Superintendent may periodically reinspect neglected buildings to ensure compliance of this chapter and all applicable court and administrative orders.

Section 30.01.120 Removal from Registration.

A neglected building shall be removed from the registration requirements of this chapter by the Superintendent of Central Inspection upon such building:

1. Being brought into compliance with all health and safety standards set forth in the codes of the City of Wichita;
2. Being removed or demolished by the owner;
3. Being abated or demolished by the City of Wichita, if such structure is unsafe or unfit for habitation.

Section 30.01.130 Registration nontransferable.

If the neglected building is required to be registered pursuant to Section 30.01.070, a new registration shall be required for each change of ownership of the building. The owner or operator of a neglected building which is registered with the office of Central Inspection pursuant to this Chapter, shall notify the office of Central Inspection within ten business days of the sale or transfer of any registered property.

Section 30.01.140 Duty to File Statement of Intent for Neglected Buildings.

(a) The Superintendent shall create and make available a form entitled 'Statement of Intent' to be completed by the owner, operator or resident agent of any neglected unoccupied building required to be registered pursuant to this chapter.

(b) The owner, operator or resident agent of a neglected unoccupied building shall complete the information required on the standard Statement of Intent and submit the Statement to the Office of Central Inspection within thirty (30) days of the date the Superintendent orders that the structure be registered.

(c) The Superintendent shall determine whether a submitted Statement of Intent is complete and may require an owner to provide more complete information.

(d) When a submitted Statement of Intent does not meet with the Superintendent's approval, the owner or registered agent shall, within ten business days, correct and resubmit the Statement of Intent.

(e) The Statement of Intent shall include information as to:

- (1) expected period that the building will remain unoccupied;
- (2) a plan for regular maintenance during the period that the building is unoccupied; and
- (3) a reasonable plan and time line for the lawful occupancy, rehabilitation or demolition of the building; and

- (4) any additional information required by the Superintendent.
- (f) The provisions of Section 30.01.140 shall not be applicable to neglected occupied buildings.

Section 30.01.150 Neglected Unoccupied Building Penalty.

(a) Any owner or operator who fails to submit a Statement of Intent or refuses to supplement or modify a Statement of Intent which does not meet with the approval of the Superintendent or otherwise comply with the requirements of Section 30.01.140, may be liable for a civil penalty not to exceed \$250.00.

(b) Any owner or operator of a neglected unoccupied building that remains as a neglected unoccupied building for a period of ninety (90) consecutive calendar days may be liable for a civil penalty in the amount of two hundred fifty dollars (\$250.00) per building, not to exceed one thousand (\$1,000.00) per calendar year unless:

(1) A Statement of Intent has been filed and approved by the Superintendent;
and

(2) One of the following applies:

(A) The owner is proceeding diligently in good faith to complete the repair or rehabilitation; or,

(B) The building is the subject of an active building permit for repair or rehabilitation; or

(C) The building is maintained in compliance with this chapter and is actively being offered for sale, lease or rent; or,

(D) The property owner can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the timeline contained within the Statement of Intent.

(c) If the building continues to meet the definition of neglected unoccupied building as provided in this chapter beyond the initial ninety (90) calendar days, and if the owner does not meet any of the exceptions set forth in this section, the Superintendent may continue to assess a penalty of two hundred fifty dollars (\$250.00) for each ninety (90) calendar day period the building continues to constitute a neglected unoccupied building. At no time may the amount of the assessment exceed one thousand dollars (\$1,000.00) per building in a calendar year.

(d) All penalties assessed shall be payable directly to the City Treasurer.

(e) The Superintendent of Central Inspection shall develop policies and procedures for the implementation of this penalty.

Section 30.01.160 Procedures for Neglected Unoccupied Building Penalty.

(a) Whenever the Superintendent determines that a building meets the definition of a neglected unoccupied building as defined by this chapter for a period of more than ninety (90) consecutive calendar days, and the owner does not meet any of the exceptions set forth in Section 30.01.150, a Notice of Neglected Unoccupied Building Penalty may be issued to the owner or operator.

(b) A separate Notice of Neglected Unoccupied Building Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 30.01.150.

(c) The Notice of Neglected Unoccupied Building Penalty shall be served upon the owner or operator or his or her registered agent by certified mail or personal service.

Section 30.01.170 Appeals to Board of Code Standards and Appeals.

a. Appeals from the decision of the Superintendent of Central Inspection or his designee, of the registration requirements or the assessment of a registration or neglected building penalty, as provided for by this chapter, may be made by requesting, in writing, to the Superintendent of Central Inspection, within ten days after receiving such decision or penalty, a hearing before the Board of Code Standards and Appeals.

b. The appeal must be heard by the Board within forty-five days of receipt of the written request. The board may affirm, reverse or modify the penalty assessed.

c. Appeals from the decision of the board of code standards and appeals may be made to the city council by requesting in writing to the city clerk, within ten days after receiving such decision, a hearing before such city council. Such appeal shall be heard, with written notification as to time and place given such appellant, within forty-five days after receipt of the written request.

Section 30.01.180 Failure to Pay Penalties.

The failure of any person to pay the Registration or Neglected Building penalty as set forth in this chapter may result in the Superintendent using any legal means to recover the civil penalties assessed.

ORDINANCE NO. 2007-060

Adopted by the Sacramento City Council

July 24, 2007

AN ORDINANCE REPEALING ARTICLES XV AND XVI OF CHAPTER 8.100 OF THE SACRAMENTO CITY CODE AND REENACTING ARTICLE XV RELATING TO VACANT BUILDINGS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1. Articles XV and XVI of Chapter 8.100 (Sections 8.100.1170 through 8.100.1380) of the Sacramento City Code are repealed.

SECTION 2. Article XV of Chapter 8.100 of the Sacramento City Code is reenacted to read as follows:

Article XV Maintenance of Vacant Buildings.

8.100.1200 Findings—Vacant buildings.

The city council finds as follows:

A. When the owner of a vacant building fails to actively maintain and manage the building, the building can become a major cause of blight in both residential and nonresidential neighborhoods. Vacant buildings that are boarded, substandard or unkempt properties, and long-term vacancies discourage economic development and retard appreciation of property values.

B. It is a responsibility of property ownership to prevent owned property from becoming a burden to the neighborhood and community and a threat to the public health, safety, or welfare.

C. One vacant property that is not actively and well maintained and managed can be the core and cause of spreading blight.

D. Owners of multiple buildings, either concurrently or serially, that are vacant and a blight to the community are a significant problem in the city. Owners of multiple buildings who fail to correct deficiencies and blighted conditions contribute to the decline of neighborhoods to a greater extent than owners who own only one building. Some owners have acquired multiple vacant and blighted buildings at depressed prices and have not improved or cared for the properties. It is in the interest of the welfare of neighborhoods that owners of multiple properties who fail to maintain properties and correct vacant and blighted buildings be subject to imposition of higher administrative penalties in order to encourage these owners to correct violations of this article in a prompt manner.

8.100.1210 Vacant building defined.

For the purposes of this article, the term “vacant building” means a building that is unoccupied, or occupied by unauthorized persons for any amount of time.

8.100.1220 Required boarding of vacant buildings

A. For the purposes of this article, “boarded” shall mean the covering of all entry points, including all doors and windows, with plywood or other materials for the purpose of preventing entry into the building by persons or animals.

B. Vacant buildings shall be boarded when the building can no longer be secured against intrusion by the closing and locking of doors and windows.

C. Vacant buildings that are immediately dangerous as defined in section 8.96.120 of this code and are open and accessible to the general public may be summarily boarded by the city, pursuant to section 8.96.390 of this code.

D. Any building that is boarded, whether by voluntary action of the owner, or as a result of enforcement activity by the city, shall be boarded in compliance with city standards promulgated by the City Manager, and approved by resolution of City Council.

8.100.1230 Vacant building penalty.

No owner shall allow a building designed for human use or occupancy to be a vacant building for more than thirty (30) days, unless one of the following applies:

1. The building is the subject of an active building permit for repair or rehabilitation and the owner is progressing diligently to complete the repair or rehabilitation.

2. The building meets all codes, does not contribute to blight, is ready for occupancy, and is:

- a. actively being offered for sale, lease, or rent, or
- b. is actively being maintained and monitored by the owner, as defined in section 8.100.1240

8.100.1240 Maintenance and Monitoring of Vacant Buildings

Active maintenance and monitoring shall include all of the following:

- a. Maintenance of landscaping and plant materials in good condition.
- b. Maintenance of the exterior of the building, including but not limited to paint and finishes, in good condition.
- c. Regular removal of all exterior trash, debris and graffiti.
- d. Maintenance of the building in continuing compliance with all applicable codes and regulations.
- e. Prevention of criminal activity on the premises, including but not limited to use and sale of controlled substances, prostitution and criminal street gang activity.

f. The posting of a notice in a conspicuous place on the front of the building stating the name, address, and telephone number of both the owner and, if applicable, the owner's agent in control of the building. This notice shall have lettering not less than two (2) inches high, and shall be generally readable from at least thirty (30) feet away.

8.100.1250 Administrative penalty.

Notwithstanding the provisions of section 1.28.010(C)(3) of this code, any owner of a building that is in violation of section 8.100.1230 shall be subject to an administrative penalty, in an amount not to exceed one thousand dollars (\$1,000.00) per building for the first violation.

A second administrative penalty shall be imposed upon an owner pursuant to this article if the owner's building remains in violation of section 8.100.1230 thirty (30) days following the imposition of the first administrative penalty. Additional penalties may be imposed in each thirty (30) day period following the imposition of an administrative penalty under this article. Additional penalties may be imposed so long as the violations continue. A second and any subsequent penalty shall be in an amount not to exceed five thousand dollars (\$5,000.00).

If a previous administrative penalty has been imposed pursuant to this article upon an owner within two years of the date of the imposition of the present administrative penalty, and that previous administrative penalty related to a vacant building other than the building presently the subject of an administrative penalty, any penalty imposed shall be imposed pursuant to section 1.28.010(D) of this code, but in no case shall it be less than two thousand dollars (\$2,000.00), nor more than ten thousand dollars (\$10,000.00).

8.100.1260 Monitoring Fee for Vacant Nuisance Properties.

Any vacant building that also constitutes a public nuisance as defined in chapters 8.04, 8.08, 8.96, or 8.100 of this code shall be subject to monthly monitoring fees and enforcement response fees, to recover the city's regulatory costs to monitor and respond to the vacant building. The separate monthly monitoring fee and enforcement response fee shall be set by resolution of the City Council. The monitoring fee shall be applicable even in the absence of any action, administrative or otherwise, by the city pursuant to any other provision of the city code. The monitoring fee shall be imposed upon the initial determination that the vacant building constitutes a public nuisance as defined in chapters 8.04, 8.08, 8.96, or 8.100 of this code. The fee shall thereafter be imposed in each thirty (30) day period following the imposition of the initial monitoring fee. On buildings requiring more than one (1) involuntary city enforcement response within any thirty (30) day period, an additional and separate enforcement response fee shall be imposed, for each response, upon the owner. Monitoring fees shall be imposed as long as the vacant building remains a public nuisance as defined in those chapters.

Any monitoring fee imposed pursuant to this section may be appealed and shall be collected in the same manner as is specified in section 1.28.010(D) of this code.


Adopted by the City of Sacramento City Council on July 24, 2007 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy,
Tretheway, Waters and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Mayor Heather Fargo

Attest:



Shirley Concolino, City Clerk

Passed for Publication July 17, 2007
Published July 20, 2007
Effective August 23, 2007



THE CITY OF SAN DIEGO

FACT SHEET

MAYOR SANDERS SIGNS AGGRESSIVE NEW LAW TO REDUCE NUMBER OF NEGLECTED, ABANDONED PROPERTIES

*New ordinance adds new teeth to City's ability to
clean up dangerous and blighted properties*

February 7, 2006

Background

- Hundreds of vacant or abandoned properties currently blight our City's neighborhoods.
- Vacant boarded properties invite a host of unwelcome activity and blight in a neighborhood: graffiti, dumping, overgrowth of weeds, and a location for drug transactions, prostitution and transients. Severe deterioration of a single property often leads to the deterioration of many properties and can promote economic decay in a neighborhood.
- Vacant Property Laws have been on the books in San Diego since 1993, and the Neighborhood Code Compliance Department (NCCD) has been able to successfully work with many property owners during that time to rehabilitate blighted property. Since its inception 700 properties have been returned to productive use and 30 properties have been demolished.
- Currently there are 165 vacant or abandoned properties identified by the City's NCCD.
- Despite many successes, loopholes in the law allow some property owners to pay fines, but not clean up their blighted property.

What the New Law Does:

- The new laws address some of the loopholes that currently exist. The new laws significantly raise the fees and fine assessed on the owner of a vacant or abandoned property.

- Under the existing ordinance, owners of vacant structures can be fined \$250 quarterly, not to exceed \$1,000 per year.
- Under the new ordinance, owners of vacant structures can be fined up to \$5,000 annually.
- Under the existing ordinance, owners of neglected vacant property must file a one time “Statement of Intent,” stating how they plan to clean up the property.
- Under the new ordinance, owners of neglected vacant property will be required to file a “Statement of Intent” annually, until the property is cleaned up.
- The new law gives the Neighborhood Code Compliance Officers tools to more aggressively address properties where owners continue to pay fines, yet do not clean up the property.
 - Previously, various nuisance conditions had to be cited separately, under different codes contained throughout the Municipal Code.
 - Under the new law, all nuisance condition will be addressed from one Municipal Code section.

Future related Municipal Code Amendments:

- Address “perennial remodels.” These are properties where building activity has been going on for several years.
- Expand program to address vacant lots.
- Expand program to address commercial buildings.

Article 4: Public Hazards and Public Nuisances

Division 3: Abatement of Vacant Structures

*(“Public Property Nuisance Abatement”
added 8-17-1981 by O-15573 N.S.)*

*(Retitled to “Public Property Nuisance Abatement”
on 8-10-1993 by O-17957 N.S.)*

§54.0301 Declaration of Purpose

The Council of the City of San Diego finds and declares that:

- (a) Structures that are vacant and unsecured or boarded attract vagrants, gang members and other criminals as prime locations to conduct illegal criminal activities.
- (b) Structures that are vacant and not properly secured are extremely vulnerable to being set on fire by unauthorized persons.
- (c) Structures that are vacant and unsecured or boarded are a blight and cause deterioration and instability in neighborhoods.
- (d) Structures that are vacant and unsecured or boarded pose serious threats to the public’s health and safety and therefore are declared to be public nuisances.
- (e) Immediate abatement and rehabilitation of these structures is necessary and can be accomplished by using the judicial or administrative procedures found in this Code.

(Amended 5-28-1996 by O-18301 N.S.)

§54.0302 Definitions

The words and phrases used in this Division have the meanings set forth in this section:
"Director" means the Director of the Neighborhood Code Compliance Department or any other Director authorized by the City Manager and any of their designated agents or representatives.

"Litter" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Rubbish" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Solid Waste" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Liquid Waste" has the same meaning as provided in Division 2, Article 4, Chapter 5 of this Code.

"Statement of Intent" means a form filled out by the owner of a boarded structure which contains specific information regarding the structure and the owner's plan for its rehabilitation and maintenance.

"Vacant Structure" means any structure or building that: 1) is unoccupied or occupied by unauthorized persons; and 2) is unsecured or boarded.

(Amended 5-28-1996 by O-18301 N.S.; corrected 1-23-1998.)

(Amended 2-7-2006 by O-19460 .S.; effective 3-7-2006.)

§54.0303 Enforcement Authority

The Director of the Neighborhood Code Compliance Department, or any other Director authorized by the City Manager, is authorized to administer and enforce the provisions of this Division. The Director or anyone designated by the Director to be an Enforcement Official may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.

(“Enforcement Authority” added 5-28-1996 by O-18301 N.S.)

§54.0304 Enforcement Remedies

Violations of this Division may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201. The Director may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy provided in Chapter 1 of this Code.

(“Enforcement Remedies” added 5-28-1996 by O-18301 N.S.)

§54.0305 Strict Liability Offenses

Violations of this Division shall be treated strict liability offenses regardless of intent.

(“Strict Liability Offenses” added 5-28-1996 by O-18301 N.S.)

§54.0306 Duty to Clean and Secure or Board

(a) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to remove any waste, rubbish or debris from the interior of the structure.

(b) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to remove any litter, waste, rubbish, solid waste, liquid waste, debris or excessive vegetation from the yards surrounding the Vacant Structures.

(c) It is unlawful for any Responsible Person in charge or control of any Vacant Structure to fail to lock, barricade or secure all doors, windows and other openings.

(“Duty to Clean and Secure or Board” renumbered, retitled and amended from Sec.

54.0303, 5-28-1996 by O-18301 N.S.)

(Amended 2-7-2006 by O-19460 N.S.; effective 3-27-2006.)

Ch.	Art.	Div.	
5	4	3	2

§54.0307 Administrative Abatement Procedures for Vacant and Unsecured Structures

- (a) Whenever the Director determines that a vacant and unsecured structure exists within the City of San Diego, an Abatement Notice and Order may be sent to the Responsible Person directing abatement by cleaning and securing or boarding. Boarding shall be done pursuant to the standards established in Section 54.0308 of this Division.
- (b) The Director may also require as part of the Abatement Notice and Order, that the Responsible Person erect fences, barriers, berms or other suitable means to discourage access to the Vacant Structure and to discourage illegal dumping or littering on the yards surrounding the Vacant Structure. The Director may also require the Responsible Person to post signs that prohibit trespassing, littering or illegal dumping.
- (c) The Director may also require as part of the Abatement Notice and Order, that the Responsible Person remove any litter, waste, rubbish, solid waste, liquid waste, debris or excessive vegetation from the yards surrounding the Vacant Structures.
- (d) The Director may also require as part of the Abatement Notice and Order, that the Responsible Person remove any vehicles or items stored in the yards surrounding the Vacant Structure in violation of the Land Development Code.
- (e) The Director shall follow the Administrative Abatement procedures for Time Frame One as provided in Division 6 of Article 2 of Chapter 1 of this Code.
- (f) If the Responsible Person does not comply with the Abatement Notice and Order, and no appeal is filed, the Director may: 1) clean and board the unsecured Vacant Structure; 2) remove all litter, waste, rubbish, solid waste, liquid waste, debris or excessive vegetation from the yards surrounding the Vacant Structures; 3) remove all vehicles and items stored in violation of the Land Development Code; and 4) recover all costs pursuant to the procedures found in Division 6, Article 2 of Chapter 1 of this Code.
- (g) If the Director boards the structure, all barricade materials supplied by the City shall become the property of the Responsible Person upon payment of all costs to the City.
*(“Administrative Abatement Procedures for Vacant and Unsecured Structures” renumbered and amended from Sec. 54.0305 on 5-28-1996 by O-18301 N.S.)
(Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)*

§54.0308 Standards for Boarding a Vacant Structure

- (a) Except as provided in Section 54.0308(a)(9), the Responsible Person or Director shall board a Vacant Structure according to the following specifications and requirements:
 - (1) remove all waste, rubbish or debris from the interior of the structure;
and

- (2) remove all waste, rubbish, debris or excessive vegetation from the yards surrounding the Vacant Structure; and
- (3) barricade all unsecured doorways, windows or exterior openings with minimum 1/2 inch thickness exterior grade plywood which shall extend to the molding stops or studs; and
- (4) mount at least two wood stocks of minimum 2 x 4 inch thickness to the reverse face of the plywood with minimum 3/ 8 inch carriage bolts mated with nuts and two flat washers; and
- (5) extend the stock a minimum of eight (8) inches on each side of the interior wall; and
- (6) cause all hardware to be galvanized or cadmium plated; and
- (7) paint all exterior barricade material the predominant color of the structure; and
- (8) post the premises. One or more signs shall be posted at or near each entrance to the structure and on fences or walls as appropriate. The signs shall remain posted until the structure is either lawfully occupied or demolished. Signs shall contain the following information: DO NOT ENTER It is a misdemeanor to enter or occupy this building or premises or to remove or deface this notice. (San Diego Municipal Code) City of San Diego Trespassers will be prosecuted.
- (9) In lieu of requiring the Responsible Person to board a structure as set forth in Sections 54.0308(a)(1) through (7), the Director may allow the Responsible Person to board the Vacant Structure in a manner in which the Director determines adequately prevents unauthorized entry or vandalism. In any event, a Responsible Person shall post the premises as set forth in Section 54.0308(a)(8).

(“Standards for Boarding a Vacant Structure” renumbered, retitled and amended from Sec. 54.0306 on 5-28-1996 by O-18301 N.S.)

§54.0309 Entry or Interference with Notice Prohibited

- (a) It is unlawful for any person to enter or occupy any structure or premises which has been posted pursuant to Section 54.0308(a)(8) of this Division, except to repair or demolish the structure under proper permit or for a purpose authorized by the owner.
- (b) It is unlawful for any person to remove or deface any notice posted pursuant to Section 54.0308(a)(8) of this Code until the required repairs or demolition have been completed or a Certificate of Occupancy has been issued in accordance with appropriate provisions of the California Building Code as in Chapter IX of the Municipal Code.

(Amended 7-19-1999 by O-18656 N.S.)

§54.0310 Continuous Abatement Authority

- (a) If a Vacant Structure previously abated by the Responsible Person or the Director pursuant to a Notice and Order again becomes unsecured and open to unauthorized entry, the Director may, without further notice to the Responsible Person, proceed to abate the nuisance and recover costs as provided for in this Division.
- (b) If the yards surrounding a Vacant Structure again contain debris, rubbish, waste or excessive vegetation, the Director may, without further notice to the Responsible Person, proceed to abate the nuisance and recover costs as provided for in this Division.
- (c) An Enforcement Hearing Officer may issue an Administrative Enforcement Order that would give the Director continuous abatement authority to: 1) abate a Vacant Structure which again becomes unsecured and open to unauthorized entry; or 2) abate the yards surrounding a Vacant Structure if the yards again contain debris, rubbish, waste or excessive vegetation. The Hearing Officer may establish notice requirements as may be reasonable.

(“Continuous Abatement Authority” renumbered, retitled and amended from Sec. 54.0112 on 5-28-1996 by O-18301 N.S.)

§54.0311 Abatement Cost

- (a) Abatement costs shall include the cost to perform the actual work and the City’s cost to administer any abatement.
- (b) Once the abatement is complete, the Director shall recover all abatement costs pursuant to the procedures found in Division 3, Article 3 of Chapter 1 of this Code.

(“Abatement Cost” renumbered from Sec. 54.0310 on 5-28-1996 by O-18301 N.S.)

§54.0312 Continuous Public Nuisances

Any Vacant Structure that was originally secured by the Responsible Person’s voluntary actions or pursuant to judicial or administrative order may be declared a permanent public nuisance by the Director if the structure continues to remain open and unsecured on a periodic basis, thereby requiring additional reinspections and resecuring of the structure. The Director may seek demolition of this continuous public nuisance by seeking a court order or follow any of the administrative abatement procedures found in this Code.

(“Continuous Public Nuisances” renumbered from Sec. 54.0313 on 5-28-1996 by O-18301 N.S.)

§54.0313 Duty to File a Statement of Intent

- (a) The Director shall create and make available a form entitled "Statement of Intent" to be completed by the owner of a Vacant Structure.
- (b) The owner of a Vacant Structure shall complete the information required on the standard Statement of Intent and submit the statement to the City within thirty (30) calendar days of the date the Director determines the structure became boarded. If a Vacant Structure remains in a vacant state for more than three hundred sixty-five (365) calendar days from the date the first Statement of Intent was submitted, then a new Statement of Intent must be submitted, and annually thereafter until the structure is no longer a Vacant Structure.
- (c) The Director shall determine whether a submitted Statement of Intent is complete and may require an owner to provide more complete information.
- (d) When a submitted Statement of Intent does not meet with the Director's approval, the owner shall immediately correct and resubmit the Statement of Intent.
- (e) The Statement of Intent shall include information as to:
 - (1) expected period of vacancy;
 - (2) a plan for regular maintenance during the period of vacancy; and
 - (3) a plan and time line for the lawful occupancy, rehabilitation or demolition of the boarded structure; and
 - (4) any additional information required by the Director.
- (f) It is unlawful to:
 - (1) fail to submit a Statement of Intent within the time period specified by Section 54.0313(b); or
 - (2) fail to submit a Statement of Intent annually as required by Section 54.0313(b); or
 - (3) fail to submit a Statement of Intent which does not meet with the approval of the Director or otherwise comply with the requirements of this Section.
*("Duty to File a Statement of Intent" added 5-28-1996 by O-18301 N.S.; corrected 1-23-1998.)
(Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)*

§54.0314 Reinspection Fee

The Director may periodically reinspect Vacant Structures to ensure compliance with the provisions of this Division and all applicable court and administrative orders. The Director may assess a reinspection fee against the Responsible Person for actual costs of each reinspection and continuous monitoring of the structure and premises as is reasonably necessary to determine compliance with the standards and procedures in this Division. The Director shall follow the reinspection procedures found in Division 1, Article 3 of Chapter 1 of this Code.

("Reinspection Fee" renumbered from Sec. 54.0311 on 5-28-1996 by O-18301 N.S.)

§54.0315 Boarded and Vacant Structure Penalty

(a) Any owner of a structure which meets the definition of Vacant Structure as provided in this Division for ninety (90) consecutive calendar days may be liable for a civil penalty in the amount of five hundred dollars (\$500) per structure, not to exceed five thousand dollars (\$5,000) per structure in a calendar year unless:

(1) a Statement of Intent has been filed and approved by the Director; and

(2) one of the following applies:

(A) the structure is the subject of an active building permit for repair or rehabilitation and the owner is proceeding diligently in good faith to complete the repair or rehabilitation; or,

(B) the structure is maintained in compliance with this Division and is actively being offered for sale, lease or rent; or,

(C) the property owner can demonstrate that he or she made a diligent and good faith effort to implement the actions set forth in the approved Statement of Intent within the time line contained within the Statement of Intent.

(b) If the structure continues to meet the definition of Vacant Structure as provided in this Division beyond the initial ninety (90) calendar days, and if the owner does not meet any of the exceptions set forth in this Section, the Director may continue to assess penalties in the following amounts: one thousand dollars (\$1,000) for the next ninety (90) calendar day period each structure continues to constitute a Vacant Structure; one thousand five hundred dollars (\$1,500) for the next ninety (90) calendar day period; and two thousand dollars (\$2,000) for the next ninety (90) calendar day period that each structure continues to meet the definition of a Vacant Structure. At no time may the amount of the civil penalty exceed five thousand dollars (\$5000) per structure in a calendar year.

- (c) All penalties assessed shall be payable directly to the City Treasurer.
- (d) The City Manager shall develop policies and procedures for the implementation of this penalty.
*(“Boarded and Vacant Structure Penalty” added 5-28-1996 by O-18301 N.S.)
(Amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.)*

§54.0316 Procedures for Boarded and Vacant Structure Penalty

- (a) Whenever a Director determines that a structure meets the definition of a Vacant Structure as provided in this Division for more than ninety (90) consecutive calendar days, and the owner does not meet any of the exceptions set forth in Section 54.0515, a Notice of Boarded and Vacant Structure Penalty may be issued to the owner of the structure.
- (b) A separate Notice of Boarded and Vacant Structure Penalty shall be issued for each subsequent penalty that may be assessed pursuant to Section 54.0315.
- (c) The Notice of Boarded and Vacant Structure Penalty shall be served upon the owner by any one of the methods of service listed in Section 11.0301 of Chapter 1 of this Code.
(“Procedures for Boarded and Vacant Structure Penalty” added 5-28-1996 by O-18301 N.S.)

§54.0317 Appeal of Boarded and Vacant Structure Penalty

An appeal of a vacant boarded structure penalty shall follow the procedures set forth in Division 5 of Article 2 of Chapter 1 of this Code.
(“Appeal of Boarded and Vacant Structure Penalty” added 5-28-1996 by O-18301 N.S.)

§54.0318 Administrative Enforcement Hearing

- (a) The appeal hearing shall follow the enforcement hearing procedures set forth in Division 4, Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues:
 - (1) whether the structure meets the definition of Vacant Structure as provided in this Division for ninety (90) consecutive calendar days;
 - (2) whether an approved Statement of Intent has been filed and approved by the Director; and
 - (3) whether any of the exceptions set forth in section 54.0315(a)(2)(A) through (C) have been met.

- (c) The Enforcement Hearing Officer may assess administrative costs.
(*“Administrative Enforcement Hearing” added 5-28-1996 by O-18301 N.S.*)

§54.0319 Failure to Pay Penalties

The failure of any person to pay the penalty within the time specified in the “Notice of Boarded and Vacant Structure Penalty” may result in the Director using any legal means to recover the civil penalties, including referring the matter to the City Treasurer to file a claim with the Small Claims Court.
(*“Failure to Pay Penalties” added 5-28-1996 by O-18301 N.S.*)

§54.0320 Allocation of Vacant Structure Penalty

Administrative civil penalties collected pursuant to this Division shall be deposited in the civil penalties fund established pursuant to Section 13.0402 of this Code.
(*“Allocation of Vacant Building Penalty” added 5-28-1996 by O-18301 N.S.*)
(*Retitled to “Allocation of Vacant Structure Penalty” and amended 2-7-2006 by O-19460 N.S.; effective 3-7-2006.*)

§54.0321 Timely Rehabilitation of Vacant Structures

- (a) As authorized by California Health and Safety Code section 17980.9 (b)(1), the Director may require the demolition or expeditious rehabilitation of Vacant Structures which are single-family dwellings and deemed to be substandard as determined by an inspection by the Director.
(*Added 2-7-2006 by O-19460 N.S.; effective 3-7-2006.*)