CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: All City Councilors

FROM: Jon K. Zaman, Senior Policy Analyst Jon
Gerald E. Romero, Policy Analyst II GR

SUBJECT: Economic Impact Analysis and rewritten Fiscal Impact Analysis of O-09-69, O-09-70, O-09-71, and O-09-72 – Impact Fee Reduction Bills

DATE: August 17, 2009

This memorandum summarizes information provided by the Administration and by representatives of the Residential and Commercial Construction Industries relating to fiscal and economic impacts of the above listed bills.

Background

On April 6, 2009, four impact fee reduction bills were introduced and referred to the Finance and Government Operations Committee (FGO). These bills amend the four sections of the Revised Ordinances of Albuquerque that impose four different impact fees on new development. The four bills, to be in effect for only one year, provide for a 50% reduction in impact fee assessments for all developments and a 100% reduction in impact fee assessments for developments that meet the definition of "Green Path Developments." The purpose of these bills is to stimulate economic activity through the temporary reduction in impact fees.

On June 8, 2009, the FGO Committee approved Committee Substitutes for the bills and moved them to the full Council for immediate action with a recommendation of "Do Pass as Substituted". The bills were scheduled for final action on August 3, 2009.

On August 3, 2009, pursuant to the provisions of R-08-176, Councilors Benton, O'Malley and Garduño requested that the fiscal impact analysis provided with the bills be rewritten to provide more detailed information on the fiscal impacts of the proposed impact fee reductions on the City. (Please see attached request for a revised FIA). As a result, the bills were deferred by the full Council to the meeting of August 17, 2009 in order to provide time to prepare a rewritten FIA.

On August 11, 2009, once again pursuant to the provisions of R-08-176, Councilors Jones, Sanchez and Mayer requested that an Economic Impact Analysis be prepared for these bills in order to provide for input from the construction industry on the effects a temporary reduction in impact fees would have on stimulating new construction activity. (Please see attached request for an EIA).

Section 2(A) of R-08-176 defines what an Economic Impact Analysis is and provides the requirements for its content:

> "***Economic Impact Analysis or EIA:*** ***A written statement providing the information required for an FIA. In addition an EIA shall contain: the estimated costs imposed on the impacted community if the City Council takes action on a matter.*** The EIA shall be in a manner that provides an understanding of the effect on the impacted community. ***This cost may be estimated in any of a number of ways including but not limited to:*** 1.) determining the size of the impacted community and estimating the impact on a representative sample; 2.) where specific numbers are not readily available, by a thorough explanation of the steps necessary for the impacted community to comply with the Council action; ***3.) presenting the position of a representative(s) of the impacted community on the issue of cost. No EIA shall be prepared without an attempt by the Responsible Party to contact and receive input from some segment of the Impacted Community.***" (emphasis added)

Summary of Revised Fiscal Impact Analysis

While the revised FIA submitted contains useful narrative and historical data, the focus of this summary is on the analysis itself.

Three things to note about this FIA:

1) Given the myriad of scenarios considered, Residential and Commercial are presented separately;

2) All revenue streams are considered equal when determining the net impact on the City coffers - that is, impact fees (used solely for capital costs) are considered no different than gross receipts or other taxes (used mainly for operating costs); and

3) Based on the opinion of the Legal Department, it is assumed the impact fee reductions do not need to be re-paid; therefore, no future funding source to repay the reduction in impact fees is identified. (Please see the attached legal memorandum).

Residential Construction

The following assumptions are made to establish a base and simplify the analysis:

- 436 residential permits are issued in a one-year period (FY09 level);
- Each residential permit generates $5,000 in impact fees;

- 20% of the residential permits issued qualify as "Green Path;"
- Each additional home built generates $6,778 in permit fees, gross receipts taxes, property taxes, and multiplied impacts for the City;
- The reduction period is one-year.

The following table summarizes the information provided in the revised FIA, and assumes no change in the proportion of Green Path (20%) to Traditional (80%) permits. The assumption underlying the base scenario is that the reduction in impact fees is expected to result in 0% incremental permit growth. Additional scenarios are shown which assume incremental growth levels of 20%, 30%, 40%, and finally the break-even point of 79% incremental growth. The impact to the City of each of these scenarios is summarized below:

Growth	Permits	Loss in Impact Fees	Other Revenue	Net (Loss)/Gain
0%	436	($1,308,000)	$0	($1,308,000)
20%	523	($1,569,000)	$591,032	($978,568)
30%	567	($1,701,300)	$887,904	($813,396)
40%	610	($1,831,200)	$1,182,065	($649,135)
79%	782	($2,346,000)	$2,345,152	($848)

This table provides calculations similar to those above, but assumes a shift toward Green Path development of 50%. In this scenario, residential permits would have to double for the City to break-even.

Growth	Permits	Loss in Impact Fees	Other Revenue	Net (Loss)/Gain
0%	436	($1,308,000)	$0	($1,308,000)
20%	523	($1,635,000)	$591,032	($1,043,968)
30%	567	($1,799,250)	$887,904	($1,043,968)
40%	610	($1,962,000)	$1,182,065	($911,346)
99%	868	($2,928,000)	$2,928,051	$51

While the break-even points are high, it should be noted that in FY/08, 1,212 single family permits were issued and in FY/07, 2,448 were issued, so these numbers are not unprecedented.

Commercial Construction

The analysis for the legislation's effect on commercial development is a bit more complicated. A pro forma cost estimate of a 20,000 square foot project is included to demonstrate costs, fees, and revenue impacts on a typical project across three project types – office, retail, and industrial. In all cases, the pro forma shows a positive net impact to the City. However, the pro forma assumes the maximum impact fee is collected for each project, which is not always the case. The maximum impact fee represents about 4% of the total pro forma project costs.

The comparative analysis is a bit more multi-faceted so some across-the-board assumptions are made in order to simplify the comparisons:

- An average impact fee of 2% of the value of commercial construction is used instead of the maximum 4%;
- The total value of commercial construction subject to impact fees is $34,800,000. This is 20% lower than the FY/09 amount of $43,500,000;
- The base amount of impact fees projected to be collected by the City is $696,000;
- A one-year period is assumed.

The first table shows the impact to City revenues under several growth scenarios - all assuming a 0% shift toward green path development. In this table, a break-even occurs at a growth level of about 34%. This translates to 8 new construction projects if you assume each is valued at $1,500,000.

Growth	$ value of projects	Loss of Impact Fees	Other Revenue	Net (loss)/gain
0%	$34,800,000	($348,000)	$0	($348,000)
20%	$41,760,000	($417,600)	$278,450	($139,150)
30%	$45,240,000	($452,000)	$417,675	($34,725)
40%	$48,720,000	($487,200)	$556,900	$69,700
50%	$52,200,000	($522,000)	$696,125	$174,125

The same methodology is carried out in the following matrix but against an array of added scenarios regarding the move toward Green Path building. The result is a break-even point that ranges from 34% to 48% growth, depending on what assumption is made about the proportion of Green Path to Traditional Permits. Forty-eight percent growth would represent approximately 11 new construction projects.

Total Revenue – Total Reduction in Impact Fees				
Percentage Green Path to Traditional				
Growth	0%	10%	20%	30%
20%	(139,150)	(180,910)	(222,670)	(264,430)
30%	(34,725)	(79,965)	(125,205)	(170,445)
40%	69,700	20,980	(27,740)	(76,460)
50%	174,125	121,925	69,725	17,525

Summary of Industry Comments on Impact Fee Reduction Bills

Three comments were received by Council staff which "presented the position of the industry on the issue of cost" as required by R-08-176. Those comments are attached to this memo and are summarized below:

Comment 1
National Association of Industrial and Office Products (NAIOP)
Ron Bohannan, Boardmember

Mr. Bohannan reported that NAIOP had polled its membership via email, and that 29 different projects in the following categories had been reported as projects that were anticipated for construction in FY/10:

Office Projects	11
Retail Projects	12
Industrial Projects	6
Total Projects	29

Because this represented feedback from only half of NAIOP's membership, Mr. Bohannan projected that the actual number of anticipated projects for FY/10 is likely to be twice this amount, or 58 projects, presumably in the same category ratios. Mr. Bohannan also indicated that approximately 30% of NAIOPs membership was "considering a green type project despite the additional cost."

Mr. Bohannan also estimated that, based on a 30% reduction in construction spending from FY/09 to FY/10, the City should see in the range of $73,500,000 to $103,500,000 in construction activity in FY/10, which would translate to between 49 and 68 projects based on an average of $1,500,000 per project.

In a subsequent discussion with Mr. Bohannan regarding whether the reported 29 projects would occur in FY/10 without the proposed impact fee reductions, Mr. Bohannan stated that many would, but that there are 5 or 6 retail projects slated for the west side that will not move forward in FY/10 due to high west side impact fees. In addition, he stated that 3 or 4 office projects, including two projects in the North I-25 corridor, were "on the fence" for FY/10 because of high impact fees. Presumably the remainder of the projects reported by NAIOP membership will move forward in FY/10 with or without the impact fee reduction.

Mr. Bohannan's report summary indicates that a reduction in impact fees would greatly assist in getting projects to the construction phase, and that several members wanted to point out that project economics are so slim that any savings would help meet minimum financing qualification requirements and that all savings would be passed on to the consumer.

Assuming that 19 of the reported projects would move forward regardless of impact fees, and that 10 projects would not move forward without some reduction in impact fees, an impact fee reduction might result in an increase of some 53% in FY/10.

<u>Comment 2</u>
<u>National Association of Industrial and Office Products (NAIOP)</u>
<u>David Doyle, Chair, NAIOP Board</u>

Mr. Doyle's report on behalf of NAIOP indicated that a reduction in impact fees could create an incentive for some construction projects that had been on hold to move forward, and that it could "incentivize out-of-state companies, who had put projects on hold, to activate their Albuquerque projects." Mr. Doyle points out that every dollar saved on cost "makes a tremendous difference when looking at the marginal return from revenue against costs to repay loans and investor equity. On retail projects, some area impact fees add $6 to $8 a square foot, which pushes the rent rate to a number that just doesn't work in the market."

In this economy, developers are offering any incentive they have to close a deal, and cost is the deciding factor in any deal. *Any reduction in costs will, by necessity, be passed on to the tenant and/or client.* (emphasis added).

In addition, Mr. Doyle makes the following points:

An average 6-month construction project can have 30 or more people on site, with an additional offsite employee supporting each 4 onsite workers. <u>This translates to approximately 38 jobs supporting an average 6 month construction project.</u>

A large percentage of the 6.8 percent unemployment rate in Albuquerque is due to the lack of commercial and residential construction activity, with an average salary for construction and support jobs paying $40,000.

Any project that moves forward in the next 12 to 18 months will be an infill project in the sense that the property that will be developed will already have infrastructure, fire stations, and services in place.

The private sector builds most of the City's infrastructure, and has done so since the late 1980s. In fact, during the 1990 to 2003 period, the private sector's cost share for building water, sewer, roadway, and drainage infrastructure outpaced the City's contribution by a 2.5 to 1 ratio.

Comment 3
Home Builder's Association of Central New Mexico
Katherine Martinez

Ms. Martinez's report on behalf of the Home Builder's Association of Central New Mexico made the following points:

The HBA of CNM gathered permit projects from builders building 80% of the total homes permitted in Albuquerque FY08. Ms. Martinez states that these projections were based on additional permits that would be pulled if the impact fee reductions were passed, not homes already planned. 20% was then added to these permit totals to account for the remaining builders. Based on this methodology, the HBA of CNM predicts 1003 additional homes could be permitted if the impact fees are reduced.

Ms. Martinez then states that this estimate is significantly conservative given the projection of 2,708 potential homebuyers being "priced-in" by NAHB. The 2,708 potential homebuyers figure comes from an analysis of the effect of a 50% reduction of the $7,000 average impact fee on the ability of households to afford the average house in the Albuquerque MSA. The Albuquerque MSA includes four counties – Sandoval, Bernalillo, Valencia and Torrance counties.

Ms. Martinez states that The Metro Study reports there are 700 available new homes (completed and vacant) for the entire Albuquerque MSA, the least amount available since the 3rd Quarter of 2005. Based on the last two-year absorption rate of 1200 homes purchased, there is a 3-month supply of existing new vacant homes. New home inventory is down 39% in the last year, and down 60% from peak levels in 2006. (Metro Study-Housing Starts Here, Albuquerque Executive Summary, First Quarter 2009)

Additionally, there are 11,611 detached single family home developed lots available. This inventory will last 95 months at the current absorption rate. (Metro Study-Housing Starts Here, Albuquerque Executive Summary, First Quarter 2009) However, the number of lots available in Albuquerque is only 25% of this total. Most of these lots are not usable and this number represents the entire MSA and not Albuquerque alone.

Finally, the report indicates that Albuquerque has lost 7,700 jobs in the last 12 months with the most significant losses in the Construction Industry losing 4,500 jobs (Metro Study-Housing Starts Here, Albuquerque Executive Summary, First Quarter 2009).

Please see the attached complete reports for additional details.

Request for Rewrite of Original Fiscal Impact Analysis

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: **All City Councilors**

FROM: **Isaac Benton, Council President** IB
Debbie O'Malley, Councilor, District 2
Rey Garduño, Councilor, District 3 RGA

SUBJECT: **Fiscal Impact Analysis Request for O-09-69, O-09-70, O-09-71, and O-09-72 – Impact Fee Reduction Bills.**

CC: **Ed Adams, Chief Administrative Officer**

DATE: **August 3, 2009**

As you know, the City Council recently passed F/S R-08-176, which requires a fiscal impact analysis for Ordinances, Resolutions, Executive Communications and Other Communications considered by the City Council. That Resolution also provides that a more detailed Economic Impact Analysis (EIA) must be prepared for ordinances and resolutions that that have a regulatory impact on persons or businesses or an economic impact on members of the community.

Section B(3) of F/S R-08-176 states: "3. Following receipt of the letter of introduction any Councilor may request a copy of any item together with the accompanying EIA or FIA. *For any proposed Council action that is accompanied by an FIA any Councilor may request that an EIA be prepared or that an EIA or FIA be rewritten to provide greater information.* To the extent possible the Councilor shall explain the deficiencies if any in the EIA or FIA. The request shall be honored for any such request made after introduction up until the end of the first Council Committee meeting where the proposed Council action is considered. *Following the end of the first Council Committee where the Council action is considered, until final Council action on the matter by the full City Council, it shall take a request from three Councilors to impose a requirement for the preparation of an EIA or to request a rewrite of an EIA or FIA.*"

A Fiscal Impact Analysis was submitted to the City Council along with each of the bills referenced above; however, those analyses contained mathematical errors, were unclear on the potential fiscal impact to the City in terms of lost impact fee revenue, incorrectly assumed that the total number of building permits issued by the City represented the number of building permits that would be generated as a result of the reduction in impact fees, did not provide an estimate of the number of building permits issued as a result of the incentive created by the impact fee reduction (the estimated number of new residential and commercial building permits issued solely as a result of the reduction), and did not address the potential economic impact to builders and homebuyers. As such, we request a rewrite of the Fiscal Impact Analysis for each of these bills which addresses, at a minimum, the following:

- An estimate of the increase in the number of **residential** building permits that will be issued by the City month by month during the term of the reductions *based solely on the proposed reductions in impact fees.* This estimate should break out the number of Green Path (100% waiver) building permits and non-Green Path (50% waiver) building permits. The estimate should be at least partially based on the experience of other communities similar in nature to Albuquerque that have reduced impact fees.

- An estimate of the increase in the number of **commercial** building permits that will be issued by the City month by month during the term of the reductions *based solely on the proposed reductions in impact fees.* This estimate should break out the number of Green Path (100% waiver) building permits and non-Green Path (50% waiver) building permits. The estimate should be at least partially based on the experience of other communities similar in nature to Albuquerque that have reduced impact fees.

- An estimate of the fiscal impact to the City based on the gross receipt and property tax revenue gains *solely from the increased number of residential and commercial permits issued as a result of the proposed reductions* versus impact fee revenue lost as a result of the proposed reductions. Please include an estimate of the number of reduced fee permits that must be issued to reach breakeven.

- A table showing impact fee waivers to date and estimated additional impact fee waivers as a result of the proposed impact fee reduction bills.

- A plan, including the estimated amounts required and funding sources, necessary to offset the loss of impact fee revenues as a result of the proposed reductions.

- An estimate of additional administrative costs to operate the reduced fee program.

In order to provide the Council with the type of information that they will need to carry out the City Council's fiduciary duty to protect the best interests the citizens of Albuquerque and the City's finances, we respectfully request a rewrite of the original Fiscal Impact Analysis for the above mentioned bills. As the initial Fiscal Impact Analyses were prepared by the Administration, we are formally requesting that the responsible party, in this case the Planning Department, prepare revised Fiscal Impact Analyses for O-09-69, O-09-70, O-09-71, and O-09-72, as required in F/S R-08-176.

Request for Production of an Economic Impact Analysis

CITY OF ALBUQUERQUE
CITY COUNCIL

INTEROFFICE MEMORANDUM

TO: All City Councilors

FROM: Trudy Jones, Councilor District 8 tj
Ken Sanchez, Councilor, District 1 KS
Sally Mayer, Councilor, District 7 SM

SUBJECT: Economic Impact Analysis Request for O-09-69, O-09-70, O-09-71, and O-09-72 – Impact Fee Reduction Bills.

CC: Ed Adams, Chief Administrative Officer

DATE: August 11, 2009

As you know, the City Council recently passed F/S R-08-176, which requires a fiscal impact analysis for Ordinances, Resolutions, Executive Communications and Other Communications considered by the City Council. That Resolution also provides that a more detailed Economic Impact Analysis (EIA) must be prepared for ordinances and resolutions that that have a regulatory impact on persons or businesses or an economic impact on members of the community.

Section B(3) of F/S R-08-176 states: "3. Following receipt of the letter of introduction any Councilor may request a copy of any item together with the accompanying EIA or FIA. *For any proposed Council action that is accompanied by an FIA any Councilor may request that an EIA be prepared or that an EIA or FIA be rewritten to provide greater information.* To the extent possible the Councilor shall explain the deficiencies if any in the EIA or FIA. The request shall be honored for any such request made after introduction up until the end of the first Council Committee meeting where the proposed Council action is considered. *Following the end of the first Council Committee where the Council action is considered, until final Council action on the matter by the full City Council, it shall take a request from three Councilors to impose a requirement for the preparation of an EIA or to request a rewrite of an EIA or FIA.*"

A Fiscal Impact Analysis was submitted to the City Council along with each of the bills referenced above; however, an Economic Impact Analysis of the bills was not. In order to provide the City Council with the type of information that they will need to carry out the City Council's fiduciary duty to protect the best interests the citizens of Albuquerque and the City's finances, we respectfully request the drafting of an Economic Impact Analysis for the above mentioned bills.

Legal Memorandum Regarding Amendments to the Impact Fee Ordinance

Interoffice Memorandum
Legal Department

TO: All City Councilors

FROM: Robert M. White, City Attorney RMWhite
Kevin J. Curran, Asst. City Attorney

DATE: July 8, 2009

SUBJECT: Legal Opinion Regarding Amendments to Impact Fee Ordinance

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You have asked for a legal opinion on whether the proposed amendments to the City's impact fee ordinances comply with New Mexico constitutional law, state statute, and City ordinances. For the reasons sets forth below, it is our opinion that the proposed amendments are consistent with state and city laws and do not violate the State or United States Constitutions.

The amendments substantively consist of temporary discounts or reductions in the amount of impact fees collected for a period of one year commencing upon the effective date of the amendments to the City's Impact Fee Ordinance. Impact fees collected on Green Path Developments are to be discounted 100%. Impact fees collected on all other developments are to be discounted by 50%. The amendments also include a provision that extends the life of existing excess credits an additional two years, from seven to nine years. The amendments apply to all four (4) impacts fee ordinances: public safety, roads, drainage, and parks and open space.

I. Discussion. Do the impact fee amendments comply with the State Development Fees Act?

Cities and counties are authorized to enact impact fee ordinances pursuant to the Development Fees Act (the "Act"), §§ 5-8-1 et seq. NMSA 1978 as amended. The Act prescribes specific procedures that must be followed for the imposition of impact fees that include land use assumptions, and the preparation of a capital improvements plan for the calculation of the fees. Impact fees must be spent to construct the capital improvement plan and the plan must be prepared by qualified professionals who substantiate the costs necessitated by and attributable to new development based on the approved land use assumptions and the capital improvements plan.

The authority for the impact fee discounts is found in § 5-8-13 of the Act. This section states:

> Municipalities and counties may spend funds from any lawful source or pay for all or a part of the capital improvements.... to reduce the amount of impact fees.

In addition, § 5-8-7 of the Act requires that ~~the fee not exceed the amount needed to serve new development~~. This section states:

> The fee shall not exceed the cost to pay for a proportionate share of the cost of system improvements.... needed to serve new development.

The discounted collection of impact fees clearly will not result in new development exceeding its share of new infrastructure, because the impact fees currently being charged are the maximum amounts that can be justified under the City's methodology and the rational relationship test as enunciated by the courts.

Section § 5-8-13 NMSA 1978 of the Act contains a second sentence that allows a developer and a municipality to agree to reduce an impact fee provided the public policy which supports the reduction is contained in the appropriate planning documents of the municipality. This provision, however, does not seem applicable to the current amendments because the amendments do not involve a contractual agreement between the City and a developer to reduce an impact fee.

Section 5-8-13 NMSA 1978 expressly authorizes cities to reduce the amount of an impact fee provided a city is prepared to construct the cost of the capital improvement for which collection of impact fees was intended. Section 5-8-13, read in conjunction with § 5-8-6, clearly authorizes cities and counties to reduce impact fees.

Accordingly, the City's impact fee amendments are authorized and consistent with the Act.

II. Discussion. Do the impact fee amendments comply with City ordinance?

Pursuant to authority contained in the Act, the City has enacted four (4) impact fee ordinances: Sections 14-19-(1-4)-12 ROA 1994. Impact fees are imposed on new development for the construction of public safety facilities, roads, drainage, and parks and open space. The ordinances intend to require new development to bear an amount not to exceed its proportionate share of the costs related to the additional facilities that are rationally related to the new development,. The express authority for the impact fee discounts is found in § 14-19-(1-4)-2(B). This section in relevant part states:

> Impact fees shall not exceed the cost to pay for a proportionate share of the cost of system improvements.... needed to serve new development.

This ordinance provision is consistent with the Act, as it also permits impact fee discounts, because the impact fees currently being charged are the maximum amounts that can be charged under the City's methodology and the rational relationship test. Accordingly, the discounted amounts will not exceed a new development's proportionate share of system improvements.

This section is also corroborated by the Report dated August 2004 prepared by the City's consultants Tindale-Oliver & Associates, Inc. titled, City of Albuquerque 2004 Roadway Facilities Impact Cost Study. The Report sets forth reasonable and equitable methodology and assumptions that are consistent with the Act for the formulation and imposition of impact fees for roadway facilities. The Report states that the net impact cost and therefore, the amount of the fee represents the *maximum impact fee that could be assessed*, however, the City has the discretion *not to assess the full impact fee cost* and may opt to discount across the board all land uses by a uniform percentage. (P. 20 Final City of Albuquerque 2004 Roadway Facilities Impact Cost Study Summary Report dated August 31, 2004).

With the imposition of the impact fees ordinances on July 1, 2005, the City Council exercised its discretion in this regard and discounted impact fees 66% for the first six months and 33% for the next 12 months. § 14-19-2-12(I). The current impact fee amendments are consistent with the previous legislative discounts and conform with the adopted direction given by the City's qualified professionals who formulated the methodology used to calculate the fees.

III. <u>Discussion. Do the impact fee amendments comply with New Mexico constitutional provisions?</u>

A. The Prohibitions on Debt Reduction (Article IV Section 32 of the New Mexico Constitution).

This provision in relevant part prevents a city from forgiving or reclaiming a debt owed the city. The relevant language provides:

> "No obligation or liability of any person, association or corporation ... owing to ... any municipal corporation...shall ever be exchanged, transferred, remitted, released, postponed ... nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury ...."

The goal of the clause is to "prevent public officials from releasing debts justly owed to the state and to discourage collusion between public officials and private citizens." N.M. Att'y Gen. Op. No. 69-69 (1969).

In the present case, the constitutionality of the amendments hinges on a determination of the action that creates the "obligation or liability" and the amount of that debt when it is created. Under the proposed amendments, the proportional cost of new development remains unchanged, representing the maximum assessment that can be imposed on new development. However, that potential maximum assessment is being discounted fully for green development and in half for other development. Under the state statute an "impact fee" is defined as "a charge or assessment imposed" and the definition of "assessment" is "a determination of the amount of an impact fee," § 5-8-2 NMSA 1978. It is the discounted assessment that will be imposed on new development that will create a debt owed to the City. That debt amount is being fully collected and therefore Article IV Section 32 is not implicated in the proposed amendments.

The constitutional debt prohibitions apply to an existing debt and do not apply to a prospective debt that has not yet been imposed or created. See for example, *Asplund v. Alarid,* 29 N.M. 129, 219 P. 286 (1923), (Veteran's tax exemption invalidated when applied to an existing and fixed tax liability), *Gutierrez v. Gutierrez*, 99 N.M. 333, 657

P.2d 1182 (1983), (Court precluded from reducing hospital lien evidencing an existing debt owed to a public hospital).

Constitutionally the critical inquiry is whether or not previous assessments or impact fee charges are being reduced. Unquestionably this is not the case. The amendments do not seek to retroactively reduce or discount an existing impact fee liability or payment. The amendments seek to prospectively discount the amount of fees on future building permits. Therefore there can be no obligation or debt created in the constitutional sense because no building permit has been issued under the proposed amendments.

The Impact Fees Cost Schedule that is attached to each of the four impact fee ordinances represents the maximum amount of impact fees that can be substantiated under the methodology used by the City (p. 20 Tindale Report August 31, 2004.) It does not represent an immutable debt in the constitutional sense. The City is free to collect an impact fee up to, but not exceeding, the amounts shown. Pursuant to § 5-8-8 of the state Act, the fee schedule cannot be changed for four years without complying with the amendment procedure as prescribed by the Act (§§ 5-8-30 to 5-8-36.) However, nothing in the Act or the debt prohibitions of the New Mexico Constitution precludes the City from adjusting or reducing the amount of the fee collected, provided the amount of the fee does not exceed the development's proportionate share of improvements.

B. The Anti-Donation Clause (Article IX, Section 14 of the New Mexico Constitution).

The anti-donation clause, Article IX, Section 14 of the New Mexico Constitution, precludes the donation of public funds to private entities:

> "Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation..."

The forgiveness of a debt has been held to fall within this prohibition:

> "Past judicial decisions have held the clause violated whenever the state or local governments have made outright gifts of money or property, or have effectively relieved private persons and entities from obligations they would otherwise have to meet."

N.M. A.G. Op. No. 99-01(citing, *e.g., Chronis v. State ex rel. Rodriguez*, 100 N.M. 342, 670 P.2d 953 (1983) (tax credit to liquor licensees against taxes owed was an unconstitutional subsidy of the liquor industry)).

The same reasoning made above as to Article IV Section 32 is applicable to whether the anti-donation clause is violated by the proposed amendments. In this case there can be no anti-donation violation because, as discussed infra, the City will collect 100% of the discounted marginal cost of new development.

IV. <u>Impairment of Contract</u>

Pursuant to § 14-19-(1-4)-20 of the City's Impact Fee Ordinances, and § 5-8-15 of the state Act, the City is authorized to issue impact fee credits to developers that construct system improvements as identified on the City's Component Capital Improvement Plan ("CCIP"). If the cost of the construction of the system improvements exceeds the cost of impact fees due, the developer is entitled to receive excess credits. Excess credits are freely transferable within the respective service areas and may be sold, used or redeemed by the City within seven years after issuance.

If the impact fee amendments allow for reduced fee payments, the holders of excess credits will not have as large a demand for the selling of the excess credits. The holders of the excess credits may argue that their excess credits have a reduced value due to the reduced demand, (at least for the time period that the discounts are in place.)

The legal issue is whether the City can enter into agreements that encourage the construction of CCIP projects that result in the issuance of excess credits and then legislatively reduce the value of the excess credits.

This argument presupposes the impact fee amendment will reduce the value of the credits. Other than anecdotal information, no data has been presented in support of this premise. It is doubtful that damages pursuant to any impairment of contract claim could be shown until the life of the excess credits had expired. Additionally, holders of the excess credits are charged with the knowledge that, by law, impact fee obligations may be imposed at less than the maximum amount.

In order to address any potential claims for breach of contract, impairment of contract rights, or for a taking without just compensation, the impact fee amendments include a provision that extends the life of excess credits for the affected holders two additional years. In the event the credit holders still wished to bring claims against the City, the City could take any one of at least three options: 1) the City could agree to extend the life of the excess credits an additional period of time; 2) the City could agree to purchase or redeem the excess credits as provided in § 14-19-(1-4)-20(J)(7)(c); or 3) the City could litigate the issue. Therefore, the amendments as proposed are not facially defective. Claims would have to be analyzed on a case by case basis.

Rewritten
Fiscal Impact Analysis

City of Albuquerque
Office of the Mayor

Martin J. Chávez, Mayor

Interoffice Memorandum **Date:** August 12, 2009

To: President Isaac Benton, Albuquerque City Council
Debbie O'Malley, Councilor, District 2
Rey Garduño, Councilor, District 6

From: Ed Adams, P.E., Chief Administrative Officer

Subject: Fiscal Impact Analysis for O-09-69, O-09-70, O-09-71 and O-09-72 – Impact Fee Reduction Bills

Attached is the Fiscal Impact Analysis of the legislation amending the above referenced ordinances related to Impact Fees. The analysis was prepared with information available from City records, the NAIOP and national publications as well as input and suggestions from council staff.

In order to provide a concise report, there were a number of assumptions made. First, an average of $5 thousand was used for the cost of the impact fee for residential citywide. The Fiscal Year 2009 level of 436 in new housing permits is used as the base with the recent level of 20% being green path. Finally, for commercial building, the proportion of revenue generated to impact fees of a 20 thousand square foot building is used as a base with the estimated impact fees for the upcoming year assumed to be 20% of FY/09 at $696 thousand.

As reflected in the report revenues generated from the construction of a house exceed the average impact fee cost of $5 thousand for both green path and traditional. The report takes these assumptions and provides scenarios for a 20%, 30% or 40% increase as well as a break even point. The report also provides a scenario with a 50% migration to green path due to the added incentive. For commercial building, revenues also exceed the cost of impact fees. Scenarios for commercial building increases of 20%, 30%, 40% or 50% are provided as well as 10%, 20% and 30% migration to green path.

Also reflected in the analysis is the impact the economic downturn has had on the construction industry. The Albuquerque MSA has lost 4,800 construction jobs within the last year, single family housing permits have fallen from 4,331 in Fiscal Year 2006 to 436 in Fiscal Year 2009 and the value of new construction has fallen 50%. Albuquerque continues to grow with an average growth of 1.8% from the 2000 census to Fiscal Year 2009 while housing stock has only grown by 1.44% indicating there is a pent up demand for housing.

I hope this provides the Council with information needed to make decisions on the above referenced legislation. My staff is also available to discuss the report if needed. Thank you.

cc: All City Councilors

Fiscal Impacts of Impact Fee Reductions

Current Economic Environment in Albuquerque. In Albuquerque, the economic downturn has been particularly focused on the construction industry. Within one year March 2008 to March 2009, this sector of the economy lost approximately 4,800 construction jobs, with an average wage $42,000/job. Total job losses in the Albuquerque metro area were 13,000. The unemployment rate for June 2009 was 6.8% up from the June 2008 level of 4.1%. Total economic loss exceeds wages and salaries from lost jobs, with fewer hours worked and downward pressure on wages. It also doesn't include proprietors or corporate incomes, which also are down.

Residential. Building permits for single family homes fell from 4,331 in Fiscal Year 2006 to 436 in Fiscal Year 2009. In FY/09 new single family construction was about the same in July to December 2008 (215 permits) and January to June 2009 (221 permits). Part of the reason for this is the first time buyer's tax credit of $8,000. The value of new construction in FY/09 declined 50% from FY/08: Single Family down 65%, public down 41%, private commercial down 35%, and multi family down 59%. The revenue for impact fees was down 73%.

Fiscal Year 2009 permits	
NE	31
NW	217
SE	74
SW	114
Total	436

Commercial. New commercial construction (multi-family, public and private) slowed substantially during the year. The second half of the year was 46% below the first half, meaning the trend for commercial is continuing down. This trend will yield a substantial reduction in construction in FY/10. In FY/09, there was about one million square feet of new commercial construction that was subject to impact fees, not including Westside public schools, projects at Mesa Del Sol, and projects in MRAs. Commercial construction has substantial impacts with somewhat higher values per square foot, a larger multiplier for indirect and induced affects, and larger project sizes. The commercial projects in FY/09 were much more heavily weighted toward the NE quadrant of the City and potentially lower impact fees.

FY/09 Commercial Building Permits by Quadrant

QD	Permits	Valuation	SQFt
NE	40	56,976,324	524,774
NW	24	32,022,376	285,610
SE	14	10,936,793	118,907
SW	10	13,406,226	177,503
Grand Total	88	113,341,719	1,106,794

Analysis of Impact Fee Reduction. The reduction of impact fees is expected to last for one year and will provide a reduction of 50% for standard or traditional building and 100% for green or green path construction. In FY/09 $3 million of impact fees of were collected, down from $11.4 million in FY/08. Given the state of the construction industry, it is unlikely that, without some additional stimulus, there would be much if any increase in construction in the upcoming year.

The impact fee reductions will help on the margin to increase construction, and particularly with improving the financing decision for lenders. In many respects, the impact of this legislation is to stimulate local lenders. From an employment standpoint, the scenarios below could generate from 300 to 1,000 additional jobs in Albuquerque area.

There isn't any direct cost to the program. The reductions do not need to be paid back as is the case with waivers of impact fees. For a single family house, or commercial project the collections of GRT, building permits, and one year of property tax in most cases exceed the entire impact fee. The impact fee program since inception has collected $26.5 million.

Impacts of Single Family Impact Fee Reduction

Green at 20 % of single family permits

	permits	20% green	80% Traditional	Total Impact Fee	Paid Green	Paid Traditional(1/2)	Reduced Fees Incremental	Total	Other Revenue	Net Cost
Base Next Year	436	87	349	2,180,000	0	872,000	1,308,000	1,308,000		1,308,000
Added 20%	87	17	70	436,000	0	174,400	261,600	1,569,600	591,032	978,568
Added 30%	131	26	105	655,000	0	262,000	393,000	1,701,000	887,904	813,096
Added 40%	174	35	140	872,000	0	348,800	523,200	1,831,200	1,182,065	649,135
Number Added homes to Breakeven	346	69	277	1,730,000	0	692,000	1,038,000	2,346,000	2,345,152	848

Scenario with green constuction shifting to 50% of single family permits

	permits	50% green	50% Traditional	Total Impact Fee	Paid Green	Paid Traditional(1/2)	Reduced Fees Incremental	Total	Other Revenue	Total Cost
Base Next Year (assume 20% green)	436	87	349	2,180,000	0	872,000	1,308,000	1,308,000		1,308,000
Added 20%	87	44	44	436,000	0	109,000	327,000	1,635,000	591,032	1,043,968
Added 30%	131	66	66	655,000	0	163,750	491,250	1,799,250	887,904	911,346
Added 40%	174	87	87	872,000	0	218,000	654,000	1,962,000	1,182,065	779,935
Number Added homes to Breakeven	432	216	216	2,160,000	0	540,000	1,620,000	2,928,000	2,928,051	(51)

Impacts from one "average $160,000 home"

	Green	Traditional	Other governments Tax Revenues
Average impact Fee	5,000	5,000	
Fee Reduction	(5,000)	(2,500)	
GRT from construction	3,633	3,633	10,919
Multiplier	1.46	1.46	
GRT From indirect jobs	836	836	2,511
permit revenue	1,658	1,658	
property tax	650	650	3,071
Total Revenue	6,778	6,778	16,501
Net Impact	1,778	4,278	16,501

The Impacts of Commercial Development of Impact Fee Reduction
Example for a 20,000 square ft building

	office space	Retail	Industrial
Impact Fee Range			
Minimum	1,994	9,096	2,228
Maximum	102,278	94,952	73,531
Impacts per square ft			
Hard Costs (sf)	120	90	80
Soft Costs (sf)	18	14	12
Site Development (sf)	8	10	6
Total Cost for 20,000 square ft			
Hard Costs	2,400,000	1,800,000	1,600,000
Soft Costs	360,000	280,000	240,000
Site Development (sf)	160,000	200,000	120,000
Total Costs	2,920,000	2,280,000	1,960,000
City GRT Rate	0.022706	0.022706	0.022706
City GRT	66,301.52	51,769.68	44,503.76
Multiplier	1.598116	1.598116	1.488831
GRT on indirect & induced*	23,793.60	18,578.56	13,052.89
Total GRT	90,095.12	70,348.24	57,556.65
Building&Plan Check	15,513	11,727	10,465
Other Inspections (mechanical & Electrical)	4,899	3,703	3,305
Building Permit (total)	20,412	15,430	13,770
One year property tax** 11.52	11,213	8,755	7,526
Total Revenue to City	121,720	94,534	78,853
Max impact fee waiver of 50%	(51,139)	(47,476)	(36,766)
Net Impact	**70,581**	**47,058**	**42,088**
Effects to State, County APS etc			
GRT other Governments	**270,778**	**211,429**	**172,984**
Property Tax	**50,177**	**39,180**	**33,681**
Potential Jobs			
Direct	**49**	**37**	**27**
Indirect	**19**	**15**	**11**

*60% taxable

** taxable value 1/3 of total costs

To get an estimate of the permit values (construction costs) the ratio of the middle of impact fee to total cost in the previous table was used: an average of 2%. This is a middle range estimate of the construction cost associated with impact fee projects.

Estimated Revenues Associated with Impact Fee Projects

Increase above the base	Est. Construction Cost	GRT Direct	GRT Indirect	Building permits	Property Tax	Total Revenues
20%	6,960,000	158,034	56,714	36,976	26,726	278,450
30%	10,440,000	237,051	85,070	55,465	40,090	417,675
40%	13,920,000	316,068	113,427	73,953	53,453	556,900
50%	17,400,000	395,084	141,784	92,441	66,816	696,125

The base is expected to be 20% below the FY/09 estimated impact fee collection of $870,000. The following table shows the impact fee reduction associated with increases of 20% to 50% above the base and assumptions of 0 to 30% green path production.

Total Reduction in Impact fees

	Impact Fee	Green Path Proportion 0%	10%	20%	30%
FY/09 impact Fee	870,000				
Base 20% reduction	696,000	348,000	382,800	417,600	452,400
Increases					
20%	139,200	69,600	76,560	83,520	90,480
30%	208,800	104,400	114,840	125,280	135,720
40%	278,400	139,200	153,120	167,040	180,960
50%	348,000	174,000	191,400	208,800	226,200
		Total Fee Reduction (including the base)			
20%		417,600	459,360	501,120	542,880
30%		452,400	497,640	542,880	588,120
40%		487,200	535,920	584,640	633,360
50%		522,000	574,200	626,400	678,600

The revenues from fees and taxes are larger than the reductions, as in 20,000 square foot presentation. The cost for the expected fees from the base requires a larger increase. The revenues associated with some of the reductions coming from areas not at the maximum, show that it is possible to cover the costs at a much lower increase.

Total Fee Reduction - Total Revenue

	Green Path Proportion 0%	10%	20%	30%
20%	139,150	180,910	222,670	264,430
30%	34,725	79,965	125,205	170,445
40%	(69,700)	(20,980)	27,740	76,460
50%	(174,125)	(121,925)	(69,725)	(17,525)

Additional Information

Impact Fees Collected throughFY/09

	FY2006	FY2007	FY2008	FY2009	Grand Total
parks	882,377	2,447,071	2,370,427	826,508	6,526,382
Public Safety	412,707	904,580	1,084,715	339,117	2,741,120
Storm Drain	524,763	1,032,782	1,816,297	396,233	3,770,075
Streets	1,972,102	3,826,228	6,138,537	1,489,224	13,426,091
Grand Total	3,791,949	8,210,661	11,409,977	3,051,082	26,463,668

Value of Building Permits Issued in the City of Albuquerque

FY	Single Family	Multi-Family	Commercial Permits	Public Permits	All New	Additions Repairs	Total Value	Impact Fee Collection
05	720,890,242	25,206,921	113,672,827	58,844,052	918,614,042	166,695,983	1,085,310,025	
06	727,901,540	24,964,567	207,314,744	40,115,000	1,000,295,851	144,472,185	1,144,768,036	3,791,949
07	454,687,983	98,679,107	160,451,075	58,360,066	772,178,231	220,793,218	992,971,449	8,210,661
08	222,025,246	41,438,583	206,571,308	84,293,230	554,328,367	208,612,532	762,940,899	11,409,977
09	77,415,292	17,030,477	133,844,207	49,637,703	277,927,679	225,597,308	503,524,987	3,051,082

Rates of Change

06	1%	-1%	82%	-32%	9%	-13%	5%	
07	-38%	295%	-23%	45%	-23%	53%	-13%	117%
08	-51%	-58%	29%	44%	-28%	-6%	-23%	39%
09	-65%	-59%	-35%	-41%	-50%	8%	-34%	-73%

Number of Building Permits Issued in the City of Albuquerque

FY	Single Family	Multi-Family No. of Units	Commercial Permits	Public Permits
05	4,967	470	131	16
06	4,331	269	144	8
07	2,448	1,078	112	6
08	1,212	590	121	11
09	436	181	113	17

Rates of Change

06	-13%	-43%	10%	-50%
07	-43%	301%	-22%	-25%
08	-50%	-45%	8%	83%
09	-64%	-69%	-7%	55%

Impact fees were phased in FY/08 and FY/09 were the only years with full fee collection

Population growth and housing

The growth in single family housing in Albuquerque was very large in the period 2001 to 2007, but was not that large compared to population estimates from BBER.

	Housing Stock				Additions (Permits)	
	Total	single Family	Multi family	households	SF	Multi
2000 census	198,714	126,643	63,285	184,601		
2001	194,487	130,436	64,051	186,591	3,793	766
2002	199,532	134,479	65,053	190,682	4,043	1,002
2003	204,894	139,348	65,546	194,291	4,869	493
2004	210,940	144,394	66,546	198,624	5,046	1,000
2005	216,377	149,361	67,016	203,087	4,967	470
2006	220,977	153,692	67,285	207,535	4,331	269
2007	223,545	156,140	67,405	211,228	2,448	120
2008	225,350	157,355	67,995	213,934	1,215	590
2009	225,966	157,790	68,176	216,715	435	181
Average growth	1.44%	2.47%	0.83%	1.80%		

If you include the slow growth that occurred in multifamily construction, the total housing stock grew slower than the estimated population. Single family construction boomed and the single family share of the market increased from about 64% of the stock to 70%.

The growth in population of 1.8% annual is large for Albuquerque and the average long term is probably 1.5%. To meet this population we would need 2,367 single family homes annually. The construction over the last two years has been well below this, so the demand for housing should be strong.

Information on Job creation for Single Family Construction

The job impacts of the above scenarios are

	Number of homes (added)	Direct Construction	Indirect & Induced	Total Jobs
Base FY/09	435	927	343	1269
20%	87	185	69	254
30%	131	279	103	382
40%	174	371	137	508
Breakeven	372	792	293	1086

Comment 1

National Association of Industrial and Office Products (NAIOP)

Ron Bohannan, Boardmember

Zaman, Jon K.

From: Lynne Andersen [lynne@naiopnm.org]
Sent: Thursday, August 13, 2009 4:05 PM
To: Zaman, Jon K.; Blair, Jacques B.
Cc: David Doyle
Subject: Report from Ron Bohannan for NAIOP

Jon & Jacques

We have polled our membership which includes developers, owners, architects, engineers and contractors, and which touches, we believe, about 90 percent of the commercial development community in the area. We received numerous responses which I tallied and, from which, I extrapolated an estimate of the total number of projects that we expect to see over the next fiscal year, or the life of the proposed impact fee moratorium. Due to the sensitive nature of commercial development, we are not attaching any names to the developments. Based on this information and other data, I will offer a way for you to reach into the building permit process to calculate a total value and then be able to translate to actual construction jobs for those projects.

Summary of Projects

We broke up the projects into Office, Retail, and Industrial Categories. Health, government and religious type buildings were put into the Office category. Our membership indicated that approximately 29 projects are anticipated that could be identified. We did not hear from all of our membership, so we will increase the response by a factor of 50 percent which indicates that a low number of projects would be around 49 to 50. We also were able to pull the permits for the fiscal years of 2008 and 2009 (ending July 31) and found a drop of 32 percent, from 147 in '08 to 101 in '09 (We suggest that you verify this data). We think that same percentage drop could be used as a high value, so we estimate approximately 68 projects for the coming year. In summary, we believe the range in commercial projects will be a low of 49 to a high of 68 fiscal year 2010.

The break-out of projects includes the following for the Office Category: 4 office, 2 health, 2 government, and 3 churches, for a total of 11 permits. In the Retail Category, our membership identified 12 potential projects, and 6 projects in the Industrial Category. Approximately 30 percent of the members indicated they were considering a green type project despite the additional cost. All mentioned that reduction of impacts would aid in securing the project but was not the sole reason that a project would move forward. Still the single most important factor mentioned was obtaining reasonable financing for construction, which is directly related to the total cost of the project, including impact fees.

Construction Value Estimate

In 2005, there were 126 commercial building permits pulled for new commercial buildings. We valued those at $198,000,000, or averaging $1,500,000 per project. We can anticipate that the City could expect a range of $73,500,000 to $103,500,000 based upon the anticipated 49 to 68 projects that we estimate. In 2005, the State of New Mexico's total output for the three Project Categories was $1,022,000,000, creating 23,746 jobs and an average of $43,038.82 dollars of construction per job. In 2007, that value had dropped to $659,100,000 with 14,604 jobs and $45,131.00 dollars of construction per job (note the increasing in project proficiency). Using the higher of the two figures and the high of construction, we can estimate that the industry will create approximately 2,293 jobs.

Apartment or Senior Housing

We are currently seeing several projects for multifamily being considered, but again none seem to have the necessary requisite financing to be considered for the next fiscal year. One project located on the west side was cancelled due specifically to impact fees. The others are looking for financing.

Report Summary

Many of the members indicated that a reduction in impact fees would greatly assist in getting projects to the construction phase. Many were transitioning to green buildings and were weighing the additional cost of the green construction against the return period for the project (if you have a lease for 5 years you have a lower rate of return than if it was 30 years). Lower impact fees would make that return on investment more financially attractive and more immediate. The number of permanent employees is very difficult to estimate at this time, but we are still working with our membership to try and quantify that number.

Several members wanted to point out that the project economics are so slim that any savings help meet the minimum financial requirements and that all savings were being passed on to the consumer.

The home builders will be submitting their analysis in the morning. They unfortunately had problems meeting the evening deadline but it will be in your in box in the morning. If you have any questions please feel free to contact me at the numbers listed below or my cell phone at 238-5385.

Thanks

Ronald R. Bohannan
5571 Midway Park Place
Albuquerque, NM 87109
505-858-3100 ext 203
800-245-3102

Comment 2

National Association of Industrial and Office Products (NAIOP)
David Doyle, Chairman

Enterprise Builders
CORPORATION
General Contractor License • #29031

August 16, 2009

As you probably know, private development and non-residential construction in Albuquerque is virtually non-existent. The direct impact on the city from construction jobs is a big number. The average 6-month construction job can have an average of 30 or more people on site. These workers are supported by offsite personal such as project managers, accounting staff, etc., or an average of 1 offsite staff person per 4 on onsite workers. All of these jobs have an average salary of about $40,000.00 per year. A large percentage of the 6.8 percent unemployment in Albuquerque is due the lack of construction, both residential and non residential. The City is negatively impacted by the loss of gross receipts tax on the direct costs of construction, the permit fees, and the taxes on the consumer dollars spent by these employed construction workers and so on.

We are not naïve enough to think that not having impact fees is going to bring back all of our lost jobs, and construction will be booming again as it was in the past few years. But, we do believe that it could create an incentive for some construction projects that have been on hold to move forward. It could incentivize out-of-state companies, who had put projects on hold, to activate their Albuquerque projects. It could also help local, small businesses, including the mom and pop restaurant which couldn't afford $15,000 in impact fees, to finally expand into a retail center. And, reduction of the impact fee in the developer's project costs will make it easier to qualify for a loan to finance the project.

Some of our member bankers noted the following:

- It is extremely difficult to fund both equity and debt for new construction from the perspective of a return on costs. Many projects are on hold due to the correct perception that values are dropping due to slower sales for homes, and declining rents in the case of commercial properties.
- Every dollar saved on cost, as would be the case with an impact fee moratorium, makes a tremendous difference when looking at the marginal return from revenue against costs to repay loans and investor equity.
- Without some relief on costs, many projects will remain on hold, further exacerbating unemployment figures, shrinking public revenues, and increased costs for social services.

On a retail projects, some area impact fees add 6 to 8 dollars a square foot, which pushes the rent rate to a number that just doesn't work in the market. With the impact fees removed, the office building or small shop can be leased at a market or below market rate. There has been concern that developers would simply pocket any impact fee reductions and keep them as profit from a project that would have been built anyway. Frankly, in this economy, developers are offering any incentive they have to close a deal. Developers and property owners are not in control in this market, and cost is the deciding factor in any deal. Any reduction in costs will, by necessity, be passed on to the tenant and/or client, and reduced impact fees may well be the reason that the project becomes a reality. The fact that there are almost no projects in the pipeline is proof of this statement.

In my opinion, any projects that move forward in the next 12 to 18 months will be infill projects. Let me clarify; not necessarily the downtown or urban infill that you typically think of but infill of property that already has the infrastructure, fire stations, and services in place, and could be located on the Westside, the North I-25 corridor or in other parts of the City.

In addition, the fact that impact fees would be reduced 100% for LEED SILVER OR GOLD construction offers a further benefit to both clients and to the City. It's a simple fact that the upgrades in LEED SILVER OR GOLD construction cost money, and it is also a fact that there is a return on this investment in terms of reduced operating costs. The problem is that often that return can take many years, often a time frame that is beyond the typical lease term (10 years) for a tenant, making it difficult to spend the additional dollars when the payback in lower operating costs are not recouped in a short time. With the reduction in impact fees, the over-all cost to a client to go green is significantly reduced, essentially helping tenants and building owners to make the decision to build a sustainable LEED SILVER OR GOLD project. **The return on investment time can be cut in half, depending on the level of LEED. The result is a greater opportunity to promote sustainable buildings while supporting the overall economy. The City, with this legislation, is helping to build a sustainable built environment.**

The following statistics, and answers to some of the questions we have been asked, may help you to see how the dollars and cents work in our industry. We think that reduced impact fee dollars will be made up for in several ways including consumer taxes, property taxes on new development, better (Greener) construction due to the incentive, putting tenants in buildings who may not have been able to afford it prior to this. Plus, there is the potential of new economic development with the message that **Albuquerque** is a progressive city doing what needs to be done to create jobs and stimulate its economy.

In 2005,
New Office, Industrial, Warehouse and Retail Buildings Development/Construction generated a total (**for the state of New Mexico**) of $1,022,000,000 in direct spending and $2,052,000,000 in total output, and supported 23,746 jobs.
In 2007,
New Buildings generated $659,100,000 in direct spending and $1,311,700,000 in total output with 14,604 jobs.
A 35% decrease in direct spending; a 36% decrease in total output; a loss of 9,142 jobs.

****Source:*** *Dr. Stephen Fuller, Dwight Schar Faculty Chair, Director of the Center for Regional Analysis, George Mason University, Virginia, for NAIOP Foundation. Data provides soft costs, site development, tenant improvements and construction costs.*

In 2005, in Bernalillo County
$300 million was added to the local economy from construction and operation of retail, industrial and office space. Gross receipts tax was approximately $10 to $12 million from direct outlays.
****Source:*** *UNM Andersen School of Management "Office, Industrial & Retail Real Estate Construction: An Economic Impact Study of Bernalillo County*

Since the impact fees were adopted in 2004, there has only been $16,000,000 collected in impact fees (and less than $2,000,000 spent.) Compare that to the amount of gross receipts taxes generated in just one year of real estate construction in a normal economy (i.e. $10 to $12 million, just from direct outlays).

In fiscal year 2008, there were 147 commercial permits pulled. In fiscal year 2009, 101 or a 32% decrease. Most of these were small projects and did not generate substantial impact fees. **A one year impact fee reduction will not seriously impact the city's coffers (since they are not collecting a substantial amount of impact fees anyway), and could actually positively affect the Gross Receipts added to the general fund...not to mention the economic benefits derived from more jobs.**

There has been some misinformation being disseminated about the fact that a reduction would cause city taxpayers to assume the burden of new infrastructure costs. Aside from the fact, that the one-year reduction would not adversely affect the CCIP, the private sector builds most of the city's infrastructure, and has done so since the late 1980's. In 1999, City staff confirmed that for, new construction, the **private sector pays close to 2/3 of the total costs for roads**. In fact, figures provided by City Engineer, CIP, and Public Works staff revealed that the private sector's cost share for **building water, sewer, roadway, and drainage infrastructure outpaced the city's contribution by a 2.5 to 1 ratio** during the 1990 to 2003 timeframe. Based on recent experience, it is anticipated that the private sector cost share will continue to expand.

Even if impact fees are reduced, the **private sector will continue to build infrastructure** simply because they will have to do so to complete their projects since the City does not have the funds to do so. AND, exactions are NOT going away for off-site improvements, nor have they for the full time that the impact fees have been in place. 2 examples: A small retail development on the Westside paid impact fees in 6 figures and then an additional $800,000 in off-site improvements. An infill project in the University area paid 5 figures in impact fees and still had to rebuild streets, alleys and upgrade sewer and water services.

Developers know they will still have to build infrastructure if they want to complete projects.

In short, no impact fee reduction means more of the same...declining property values, higher unemployment, lower city and state revenues.

Will an impact fee reduction fix all of these situations? No. But it will help stimulate the industry, and some developments will make the jump instead of sitting on the fence. It will start the economic ball rolling, stimulating renewed confidence in the city's support for retaining existing jobs and creating new ones.

Sincerely,

Dave Doyle, President of Enterprise Builders
2008-9 NAIOP Chairman

Cc: file

Comment 3

Home Builder's Association of Central New Mexico
Katherine Martinez,
Government Affairs Director

Impact Fee Fiscal Impact Study
Homebuilders Association of Central New Mexico

Reducing Impact Fees Can Affect Affordability

Nationally, for every $1,000 increase in the price of a home 246,021 families are priced out of home ownership. Based on information provided by the National Association of Home Builders (NAHB).

The issue of house price changes and their impact on affordability arises in a number of contexts, such as when considering policies that impose fees on new construction. A relatively straightforward approach often used by NAHB to analyze this situation is based on mortgage underwriting standards. Under those standards, it is relatively easy to calculate the number of households that can qualify for a mortgage before an increase in a representative home price, but not afterwards. The difference is the number of households that are 'priced out' of the market for a representative home.

Standards to qualify for a mortgage are typically expressed as a fraction of prospective buyers' income. One common standard is based on what the industry calls a "front end ratio"—the percentage of income that would be consumed by paying principal and in interest on the mortgage, as well as property taxes and property insurance. The front-end ratio can easily be computed for a set of assumptions about the mortgage and household income.

The assumptions NAHB typically uses in "priced-out" computations are a down payment equal to 10 percent of the purchase price and a 30-year fixed rate mortgage. For a loan with this down payment, lenders would typically require mortgage insurance, so NAHB also assumes an annual premium of 45 basis points for private mortgage insurance. Local information about property taxes and property insurance per dollar of home value can be computed from the Census Bureau's most recent (2007) American Community Survey (ACS) data.

Based on these NAHB assumptions for "priced out" families, the HBA of CNM had the National Association produce the number of families that would show the opposite. That is, to show the number of families that could be "**priced in**" to the market, or qualified, as a result of a reduction in impact fees. The following information was used to produce the "priced in" number. *The impact of reducing the impact fees for families that would not qualify for a home otherwise is significant.*

- The median new home price in Albuquerque is $215,959 (see "<u>New Home Prices by State and Metro Areas</u>").
- The average impact fee for a 2,000 sq. ft. home on the North West Mesa is $7,000. Typically this fee is increased by 11% due to bank fees, closing costs and gross receipts.

- If the price declines by $7,770 for Green Path permits ($7,000+11%) 5,417 additional households will be able to afford a new home.
- If the price decline is only half of that ($3,885 for all other permits), then 2,708 households will be "priced-in" the market. This is a ***potential*** number.

Albuquerque, NM MSA Households that Can Afford to Buy a House When Price Declines

Area	Mortgage Rate	House Price	Monthly Mortgage Payment	Taxes and Insurance	Minimum Income Needed	**Households That Can Afford House**
Albuquerque, NM MSA	5.00%	$215,959	$1,097	$197	$55,459	146,359
Albuquerque, NM MSA	5.00%	$208,189	$1,058	$189	$53,464	151,776
Difference		-$7,770	-$39	-$7	-$1,995	5,417
Albuquerque, NM MSA	5.00%	$215,959	$1,097	$197	$55,459	146,359
Albuquerque, NM MSA	5.00%	$212,074	$1,078	$193	$54,461	149,067
Difference		-$3,885	-$20	-$4	-$998	2,708

Calculations assume a 10% down payment and a 45 basis point fee for private mortgage insurance.
A[illegible]sehold Qualifies for a Mortgage if Mortgage Payments, Taxes, and Insurance are 28% of Income

Albuquerque, NM MSA Household Income Distribution for 2009

Income Range:			Households	Cumulative
$0	to	$10,699	26,439	26,439
$10,700	to	$16,050	20,705	47,144
$16,051	to	$21,400	17,703	64,847
$21,401	to	$26,750	19,365	84,212
$26,751	to	$32,100	21,019	105,231
$32,101	to	$37,451	21,757	126,988
$37,452	to	$42,801	19,757	146,745
$42,802	to	$48,151	17,511	164,256
$48,152	to	$53,501	14,653	178,908
$53,502	to	$64,202	29,044	207,952
$64,203	to	$80,253	32,552	240,504
$80,254	to	$107,004	38,678	279,182
$107,005	to	$133,755	21,447	300,630
$133,756	to	$160,506	11,007	311,637
$160,507	to	$214,009	11,230	322,867
$214,010	to	More	7,711	330,578

New Home Projections

The HBA of CNM gathered permit projects from builders building 80% of the total homes permitted in Albuquerque FY08 (Information provided by). **These projections were based on *additional* permits that would be pulled if the impact fee reductions were passed, not homes already planned.** We then added 20% to these permit totals to account for the remaining builders.

Based on this methodology, the HBA of CNM predicts ***1003 additional*** homes could be permitted if the impact fees are reduced***. (Please note that this estimate is significantly conservative given the projection of 2,708 potential homebuyers being "priced-in" by NAHB).***

Local Fiscal Impact of Building Single-Family Homes

Given this projection, the HBA of CNM used a national study produced by the NAHB, showing the local fiscal impact of new home construction, to show the benefit for every 100 homes built in the typical MSA (table on next page).

The impact of just **1003 *additional*** new homes to the Albuquerque is significant to the local economy. This would generate significant economic activity by creating jobs and income for local residents, not only by construction activity but also by the ripple effect of families living in these homes spending money in the local economy. For Albuquerque, the projected local government general revenue taxes generated for every 100 new homes being built as a result of the impact fee reduction would be:

- Each home built generates GRT (avg. construction cost average $167,000) The GRT generated by the construction of every 100 new homes:
    - City=$382,000
    - County=$114,800
    - State=$630,400
- In the first year the average homebuyer spends approximately $8,900 on items for their home producing GRT. The GRT for every 100 new homes on average:
    - City=$20,400
    - County=$6,100
    - State=$33,600

In order to fully appreciate the positive impact residential construction has on a community, it's important to include the ripple effects and the ongoing benefits. Since the NAHB model was initially developed in 1996, it has been successfully applied to construction in over 500 projects, local jurisdictions, metropolitan areas, non-metropolitan counties, and states across the country.
The NAHB model produces impacts on income and employment in 16 industries and local government, as well as detailed information about taxes and other

types of local government revenue. **This report presents estimates of the local impacts of building 100 single family units**. *(The Local Impact of Housing on a Typical Metro Area-Income Jobs and Taxes Generated, Housing Policy Department, National Association of Home Builders).*

Total One-Year Impact: Sum of Phase I and Phase II:

Local Income	Local Business Owners' Income	Local Wages and Salaries	Local Taxes[1]	Local Jobs Supported
$21,110,600	$6,272,000	$14,838,600	$2,202,700	324

Phase I: Direct and Indirect Impact of Construction Activity:

Local Income	Business Owners' Income	Local Wages and Salaries	Local Taxes[3]	Local Jobs Supported
$14,233,300	$3,996,700	$10,236,600	$1,333,000	213

Phase II: Induced (Ripple) Effect of Spending the Income and Taxes from Phase I:

Local Income	Business Owners' Income	Local Wages and Salaries	Local Taxes[1]	Local Jobs Supported
$6,877,300	$2,275,300	$4,602,000	$869,700	111

Phase III: Ongoing, Annual Effect that Occurs When New Homes are Occupied:

Local Income	Local Business Owners' Income	Local Wages and Salaries	Local Taxes[1]	Local Jobs Supported
$3,060,900	$897,900	$2,162,900	$743,300	53

Home and Lot Inventory

The Metro Study reports there are 700 available new homes (completed and vacant) for the entire Albuquerque MSA, ***the least amount available since the 3rd Quarter of 2005***. Based on the last two-year absorption rate of 1200 homes purchased, there is a 3-month supply of existing new vacant homes. New home inventory is down 39% in the last year, and down 60% from peak levels in 2006. (*Metro Study-Housing Starts Here*, Albuquerque Executive Summary, First Quarter 2009)

There are 11,611 detached single family home **developed lots** available. This inventory will last 95 months at the current absorption rate. (*Metro Study-Housing Starts Here*, Albuquerque Executive Summary, First Quarter 2009) **However, the number of lots available in Albuquerque is only 25% of this total. Most of these lots are not usable and this number represents the entire MSA and not Albuquerque alone.**

Residential Permit Decline and the Need for Stimulus

Albuquerque has lost 7,700 jobs in the last 12 months with the most significant losses in the Construction Industry losing 4,500 jobs (*Metro Study-Housing Starts Here*, Albuquerque Executive Summary, First Quarter 2009). There has been a drastic decline of permits in Albuquerque. Residential total for FY09 is 431, **down 65%** from FY08 total of 1212 (Provided by City of Albuquerque Planning Department)

Permits for 2008 and 2009

FY08	
Jul-07	298
Aug-07	168
Sep-07	73
Oct-07	82
Nov-07	77
Dec-07	68
Jan-08	64
Feb-08	107
Mar-08	94
Apr-08	60

May-08	66
Jun-08	55

FY09	
Jul-08	66
Aug-08	29
Sep-08	29
Oct-08	20
Nov-08	30
Dec-08	36
Jan-09	19
Feb-09	31
Mar-09	33
Apr-09	56
May-09	31
Jun-09	51

Impact Fee Incentive for Green Path Residential Projects

Having polled 80% of the top builders in the Albuquerque, and after objectively reviewing the statistical data, it can be determined that a percentage of the new home projections will be built to Green Path specifications that would not have without the impact fee reductions. The reductions will help to offset the costs incurred for building to these standards, and help to provide even deeper savings for the future homebuyer. Based on the response from many of the top builders, the result of this legislation will produce a more sustainable housing stock, and coupled with the New Mexico Sustainable Tax Credit and the First Time Home Buyer Tax Credit provides a real incentive for building to the highest level of green.

Residential

NM Sustainable Building Tax Credit
LEED-H SILVER
First 2,000 $6.85= $11,500 credit
Next 1,000 $3.40

Build Green NM SILVER
First 2,000 $4.50= $9,000 credit
Next 1,000 $2.00

Impact Fees
A reduction of $6,782 for a Green Path 2000 sq. ft. home

Total Incentive
(Impact Fee Reduction +NM Sustainable Building Tax Credit)
BGNM Incentive= $15,782 (9,000+6,782)
LEED Gold Incentive= $18,282 (11,500+6,782)