

**SUBDIVISION OF LAND ORDINANCE NO. 2021-02**

**AN ORDINANCE AMENDING, CONSOLIDATING, AND REPLACING  
THE COLFAX COUNTY SUBDIVISION REGULATIONS ADOPTED  
IN ORDINANCE 1997-6, AMENDED IN ORDINANCE 1999-1,  
AND FURHTER AMENDED IN ORDINANCE 2013-01**

WHEREAS, the Law of the State of New Mexico NMSA 1978, Chapter 47, Article 6 "New Mexico Subdivision Act" requires the County Commissioners of each County to adopt regulations concerning the subdivision of land; and

WHEREAS, the Colfax County Commission, following proper notice and public hearings, consider and adopted Ordinance 1997-6 (the County Subdivision Ordinance) on May 20, 1997, and filed the same with the Colfax County Clerk and New Mexico State Records Administrator, and said regulations became effective July 16, 1997; and

WHEREAS, the Colfax County Commission, following proper notice held public hearings on amending the said Colfax County Subdivision Regulations on March 2, 1999 and March 23, 1999; and adopted Amendments to Ordinance 1997-6 in Colfax County Ordinance 1999-1 on August 3, 1999, and filed the same with the Colfax County Clerk and New Mexico State Records Administrator, and said amended regulations became effective September 15, 1999; and

WHEREAS, the Colfax County Commission, following proper notice and public hearings, amended Colfax County Ordinance 1999-1 so as to bring its Subdivision Regulations into compliance with New Mexico Laws 2013, Chapter 96, Chapter 119 and Chapter 173; in Ordinance No. 2013-01; and

WHEREAS, the Colfax County Commission desires to Amend and Consolidate Ordinance 1997-6, 1999-1 and 2013-1;

NOW, THEREFORE, by virtue of the power vested in us as duly elected member of the Board of County Commissioners of Colfax County, New Mexico, under the Laws of the State of New Mexico, we do hereby approve, ratify, adopt and promulgate the attached Ordinance which replaces the Subdivision Regulations of Colfax County, NM and we hereby authorize and direct the Colfax County Clerk to file, record and publish such regulations as required by law, including without limitation with the New Mexico state records administrator.

Recording (Date - Time): 08/9/21 - 12:00:00 AM  
COLFAX COUNTY, NM - Rayetta Trujillo - County Clerk  
DOC# ORD-2021-002  
PAGE: 1 of 56

## **ARTICLE 1. GENERAL PROVISIONS**

**1.1. Title.** This ordinance shall be known and may be cited as the "Colfax County Subdivision Regulations" and shall be referred to elsewhere herein as "these Regulations".

**1.2. Authority.** These Regulations are created pursuant to the enabling authority set forth in NMSA 1978 §§47-6-1 et seq., 4-37-1 et seq., 3-20-5, 3-20-6, 3-20-9 and 3-20-9.1.

**1.3. Purpose.** These Regulations are adopted for the following purposes:

To Provide for and protect the public health, safety, and general welfare of the County;

To guide the future growth and development of the County in accordance with any official plans adopted by the County;

To provide for safety from fire, flood, and other danger;

To prevent overcrowding of the land and undue congestion of population;

To protect and conserve the value of land throughout the County and the value of buildings and improvements upon the land, and to minimize the conflicts among the uses of land and buildings;

To provide the most beneficial relationship between the uses of land and buildings and the circulation of traffic throughout the County, having particular regard to the avoidance of congestion in the streets and highways, and pedestrian traffic movements appropriate to the various uses of land and buildings; and to provide for the proper location and width of streets;

To establish reasonable standards for: an orderly description of public roads and dedication public roads; design and procedures for subdivisions and re-subdivisions in order to further the orderly layout and use of land; to ensure proper legal descriptions and monumenting of subdivided land;

To protect the environment, prevent the pollution of air, streams, and ponds;

To assure the adequacy of drainage facilities;

To safeguard the water table; and

To encourage the wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and beauty of the community and the value of the land.

**1.4. Jurisdiction.** These Regulations shall govern all subdivision of land within the County other than that land within the boundaries of municipalities. The County and a municipality shall exercise concurrent jurisdiction over the land within the platting jurisdiction of both the County and the municipality (extraterritorial boundaries).

**1.5. Written Decisions.** Whenever the Board of County Commissioners or its designee is required by these Regulations to make a decision, the decision shall be in writing sufficient for meaningful review.

**1.6. Interpretation.** The provisions of these Regulations are held to be minimum requirements. Whenever any provisions of these Regulations conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. These Regulations shall be construed broadly to promote the purposes for which they were adopted.

**ARTICLE 2. DEFINITIONS.** As used in these Regulations and the New Mexico Subdivision Act:

A. "board of county commissioners" means the governing Board of Colfax County;

B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same area of land or is known, designated or advertised as a common unit or by a common name;

C. "final plat" means a map, chart, survey, plan or re-plat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

E. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

F. "lease" means to lease or offer to lease land;

G. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

I. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it, and need not be based upon an accurate and detailed survey of the land;

J. "sell" means to sell or offer to sell land;

K. "subdivide" means to divide a surface area of land into a subdivision;

L. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

M. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period; provided that the land has been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;



(6) the division of land for grazing or farming activities; provided the land continues to be used for grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to: any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; any school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or any church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the division of a tract of land into two parcels that conform with applicable zoning ordinances; provided that a second or subsequent division of either of the two parcels within five years of the date of the division of the original tract of land shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey, and a deed if a parcel is subsequently conveyed, shall be filed with the county clerk indicating that the parcel shall be subject to the provisions of the New Mexico Subdivision Act if the parcel is further divided within five years of the date of the division of the original tract of land;

N. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

O. "time of purchase" lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

P. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

Q. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

R. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

S. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size;

T. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size."

### **ARTICLE 3. PRE-APPLICATION PROCESS**

#### **3.1. Pre-application Procedure.**

**3.1.1. Conference.** For the purpose of expediting applications and reducing subdivision design and development costs, a subdivider shall schedule an informal pre-application conference in accordance with the requirements provided herein. The pre-application conference is intended to provide general advice to the subdivider about the procedures and data requirements for subdivision review and approval in the County.

**3.1.2. Summary procedure.** All proposed subdivisions, which Qualify for approval under the summary procedure provided in Article Six of these Regulations shall begin with a pre-application conference.

**3.1.3. Scheduling.** The subdivider shall request a pre-application conference with the County Manager who will provide the conference to give the subdivider an opportunity to become acquainted with the necessary requirements for subdivision review and approval.

**3.1.4. Fee.** The fee for the pre-application conference and procedure shall be \$100.00 payable at the time of the request for the conference.

**3.1.5. Statements non-binding.** Neither the subdivider nor the County shall be bound by any statements or determinations made during the pre-application conference.

**3.2. Pre-application Data Requirements.**

**3.2.1. Sketch plan.** The subdivider shall prepare a sketch plan that shows the proposed layout of streets and lots, with estimated dimensions and other relevant site information. The location of the proposed subdivision must be adequately described on a 7-1/2 minute USGS (United States Geological Survey) map of the area.

**3.2.2. Additional Information.** In addition to the sketch plan and location map, the subdivider shall provide information including, but not limited to, the following:

- a. name and mailing address of the subdivider and designated agent, if any;
- b. name of owner or owners of land to be subdivided;
- c. a written description of the proposed subdivision;
- d. a statement of whether irrigation water rights appurtenant to the land to be subdivided have been severed;
- e. a description of surrounding land uses;
- f. accessibility of site to roads, utilities and water;
- g. a brief description of environmental impacts and authorization by the owner of the property (i.e. Fee consent statement signed and notarized);
- h. diagram showing existing development with all pertinent existing systems and structures;
- I. proposed access to the site (easement width and name of roadway);
- j. surveyor certification (signed);
- k. zone atlas page showing the subject property clearly marked;
- l. draft disclosure statement; and

m. additional Information which includes any other information which may be helpful in determining the feasibility of subdividing the tract or that which may require additional review by the County such as, but not limited to the following:

- (1) water quantity information;
- (2) water quality data;
- (3) City/County water authority water and sewer availability statement;
- (4) wastewater plan;
- (5) proposed solid waste management;
- (6) terrain management plan;
- (7) fire protection requirements;
- (8) statement of proposed development;
- (9) proposed right-of-way or easement for park, open space and trails; and
- (10) copy of "notice of decision" from any previous county action(s) (i.e. zone change, special use permit, variance request, etc.);
- (11) depiction and recognition of irrigation easements used for agricultural irrigation.

#### **ARTICLE 4. APPLICATION PROCESS.**

##### **4.1. Preliminary Plat Submittal.**

**4.1.1. Preliminary plat required.** Twenty [20] copies of the Preliminary plat shall be submitted to the County along with the Application and Application Fee for Type One, Type Two, Type Three, and Type Four subdivisions. Certain Type Three and all Type Five subdivisions are subject to review under the summary procedure set forth in Article Six of these Regulations.

**4.1.2. Application fees.** A subdivider shall submit a preliminary plat and supporting documentation in accordance with the requirements provided in these Regulations. Preliminary plat submittal is initiated by completing an application on a prescribed form available from the County Manager and upon payment of the

required application fee of \$500.00. Prior to accepting the preliminary plat, the County shall require that the subdivider furnish documentation of:

- (1) an approved sketch plat consistent with applicable county ordinances and staff requirements;
- (2) water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;
- (3) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;
- (4) the means of wastewater disposal for the subdivision;
- (5) the means of solid waste disposal for the subdivision;
- (6) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;
- (7) terrain management (drainage report) to protect against flooding, inadequate drainage and erosion; and measures to protect steep slopes over 15 percent and ridge tops;
- (8) protection for cultural properties, archaeological sites and unmarked burials that may be impacted directly by the subdivision;
- (9) if property is in a designated wildfire hazard area, means of compliance with wildfire safety provisions of this chapter;
- (10) fire protection requirements;
- (11) proof of neighborhood notification and sign posting;
- (12) appropriate number of copies of the preliminary plat and supporting documentation as determined by the County Manager (folded to approximately eight and one-half (8 1/2) inches by eleven (11) inches); and
- (13) additional information as deemed appropriate by the County upon prior notice to applicant.

**4.1.3. Plat deemed complete.** On receipt of the application, fees, preliminary plat, and supporting documentation, the County Manager or Review Committee shall review all materials to determine if the preliminary plat is ready to begin the review process. If there are no deficiencies, the preliminary plat is deemed complete for review

thirty (30) days after the date of receipt of notice to all public Agencies required to receive notice. If the preliminary plat is incomplete or does not comply with the submittal requirements provided herein, the subdivider shall be notified and be given a maximum time period of sixty (60) days to correct the deficiencies and return the preliminary plat for consideration. If the deficiencies are not timely corrected the application will be denied.

#### **4.2. Agency Review.**

**4.2.1. Plat transmittals.** Within ten (10) days after the date that the preliminary plat is deemed complete, the County Manager shall forward a copy or copies of the preliminary plat and supporting documentation to the following state and local agencies by certified mail "return receipt requested" with a request for review and opinion, as follows:

One (1) copy New Mexico Office of the State Engineer;

One (1) copy New Mexico State Environment Department;

Four (4) copies New Mexico State Highway and Transportation Department;

One (1) copy Soil and Water Conservation District in which the proposed subdivision is located; and

Any other public agency the County Manager considers necessary to determine whether there are adequate facilities to accommodate the proposed subdivision. (e.g., fire district, school district, special purpose district or authority, Office of Cultural Affairs, solid waste authorities, water districts and acequia associations, irrigation districts, conservancy districts.) These agencies will be disclosed to the subdivider at the pre-application conference.

**4.2.2. Agency response.** The state and local agencies shall have thirty (30) days from their receipt of the preliminary plat to review and return an opinion regarding the preliminary plat. The County Manager shall obtain receipts, or other proof, showing the date the opinion request was received by each state or local agency.

#### **4.2.3. Hearing deadlines.**

a. Favorable opinions. If the opinions received from all agencies are favorable, the County Manager shall schedule a public hearing for consideration and action on the preliminary plat within thirty (30) days following the receipt of such favorable opinions. If the County Manager does not receive a requested opinion within the

specified thirty (30) days, the County shall proceed with the public hearing.

b. Adverse opinions. If any opinion from a public agency is adverse, the County Manager shall forward a copy of the adverse opinion to the subdivider and request that additional information be provided to the County within thirty (30) days to respond to the concerns of the appropriate agency. The County Manager shall forward such additional information upon receipt to the appropriate agency which shall have thirty (30) days after the date the subdivider submits the additional information in order to revise its opinion. The County Manager shall obtain receipts, or other proof, showing the date the additional information was received by each state or local agency.

c. Revised opinion. The County Manager shall schedule a public hearing for consideration and action within thirty (30) days after the receipt of a revised opinion from the appropriate agency. If the County Manager does not receive a revised opinion within the specified thirty (30) days after the date the subdivider submits the additional information, the County shall proceed with the required public hearing.

#### **4.3. Public Hearings on Preliminary Plats.**

**4.3.1. Scheduling.** The County Manager shall conduct a public hearing after receipt of all requested opinions, either favorable or revised, within the time periods specified in these Regulations. Notice of the public hearing shall be given at least twenty-one (21) days before the hearing date.

**4.3.2. Notice.** The notice of public hearing shall be published in a newspaper of general circulation in Colfax County and shall contain the following information: subject of the hearing; time and place of the hearing; manner for interested persons to present their views; and place and manner for interested persons to get copies of any favorable or adverse opinion and of the subdivider's proposal.

**4.3.3. Notification.** Copies of the notice of public hearing shall be transmitted to the following: the subdivider filing the application for preliminary plat approval; those public agencies which initially received copies of the preliminary plat and supporting documentation with a request for opinion; any interested person who previously requested such notice and provided a stamped, self-addressed envelope for such purpose; and owners of property contiguous to land proposed to be subdivided.

**4.3.4. Participation and record.** At the public hearing, the Colfax County Commission shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing. A record of the public hearing shall be made. The opinions of the public agencies shall be made a part of the record.

**4.3.5. Action.** Within thirty (30) days after the public hearing, the Board of County Commissioners shall approve, approve the conditions, or disapprove the preliminary plat at a public meeting. The County Manager shall inform the subdivider in writing of the decision of the Board of County Commissioners.

**4.3.6. Approval.** Approval of a preliminary plat shall constitute approval of the proposed subdivision design and layout submitted on the preliminary plat and shall be used as a guide in the preparation of the final plat. The preliminary and final plats shall state "Final approval of the public roads does not constitute approval or acceptance or roads by the County for County maintenance. Acceptance into Colfax County road maintenance requires a separate application".

#### **4.4. Expiration of Preliminary Plat.**

**4.4.1. Expiration.** An approved or conditionally approved preliminary plat shall expire twenty-four (24) months after its approval or conditional approval.

**4.4.2. Phased development.** If the preliminary plat was approved for phased development, the subdivider may file final plats for phases of the development, and the expiration date of the preliminary plat may be extended for an additional period of time not to exceed twelve (12) months after the date of the filing of each phase final plat. The number of allowable phases shall be determined by the Board of County Commissioners at the time of the approval of the preliminary plat. Colfax County will limit the number of phases depending on the application but will not allow more than three [3] phases and will allow no more than thirty-six (36) months for completion of all phases. The County will not approve a phased development if:

a. The proposed development is less than ten [10] acres or fewer than ten [10] lots.

b. The Board of Commissioners determines the development is not in the best interest of the County or its residents.

**4.4.3. Extension.** Before the expiration date of the approved or conditionally approved preliminary plat, the subdivider may submit to the Board of County Commissioners an application for extension of the



preliminary plat for a period of time not exceeding twelve (12) additional months.

**4.4.4. Expiration effect.** The expiration of the approved or conditionally approved preliminary plat shall terminate all proceedings on the subdivision, and no final plat shall be filed without first processing a new preliminary plat.

**4.5. Preliminary Plat Data Requirements.**

**4.5.1.** At a minimum, the supporting documentation required for the preliminary plat review shall provide sufficient information for the County to determine that:

a. water is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;

b. water is of an acceptable quality for human consumption; measures are taken to protect the water supply from contamination; there is a means of liquid waste disposal for the subdivision;

c. there is a means of solid waste disposal for the subdivision;

d. there are satisfactory roads to each parcel, including entry and exit for emergency vehicles;

e. there are appropriate utility easements to each parcel;

f. terrain management protects against flooding, inadequate drainage and erosion;

g. there are protections required by the Cultural Properties Act for cultural properties, archaeological sites and unmarked burials that may be directly affected by the subdivision;

h. there are no significant adverse effects on the environment;

i. the subdivider can fulfill the proposals contained in the disclosure statement for the subdivision; and

j. the subdivision will conform with the New Mexico Subdivision Act and these Regulations.

**4.5.2. Filing specifications.** Preliminary plat maps shall be prepared at a scale of [three hundred (300) feet to one (1) inch or larger and printed on sheets no larger than eighteen by twenty-four

(18 X 24) inches. Sheets shall be numbered in sequence if more than one sheet is used.

**4.5.3. Map specifications.** The preliminary plat map shall show the following:

a. title, scale, north arrow, and date; existing topography and any grading plans, indicating contour intervals sufficient for planning purposes;

b. existing and proposed boundary lines, in bearing and distances, for the subdivision;

c. proposed lot lines, with lot and block numbers, and approximate acreage of each lot;

d. the location, dimensions, and purpose of existing and proposed easements; names and right-of-way widths of existing and proposed streets or roads on and adjacent to the subdivision;

e. existing and proposed utilities on and adjacent to the site; locations, dimensions, and purpose of any land to be dedicated to the public use, including any improvements to be made to that land;

f. location of subdivision in relation to well-known landmarks;

g. location of archaeological, historical, or culturally significant features on the site;

h. delineation, if applicable, of any 100-year flood plain as designated by the Federal Emergency Management Agency; names and addresses of the owner or owners of land to be subdivided, the subdivider, if other than the owner, and the land surveyor; and legal description indicating the range, township, and section to include a metes and bounds description within which the subdivision is located.

**4.5.4. Phased subdivisions.** Proposed subdivisions to be phased and filed in multiple final plats shall include a phasing schedule for the final plats and a schedule of improvements.

**4.5.5. Disclosure statement.** The preliminary plat shall be accompanied by a draft disclosure statement in accordance with the requirements of this Ordinance and in accordance with NMSA 1978, Section 47-6-17 (1996), as the same may from time to time be amended. A disclosure statement shall be required for all subdivisions. The purpose of the disclosure statement is to permit the prospective purchaser, lessee, or other person acquiring an interest in subdivided land to make an informed decision about the purchase, lease, or other

conveyance of the land. In addition to the minimum requirements set out in NMSA 1978 §47-6-17 (1996) as the same may be from time to time amended. The Disclosure must state how the subdivider will accomplish improvements [e.g. a trust has been set up, etc.]. The Disclosure Statement must state whether a Protective covenant is in effect. The Disclosure Statement must state **"Final approval of the public roads or acceptance of dedicated roads does not constitute approval or acceptance by the County for County maintenance. Acceptance into Colfax County road maintenance requires a separate application"**.

## **ARTICLE 5. FINAL PLAT REVIEW PROCESS**

### **5.1. Final Plat Submittal**

**5.1.1. Following approval of a preliminary plat, and before the expiration of the preliminary plat, the subdivider shall prepare a final plat in substantial conformity with the approved preliminary plat.** Proposed subdivisions to be phased in multiple final plats shall be submitted as indicated on the phasing schedule submitted with the preliminary plat.

**5.1.2. Plat deemed complete.** A subdivider shall prepare an original final plat with twelve [12] paper copies and supporting documentation in accordance with the requirements provided in these Regulations. Final plat submittal is initiated by completing an application on a prescribed form available from the County Manager who shall review all materials within thirty (30) days of submittal of the application in order to determine whether the final plat is complete. If there are no deficiencies, the final plat will be deemed complete for review. If the final plat is incomplete or does not comply with the submittal requirements provided herein, the subdivider shall be notified and will be given a maximum time period of forty (40) days to correct the deficiencies and return the final plat for consideration.

### **5.2. Decision on Final Plat**

**5.2.1. Action.** Final plats submitted to the County for approval shall be approved or disapproved by the Board of County Commissioners at a public meeting within thirty (30) days after the date the final plat is deemed complete.

**5.2.2. Denial.** The Board of County Commissioners shall not deny a final plat if it was previously approved as a preliminary plat for the proposed subdivision and it finds that the final plat is in substantial compliance with the previously approved preliminary plat. Denial of a final plat shall be accompanied by a finding identifying the requirements that have not been met.

**5.2.3. Improvement agreement.** If, at the time of approval of the final plat, any public improvements have not been completed by the subdivider as required by these Regulations, the Board of County Commissioners shall, as a condition preceding approval of the final plat, require the subdivider to enter into an agreement with the County, to thereafter complete the improvements at the subdivider's expense. This agreement shall constitute a binding contract between the subdivider and County. An improvement agreement shall not be entered with a term for completion of improvements longer than one year.

**5.2.4. If the subdivider wishes to submit the final plat for review, approval, and recording before completion of required improvements, the subdivider shall post a realistic estimate of cost for improvements guarantee in an amount approved by the County.** The guarantee shall be not less than 125 percent of the estimated cost of the required improvement. This "guarantee" may be by bond, letter or credit, escrow deposit or other method acceptable to the County.

**5.2.5. Failure to act.** If the Board of County Commissioners does not act upon a final plat within the required period of time, the subdivider shall give the Board of County Commissioners written "notice of its failure to act". If the Board of County Commissioners fails to approve or reject the final plat within thirty (30) days after "that notice", the Board of County Commissioners shall, upon demand by the subdivider, issue a certificate that the final plat has been approved.

### **5.3. Final Plat Data Requirement.**

**5.3.1. Filing specifications.** The original drawing of the final plat shall be submitted in waterproof ink or Mylar or acetate or other durable material suitable for reproducing copies. Final plat maps shall be drawn at a scale of three hundred (300) feet to one (1) inch or larger and printed on sheets no larger than eighteen by twenty-four (18 X 24) inches. When more than one sheet is used to include the entire subdivision, all sheets shall be cut to the same size and shall show appropriate references to other sheets of the subdivision. The subdivider shall also submit twelve [12] copies of the final map and accompanying information.

**5.3.2. Map specifications.** The final plat map shall include the following information.

- a. name of subdivision, scale, north arrow, and date;

b. permanent monuments, or descriptions and ties to such monuments, to which all dimensions, angles, bearings, and similar data on the plat shall be referred;

c. tract boundary lines, easement and right-of-way lines, the manner the roads in the subdivision join or connect with existing public or private roads or with proposed public or private roads, and property lines of residential lots and other sites, with accurate dimensions, bearings or deflection angels, and radii, arcs, and central angles of all curves;

d. an accurate description of legal access to, roads to, and utility easements for each parcel, and if the access or easement is based upon an agreement, the recording data in the land records for the agreement; the name, right-of-way width, and centerline data of each road or other right-of-way; location, dimensions, and purpose of all easements and dedicated public sites;

e. the number of each parcel in progression, with its dimensions, and the dimensions of all land dedicated for public use or for the use of the owners of parcels fronting on or contiguous to the land;

f. the names of owners of contiguous un-platted land;

g. delineation of any 100-year flood plain as designated by the Federal Emergency Management Agency; the name of the owner or owners of the subdivision and the developer if other than the owner;

h. the certification of the surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey;

I. a legal description indicating the range, township, section, and a metes and bounds description within which the subdivision is located;

j. drawing exchange file; all subdivisions that are submitted for final plat approval shall be submitted on a Mylar and a DFX file using the New Mexico State Plane Coordinate System and the 1983 (or most current) North American Datum;

k. and digital plat submittals are required for Planning input, and must contain a minimum of the following:

(1) Coordinate data in one of the following systems. The submittal shall disclose the coordinate system.

a. New Mexico Coordinate System NAD 83 coordinates.

b. New Mexico Coordinate System NAD 27 coordinates.

(2) Content.

a. A single drawing in model space showing only parcel and easements lines.

b. Only final plat data will be provided.

c. Parcel lines shall be in one separate layer.

d. Access easement lines and all other easements that are twenty (20) feet wide or greater shall be in a second separate layer.

e. All other easement lines shall be in a third separate layer.

(3) *File format and naming.*

a. DXF files in ASCII format. Other formats directly compatible with Arc/Info GIS may be accepted (i.e. shapeless, coverage export files).

b. Files may be transmitted as attachments to email, floppy disks, zip disks or CD-ROM.

c. One hard copy of the final shall accompany the electronic submittal.

**5.3.3. Affidavit.** The final plat shall contain an acknowledged statement that the land being subdivided is subdivided in accordance with the final plat. The affidavit shall state **"Final approval of the plat but the County shall not constitute inclusion of the subdivision roads on the County's road maintenance schedules or lists. Acceptance into Colfax County road maintenance requires a separate application"**. The final plat shall be acknowledged by the owner and subdivider or their authorized agents in the manner required for the acknowledgment of deeds. Every final plat submitted to the County Clerk shall be accompanied by an affidavit of the owner and subdivider, or authorized agents, stating whether or not the proposed subdivision lies within the subdivision regulation jurisdiction of the County. A copy of the final plat shall be provided to every purchaser, lessee, or other person acquiring an interest in the subdivided land before sale, lease, or other conveyance.

**5.3.4. Dedication.** The final plat shall contain a certificate stating that the Board of County Commissioners has accepted, subject to improvement, or rejected, on behalf of the public, any land offered

for dedication for public use in conformity with the terms of the offer of dedication. On full conformity with County road construction standards, the roads may or may not be accepted for maintenance by the County. Acceptance of offers of dedication on a final plat shall not be effective until the final plat is filed in the Office of the County Clerk or a resolution of acceptance by the Board of County Commissioners is filed in that office.

**5.3.5. Disclosure statement.** For all subdivisions, a final disclosure statement shall be prepared in accordance with NMSA 1978, Section 47-6-17, as the same may from time to time be amended. It is unlawful to sell, lease, or otherwise convey land in a subdivision until the required disclosure statement has been filed with the County Clerk, the Board of County Commissioners and the Attorney General's Office; and the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the completed disclosure statement. The Disclosure Statement must state "Final Approval".

**5.3.6. Conformity.** The Board of County Commissioners shall not approve the plat of any subdivision unless the subdivider reasonably demonstrates that the proposals contained in the disclosure statement can be fulfilled and that the subdivider has conformed with the New Mexico Subdivision Act and the County's Subdivision Ordinance.

**5.3.7. Land Sales Act.** Any Subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit the approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.

**5.3.8. New Mexico Environment Department approval.** For any subdivision requiring construction of the public water supply system or a community system, the subdivider shall provide documentation of approval from the New Mexico Environment Department prior to final plat approval.

**5.3.9. Water permit.** For subdivisions containing ten [10] or more parcels, any one of which is two [2] acres or less in size, before approving the final plat the Board of County Commissioners shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the State Engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of §47-6-11 NMSA 1978 or provide a copy of a permit obtained from the state engineer, issued pursuant to §§§§§ 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978 for the



subdivision water use. In acting on the permit application, the State Engineer shall determine whether the amount of water permitted is sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses. The Board of County Commissioners shall not approve the final plat unless the State Engineer has so issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the State Engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of § 47-6-11 NMSA 1978. The Board of County Commissioners shall not approve the final plat based on the use of water from any permit issued pursuant to §72-12-1.1 NMSA 1978.

**5.3.10. Before approving the final plat for a subdivision of land from which irrigation water rights appurtenant to the land have been severed after April 4, 2013, the Board of County Commissioners shall require that the subdivider provide proof of a service commitment from a water provider and an opinion from the state engineer that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978 or acquire sufficient water rights through a permit issued pursuant to Section 72-5-1, 72-5-23, 72-5-24, 72-12-3 or 72-12-7 NMSA 1978 for subdivision water use.** A final plat shall not be approved unless the state engineer has issued a permit for the subdivision water use or the subdivider has provided proof of a service commitment from a water provider and the state engineer has provided an opinion that the subdivider can fulfill the requirements of Paragraph (1) of Subsection F of Section 47-6-11 NMSA 1978. The Board of County Commissioner shall not approve the final plat based on the use of water from any permit issued pursuant to Section 72-12-1.1 NMSA 1978.

**5.3.11. County Treasurer's Tax Certification.** Prior to final plat approval for any subdivision, the Colfax Count Treasurer shall certify in writing on said plat that all taxes, penalties, interest and fees due on the real property to be divided, including taxes through the taxable year in which the property is divided, have been paid in full.

**5.3.12. Solid Waste Fee.** Prior to final plat approval for any subdivision, the Colfax County Manager shall certify in writing that all Colfax County solid waste fees and late charges have been paid in full by the owner of the real property to be divided.

**5.3.13. Recording.** To be in full force and effect the final plat must be recorded in the office of the County Clerk within one (1) year from the date of approval by the Board of County Commissioners.



#### **5.4. Advertising Standards.**

**5.4.1. Filing requirements.** Copies of all brochures, publications, and advertising relating to subdivided land shall be filed with the Board of County Commissioners and the Attorney General within fifteen (15) days after initial use by the subdivider.

**5.4.2. Requirements and restrictions.** Brochures, disclosure statements, publications, and advertising of any form relating to subdivided land shall:

a. not misrepresent or contain false or misleading statements of fact;

b. not describe deeds, title insurance, or other items included in a transaction as "free" and shall not state that any parcel is "free" or given as an "award" or "prize" if any consideration is required for any reason;

c. shall not describe parcels available for "closing costs only" or similar terms unless all such costs are accurately and completely itemized or when additional parcels must be purchased at a higher price;

d. shall not include an asterisk or other reference symbol as a means of contradicting or substantially changing any statement;

e. shall accurately portray, if subdivision illustrations are used, the subdivision in its present state and if illustrations are used portraying points of interest outside the subdivision, state the actual road miles from the subdivision; shall not contain artists' conceptions of the subdivision or any facilities within it unless clearly labeled as such;

f. shall not contain maps unless accurately drawn to scale with the scale indicated;

g. shall not contain references to any facilities, schools, hospitals, etc., points of interest or municipalities located outside the subdivision unless the distances from the subdivision are stated in the advertisement in accurate road miles; and shall refer to the location where the subdivider's disclosure statement may be obtained.

**5.5. Requirements Prior to Sale, Lease or Other Conveyance.** It is unlawful to sell, lease, or otherwise convey land within a subdivision before the following conditions have been met:

**5.5.1. Final plat approval.** The final plat shall be approved by the Board of County Commissioners and shall be filed with the Colfax County Clerk. If a subdivision also lies within a neighboring county, the final plat shall be approved by the Board of County Commissioners of each county in which the subdivision is located and shall be filed with the County Clerk of each county in which the subdivision is located.

**5.5.2. Relevant documents.** The subdivider shall furnish the Board of County Commissioners a sample copy of sales contracts, leases and any other documents that will be used to convey an interest in the subdivided land.

**5.5.3. Permanent marks.** All corners of all parcels and blocks within the subdivision shall be permanently marked with metal stakes in the ground and a reference stake placed beside one corner of each parcel.

## **5.6. Recording Parcels.**

**5.6.1. Major public open space.** The following criteria shall be used in determining lands that are suitable for public open space for sites that are proposed by the developer as public open space in a subdivision or master plan application:

- (1) Lands that can be managed to preserve their natural character.
- (2) Lands that are physically, visually, or functionally related to other open space.
- (3) Lands offered in parcels of five acres or more.
- (4) Lands with concentrations of archaeological resources.
- (5) Any other type of land that the County deems appropriate.

**5.6.2. Lot standards.** The lot width, depth, shape, and orientation, and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

### **(1) Lot configurations.**

a. Corner lots for residential use shall have extra width to permit appropriate building setbacks from and orientation to both streets.

b. The subdivision of the land shall provide satisfactory access to an existing public right-of-way. Lots within the subdivision may be accessed by either a private way or by public right-of-way.

c. Double-frontage lots, reverse-frontage lots, and lots which do not meet the minimum frontage requirement should be avoided except where essential to provide separation of residential development from traffic arteries or to overcome specific disadvantages of topography and orientation. Sufficient lot depth should be provided to allow space for planting screen easement of at least ten (10) feet in width across which there shall be no right to access along the lines of lots abutting the traffic artery or other disadvantageous use.

d. Side lot lines shall be substantially at right angles or radial to street lines.

**5.6.3. Alternative modes of transportation.** Alternative modes of transportation should be expanded and integrated into the street system to improve air quality and quality of life and reduce traffic congestion. Bikeways and trails as identified in the trails and bikeways facility plan and other adopted plans shall be required in order to provide circulation or access to schools, playgrounds, shopping centers, transportation and other community facilities.

**5.6.4. Authority.** NMSA 197 §47-6-9(A)(17) requires the County to enact regulations for recording all conveyances of parcels with the County Clerk. As defined in the Act, the term "parcel" means "land capable of being described by location and boundaries and not dedicated for public or common use".

**5.6.5. Purpose.** Recording conveyances of parcels is required to protect buyers and lenders, aid in the detection of illegal subdivisions and to help enforce the Act and these Regulations by making all conveyances of parcels matters of public record.

**5.6.6. Requirement.** Any person who sells or leases for an initial term plus option terms in excess of five (5) years, or otherwise conveys any interest in any parcel located in whole or in part in the County shall record the deed, lease, real estate contract, or other document of conveyance with the County Clerk no later than five (5) days after the closing or thirty (30) days after the date on which the document is signed, whichever comes first. A Memorandum of Lease may be recorded in lieu of recording the lease itself, as provided in 14-9-1 NMSA 1978.

**5.6.7. Form and certification.** Any deed, lease for an initial term plus option terms in excess of five (5) years, real estate contract, or other document used to convey any interest in any parcel located in whole or in part in the County shall be in a form acceptable for recording and duly acknowledged and certified as required by the provisions of 14-8-4 NMSA 1978.

**5.6.8. Documentation.** The deed, lease, real estate contract, or other document of conveyance must be accompanied by a survey plat and a legal description of the parcel attached to it. The survey plat shall show the surveyor's seal, the boundaries of the parcel by metes and bounds or a lot and block description, the means of access to the parcel and any easements to which the parcel is subject. The statute may or may not require a plat attachment.

## **5.7. Development Standards.**

**5.7.1. Design requirements for water management.** The following water conservation measures shall apply to all new development in subdivisions approved after the effective date of this chapter, unless superceded by other regulations adopted by the County Commissioners.

(1) Water-saving fixtures shall be installed in all new residential and nonresidential buildings. Water-saving fixtures shall include, but not limited to, low-flush toilets, low-flow shower heads, low-flow faucets, and insulation of hot water pipes.

(2) Low water use landscaping techniques applying the principles of xeriscaping should be utilized.

(3) All nonresidential service connections, regardless of source of supply, and all residential buildings served by a new community water system shall be metered. Water produced from each well in a new community water system or at each surface water source shall also be metered and the volume thereof reported to the New Mexico Office of the State Engineer.

(4) Water distribution mains shall be pressure-tested in accordance with New Mexico Standard Specification for Public Works Construction.

(5) Where water pressure at the customer service connection exceeds eighty (80) pounds per square inch (psi), a pressure reducing valve shall be installed on the service connection.

**5.7.2. Quantification of annual water requirements.** The following procedures shall be used to quantify the maximum allowable subdivision water use per year, for all subdivisions:

(1) The maximum annual water requirements for both indoor and outdoor purposes, for each parcel in a residential subdivision shall be 0.6 acre-feet per year. The total annual water requirements for the subdivision in acre-feet per year, is computed by multiplying the number of parcels by 0.6.

(2) A detailed water demand analysis shall be prepared for all nonresidential subdivisions and all water uses not directly related to residential uses within a mixed development subdivision. Annual water requirements shall be estimated using the relevant state engineer technical report.

**5.7.3. Final Plat approval requirements.** For all subdivisions to be served by any water source other than a well or wells issued pursuant to State Statute 72-12-1 NMSA 1978, the subdivider shall provide a copy of the water permit issued by the office of the state engineer sufficient in quantity to meet the maximum annual water requirements of the proposed subdivision and authorized for this purpose. This information is a condition of final plat approval.

**5.7.4. Community water system requirements.**

a. Community water system. A community water system is a public water supply system which serves at least fifteen (15) service connections used by year-round residents or regularly services an average of twenty-five (25) year-round residents. For the purpose of this chapter, a community water system may be an existing or proposed community water system and includes all water sources not permitted under 72-12-1 NMSA 1978.

b. A community water system shall be required for all subdivisions where any one of the following criteria are met:

(1) Subdivisions containing twenty [20] parcels, any of which is equal to or less than two [2] acres.

(2) For all subdivisions containing parcels in which the minimum parcel size is greater than two [2] acres, where groundwater would be supplied from geologic formations where wells have been determined to produce at a rate of two (2) gpm or less, or where available wells have been determined to produce at a rate of two (2) gpm or less, or where available information suggests the likelihood of low yielding wells. In lieu of a community water system, individual or shared wells may be drilled by the developer, provided that it can

be demonstrated that production can be sustained at rates greater than two (2) gpm, and is adequate to meet the maximum annual water requirements of all parcels.

c. If water will be supplied from a community water system, the subdivider shall submit a plat of the proposed subdivision and preliminary plans for the water production, storage and distribution facilities prepared by or under the supervision of a registered professional engineer. The site plans shall show the topography, parcel boundaries, streets, wells, and water storage and distribution system, including hydrants. The size or capacity of the water system components should also be indicated on the site plans. Preliminary well plans shall include casing diameter, total depth, screened interval and proposed pump setting.

d. Multiple household wells systems, permitted under §72-12-1 NMSA, may be allowed subject to subsection (b)(2) of this section, under the condition that the maximum number of parcels served by one well shall not exceed five.

e. Covenants and land use restrictions shall be adopted strictly prohibiting the drilling or use of individual and/or shared domestic wells for any subdivision which requires or utilizes a community water system.

f. If a community water system is proposed or required, the developer should consult with the New Mexico Public Utilities Commission regarding the applicability of the Public Utility Act to the community water system.

#### **5.7.5. Sewer availability assessment.**

a. Subdivisions that propose to be served by an existing public utility shall provide a sewer availability statement, from the approved utility, which contains the following information:

(1) Name of the utility proposed; and

(2) Letter of intent from the utility that they are ready, willing and able to provide this service for the subdivision.

(3) A sewer availability assessment shall be submitted by the subdivider.

**5.7.6. Water availability assessment for all Type 1, Type 2, and Type 4 subdivisions, and all Type 3 and Type 5 subdivisions containing six [6] or more parcels.**

a. Subdivisions that propose to be being served by an existing public utility shall provide a water availability statement from the approved utility.

b. A water availability assessment shall be submitted by the subdivider:

(1) As a condition of preliminary subdivision plat approval for all Type 1, Type 2 and Type 4 subdivisions, and Type 3 subdivisions containing six [6] or more parcels.

(2) As a condition of final subdivision plat approval for Type 5 subdivisions containing six [6] or more parcels.

c. The requirements of the water availability assessment are dependent on the source of water supply such that:

(1) For subdivisions where the source of water will be a new groundwater diversion and community system permitted pursuant to §§72-12-3 or 72-12-7 NMSA 1978, the subdivider shall demonstrate a seventy (70) year supply and shall submit a geohydrologic report in accordance with subsection (d) of this section.

(2) For subdivisions where the source of supply will be a new surface water diversion and community system permitted pursuant to §§ 72-5-1, 72-5-23 or 72-5-24 NMSA 1978, the subdivider shall submit a hydrologic report in accordance with subsection (e) of this section.

(3) For subdivisions where the source of supply will be an existing community or municipal water supply system permitted pursuant to §§72-5-1, 72-5-23, 72-5-24, 72-12-1 or 72-12-3, the subdivider shall submit a water utility plan in accordance with subsection (f) of this section.

(4) For subdivisions where the source of water will be individual domestic wells or shared wells permitted pursuant to §72-12-1, the subdivider shall demonstrate a seventy (70) year supply and shall submit a geohydrologic report in accordance with subsection (g) of this section.

d. For new community wells and water systems, the subdivider shall submit a water supply plan and geohydrologic report which meets the following requirements:

(1) Geohydrologic reports shall demonstrate that groundwater sufficient to meet the maximum annual water requirement of the subdivision is physically available and be practically recovered to sustain the development for a continuous period of seventy (70) years. These analyses shall take into account the production of existing

wells and shall demonstrate that the subdivision wells, as proposed or as designed, will be capable of producing the full annual demand for at least seventy (70) years.

(2) The subdivider shall drill sufficient exploratory wells within the boundaries of the proposed subdivision to adequately characterize the aquifer, unless the subdivider can demonstrate that existing wells in the area are representative of general aquifer conditions within the subdivision. Where existing wells are not adequate to demonstrate aquifer conditions, aquifer parameters require to demonstrate the availability of water should be obtained from aquifer tests, performed on-site, which are adequate for predicting long-term water availability or from tests conducted on nearby wells. Alternate, tests can be conducted on nearby off-site wells if the subdivider can demonstrate that these wells are representative of general aquifer conditions within the subdivision.

(3) The assessment shall include a calculated schedule of effects on the proposed subdivision's production well(s) which may result from existing demands and from the increase of groundwater withdrawals for the subdivision. Analyses shall be performed to assess whether future water level declines will be within the limits of allowable draw down in the subdivision production wells as provided in subsection (d)(4) of this section. Predicted draw downs shall be calculated in a conservative manner (which estimates maximum draw down). These calculations shall include estimates of future water uses.

(4) The subdivider shall calculate the lowest practical pumping water level in the proposed subdivision pumping wells by any of the following methods as appropriate, provided there shall be no presumption made as to additional available water below the bottom of the proposed production well, and further provided that the total available draw down shall be reduced by a factor of twenty (20) percent as a margin of safety to account for seasonal fluctuations, drought allowance, reduction of well efficiency over time, and peak production requirements:

(a) By using the results of acceptable on-site aquifer pump tests. The lowest allowable pumping level may be the lowest water level reached during the test.

(b) By setting the level at the top of the uppermost screened interval.

(c) In wells completed in fractured aquifers, the lowest practical pumping water level may be above the top of the fracture zone,



(d) In wells completed in alluvial aquifers, the lowest practical pumping water level may be defined by a maximum allowable draw down equal to seventy (70) percent of the initial water column.

(5) The geohydrologic report should present all hydrologic information pertinent to the study area including that available from post geohydrologic studies. All sources of information used in the report should be identified including basic data collected by the consultant who prepared the report. The report shall contain maps and cross-sections showing geology, depth to the water bearing formation, water level contours, and estimated thickness of saturation in the aquifer. Basic data for the immediate area of the subdivision must be current, with the date of collection noted and the location identified on a map. The report on the investigation should be in the form of a technical narrative; spreadsheets, tables, graphs, maps and cross-sections shall be included.

e. For new surface water diversions and community water systems using surface water the subdivider shall submit a hydrologic report which meets the following requirements.

(1) The hydrologic report shall demonstrate that surface water sufficient to meet the maximum annual water requirement of the subdivision is physically available. These analyses shall include the following:

(a) Narrative and analytical demonstration that the surface water will be physically available for the proposed use given short-term and long-term fluctuations (based-flow analysis) due to climatic cycles or other factors such as induced recharge due to groundwater diversions, analyses of relevant historical runoff records, and projected water supply available for the subdivision requirements. Applicable legal or water rights constraints on water availability shall be considered.

(b) If the analysis of the historical runoff record indicates possible shortages in the projected water supply available for the subdivision requirements the subdivider shall provide for either storage or a supplemental groundwater supply sufficient to meet the shortage.

(c) If a supplemental groundwater supply is proposed, the subdivider shall prepare a geohydrologic assessment in accordance with subsection (d) of this section.

f. For community water systems in which an existing company is proposed as the source of water supply, the subdivider shall submit a water supply plan which meets the following requirements:

(1) For all existing water utilities:

(a) Name of the utility proposed as the source of supply. Letter of intent from the utility that they are ready, willing, and able to provide the maximum annual water requirements for the subdivision for at least seventy (70) years. The letter must also state any requirements for the subdivider to provide water rights.

(2) For all new water utilities other than municipally owned water utilities and at the discretion of the county, existing utilities:

(a) Documentation showing the quantity of water presently produced annually, quantity of water supply commitments to date, and proof of sufficient water rights to meet both existing commitments and the requirements of the proposed subdivision;

(b) For New Mexico Public Utilities Commission (PUC) certified utilities, a copy of the most recent annual report submitted to the PUC;

(c) Plans for the existing water system to which the proposed system will tie. The plans shall show diversion point locations, and water storage and distribution system. The size or capacity of the water system components should also be indicated on the plans; and

(d) Any other information, including any or all of the requirements of subsection (d) of this section required by the Board of County Commissioners to make a determination that the utility has the capability to meet the water requirements of the proposed subdivision.

g. For subdivisions where the source of water will be individual domestic wells, or multiple household wells, permitted under §72-12-1 NMSA, the subdivider shall submit a water supply plan and geohydrologic report which meets the following requirements:

(1) A geohydrologic report conforming to the requirements of subsection (d) of this section.

(2) The geohydrologic report shall also include a calculated schedule of off-site effects (drawdowns) and an evaluation of stream depletion effects (if applicable) which may result from the increase of groundwater withdrawals for the subdivision. These calculations

shall include estimates of fixture water uses. The report shall identify by ownership and location all existing wells which will either go dry, experience dewatering of fifty (50) percent of their water column or more or experience an average annual rate of water decline of one (1) foot or more as a consequence of the proposed subdivision's groundwater diversions. The report shall also identify by name and location all springs, streams, acequias (ditches), canals, and drains, the flows of which will be diminished by the proposed surface or groundwater diversions. All natural or manmade ponds, lakes, reservoirs, or wetlands that will be impacted shall also be identified.

**5.7.7. Water availability assessment for Type 3 and Type 5 subdivisions containing less than six parcels.**

a. If the source of water supply will be an existing community water system or municipal water system, the subdivider shall submit a water availability assessment containing the following information:

(1) Name the utility proposed as the source of supply.

(2) Letter of intent from the utility that they are ready, willing, and able to provide the maximum annual water requirements for the subdivision.

b. If the subdivider proposes that the source of water shall be individual domestic wells or multiple household wells to be approved by the state engineer pursuant to §72-12-1 NMSA 1978, the subdivider shall submit a water availability assessment containing the following information:

(1) At least one well log from an on-site well or from an existing well located within one mile of the property boundary completed in geologic conditions representative of the conditions within the proposed subdivision.

(2) A description of the water-bearing formation including a statement of the maximum and minimum depths of water in the subdivision and the basis for these statements.

(3) A statement of the estimated yield of wells in gallons per minute based upon well logs from existing nearby wells.

(4) Where certain ground water conditions exist, the County Commissioners may require a water supply plan and a geohydrologic report that meets the requirements of this ordinance.

(5) Any additional information which is required by the

Board of County Commissioners that will enable it to determine whether or not the subdivider can fulfill the proposals contained in this disclosure statement.

c. If the subdivider proposed to provide new wells or surface diversion for a community water system, the requirements of whichever is applicable shall apply.

**5.7.8. Wastewater disposal plan.** For a subdivider to document conformance with the wastewater disposal requirements of this chapter and the New Mexico Subdivision Act, a wastewater disposal documentation package shall accompany the preliminary plat submittal.

(1) The wastewater disposal plan shall:

- a. State the subdivider's name and mailing address;
- b. State the date the package was completed;
- c. State the subdivider's proposal for meeting the wastewater disposal requirements of the most current County Ordinance;
- d. Be accompanied by the information required in subsections (2), (3) and (4) of this section as applicable to the subdivider's wastewater disposal proposal; and
- e. Be accompanied by other relevant information as may be necessary for determination of compliance with the wastewater disposal requirements of this chapter.

(2) If the subdivider proposes a new community wastewater system, the following information shall be submitted as part of the wastewater disposal documentation package:

- a. An engineer's report and construction plans for the proposed community wastewater system;
- b. Maps showing the location of all water supply sources and the flood plain of all watercourses and surface bodies of water within one thousand (1,000) feet of the proposed wastewater treatment and wastewater disposal site; and
- c. Documentation of an approved wastewater permit from the County and an approved discharge plan with the New Mexico Environment Department.

(3) If the subdivider proposes a wastewater system by connection to and extension of an existing community wastewater

system, the following information shall be submitted as part of the wastewater disposal documentation package:

a. A statement of availability of sewage service signed by an official of the existing wastewater system; and

b. Name of the utility proposed; and

c. An engineer's report and construction drawings for the proposed extension to the existing wastewater system.

d. Amendment, if applicable, to the County and New Mexico Environmental Department community system wastewater permits.

(4) If the subdivider proposes individual or cluster wastewater systems, the following information shall be submitted as part of the wastewater disposal documentation package:

a. A site evaluation in accordance with the County Ordinance if applicable; a site evaluation is required for each soil series or association in the subdivision;

b. Maps showing the location of all water supply sources and the flood plain of all watercourses and surface bodies of water within the proposed subdivision and within five hundred (500) feet of the proposed subdivision boundaries;

c. A wastewater system feasibility map, superimposed on the subdivision plat, delineating the areas of allowable disposal sites as described in the most current County Ordinance; and

d. Submit map showing areas with slopes steeper than fifteen (15) degrees.

(5) Documentation of the filing of a "notice of intent to discharge" with the New Mexico Environmental Department in accordance with 20 NMAC 6.2.

**5.7.9. Wastewater disposal requirements.** The following wastewater Disposal requirements shall apply to all subdivisions:

(1) Community wastewater systems.

a. Subdivisions containing five [5] or fewer lots shall, for lots less than three-quarter [3/4] acres in size, shall provide access at the property line, to a community wastewater system, or each lot which is less than three-quarter [3/4] acre in size shall, at the property line, be provided access to sewer.

b. Subdivision containing more than five [5] lots shall, for lots less than two [2] acres in size, provide access, at the property line, to a community wastewater system, or each lot which is less than two [2] acres in size, at the property line, be provided access, to sewer.

c. For proposed residential subdivisions with five [5] or fewer lots if there exists a sewer or lift station in a public easement or right-of-way that abuts the subdivision or is within four hundred (400) feet of any lot in the subdivision and can be accessed via rights-of-way or easements, each lot must be provided sewer service at the property line.

d. For proposed residential subdivisions with more than five [5] lots and for proposed subdivisions to be used for commercial, industrial, or manufacturing purposes or its equivalent, if there exists a sewer system or project (that may or may not be under construction) that is within one thousand (1,000) feet of any lot in the subdivision and can be accessed via rights-of-way or easements, each lot must be provided sewer service at the property line.

(2) Individual wastewater systems:

a. Proposed subdivisions containing five (5) or fewer lots, of which all parcels at greater than three-quarter [3/4] acres in size and where sewer is not available, may utilize an on-site community wastewater system that complies with the County Ordinance.

b. Proposed subdivisions containing more than five [5] lots, for those parcels which are greater than two [2] acres, and where a community wastewater system or sewer is not available, may utilize an on-site wastewater system that complies with the County Ordinance.

c. Individual wastewater systems shall not be:

1. Installed on a lot with a net lot size of less than 0.75 acres;

2. Installed where an existing community wastewater system is available for use within the subdivision;

3. Installed in soils with severe limitations;

4. Installed at less than the setback distances shown in the current County Ordinance; or

5. Privies (outhouses) or cesspools.

(3) The disclosure statement for the subdivision shall contain

a description of the means of wastewater disposal for the subdivision to comply with the most current County Ordinance.

**5.7.10. Solid waste disposal documentation.** For a subdivider to document conformance with the solid waste disposal requirements of this chapter and the New Mexico Subdivision Act, a solid waste disposal documentation package shall accompany the preliminary plat submittal.

(1) A solid waste documentation package shall:

- a. State the subdivider's name and mailing address;
- b. State the date the package was completed;
- c. State the subdivider's proposal for meeting the solid waste disposal requirements of this chapter;
- d. Be accompanied by a copy of the subdivider's disclosure statement on solid waste disposal; and
- e. Be accompanied by other relevant information as may be necessary for determination of compliance with the solid waste disposal requirements of the most current County Ordinance.

(2) If the subdivider proposes solid waste collection by use of an existing solid waste collection service, the following information shall be submitted as part of the solid waste disposal documentation package:

- a. A statement of availability of solid waste collection and disposal service signed by an official of the solid waste collection service; and
- b. The name, location and owner or operator of the solid waste disposal site used by the collection service.

(3) If the subdivider proposes solid waste disposal by use of an existing solid waste disposal site, the following information shall be submitted as part of the solid waste disposal documentation package:

- a. A statement of availability of solid waste disposal service signed by an official of the disposal site; and
- b. The travel distance from the center of the subdivision to the disposal site.

**5.7.11. Solid waste disposal requirements.** The following solid waste disposal requirements shall apply to all subdivisions.

(1) At the time of first occupancy of the subdivision the subdivider shall provide for:

a. Disposal of solid wastes at an approved solid waste disposal facility; and

b. For a subdivision with twenty [20] or more lots, an approved solid waste collection system to collect and transport solid wastes to the disposal facility.

(2) The disclosure statement for the subdivision shall contain a description of the means of solid waste disposal for the subdivision.

**5.7.12. Terrain management plan.**

(a) Generally. Any person seeking approval of a subdivision plat must address terrain management. No subdivision plat shall be approved unless terrain management has been reviewed by the County Commissioners. The county commissioners may approve a terrain management plan if it determines that the plan conforms with the requirements of the New Mexico Subdivision Act and the County subdivision ordinance.

**5.7.13. Fire requirements.**

(a) Fire protection plan. All applications for subdivisions shall include a fire protection plan.

(b) Guidelines for fire protection.

(1) The subdivider's fire protection plan shall conform with requirements of the authority having jurisdiction and should include the following minimum information:

a. Fire department apparatus access.

1. Bridges;
2. Climatic considerations;
3. Dead ends;
4. Driveways;



5. Gates;
6. Geographic considerations;
7. Parking;
8. Premises identification;
9. Road grade percentage;
10. Road maintenance;
11. Road surface;
12. Road weight limitations;
13. Road width;
14. Secondary access;
15. Street or road signs;
16. Structures;
17. Timing of installation;
18. Topographic consideration;
19. Turnarounds;
20. Turning radius;
21. Urban-wildland interface area;
22. Vegetation control;
23. Vertical clearance;
24. Watercourses; and

25. Other relevant information as may be necessary for the determination of compliance with the fire department access requirements.

b. Water supplies for fire protection.

1. Distribution systems;
2. Draft sites;

3. Elevated tanks;
4. Engineering data;
5. Hydrants;
6. Maintenance;
7. Manmade water sources;
8. Natural water sources;
9. Pumping systems;
10. Pressure tanks;
11. Reservoirs;
12. Testing;
13. Topography;
14. Utilities letter of intent;
15. Water mains; and

16. Other relevant information as may be necessary for the determination of compliance with the fire department water supply requirements.

c. Urban-wildland interface areas. Also referred to as hazardous fire areas.

1. Defensible spaces;
2. Fire hazards;
3. Fuel breaks;
4. Fuel modifications;
5. Greenbelt;
6. Ignition resistants;
7. Spark arresters;

8. Vegetation control; and

9. Other relevant information as may be necessary for the determination of compliance with the fire department urban-wildland interface area requirements.

(2) Submittals for fire protection shall be a condition of preliminary subdivision plat approval for all residential subdivisions with community water systems (and all nonresidential subdivisions), or of final plat approval for Type 5 or Type 3 subdivisions subject to minor subdivision (summary review procedures).

(3) For all subdivisions with fire protection, the subdivider shall submit a plat of the proposed subdivision, preliminary plans of the proposed water supply, storage and distribution system, and calculations demonstrating that the proposed fire protection facilities will meet the requirements of the guidelines prepared by or under the supervision of a registered professional engineer.

(4) For all subdivisions with community water supply systems to be supplied from existing utilities, the letter of intent from the utility to furnish water shall specify fire flows and pressures which will be furnished and firefighting storage which may be apportioned to the subdivision.

(5) Provide an alternative type of fire protection being considered by the developer.

**5.7.14. Water quality documentation.** For a subdivider to document conformance with the water quality requirements of this chapter and the New Mexico Subdivision Act, a water quality documentation package shall accompany the preliminary plat submittal for subdivisions that contain five or more lots.

(1) The water quality documentation package shall:

- a. State the subdivider's name and mailing address;
- b. State the date the package was completed;
- c. State the subdivider's proposal for meeting the water quality requirements of this chapter;
- d. Submit a copy of the subdivider's disclosure statement on water quality;
- e. Submit the information listed in this section as

applicable to the water supply proposal; and

f. Submit other relevant information as may be necessary for the determination of compliance with the water quality requirements of this chapter.

(2) If a new public water supply system is proposed, the following information shall be submitted as part of the water quality documentation package:

a. A water quality analysis of a representative water sample for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, lead, mercury, nickel, nitrate, nitrite, selenium, thallium, alkalinity, aluminum, calcium, chloride, color, copper, foaming agents, hardness, iron, manganese, odor, pH, silver, sodium, sulfate, total dissolved solids, turbidity, and zinc;

b. For areas where contamination of the proposed source water has been documented, a water quality analysis of a representative water sample for other water quality parameters as may be required;

c. The location and description of the source of water sampled for the water quality analysis;

d. A New Mexico licensed engineer's report and preliminary plans for the proposed public water supply system; and

e. Maps identifying the location for all potential sources of contamination and the flood plain of all watercourses and surface bodies of water within 1,000 feet of the proposed water supply system source.

(3) If a connection to an extension of an existing New Mexico Environmental Department approved public water supply system is proposed, a statement of availability shall be submitted.

(4) If private water supply systems are proposed, the following information shall be submitted as part of the water quality documentation package:

a. A water quality analysis of a representative water sample for the following constituents but not limited to antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, lead, mercury, nickel, nitrate, nitrite, selenium, thallium, alkalinity, aluminum, calcium, chloride, color, copper, foaming agents, hardness, iron, manganese, odor, pH, silver, sodium, sulfate, total dissolved solids, turbidity, and zinc;

b. For areas where contamination of the proposed source water has been documented, a water quality analysis of a representative water sample for other water quality parameters as may be required;

c. The location and description of the source of water sampled for the water quality analysis;

d. Preliminary plans for the private water supply systems if the system will serve more than one connection; and

e. Maps identifying and showing the location of all potential sources of contamination and the flood plain of all watercourses and surface bodies of water within the subdivision and within five hundred (500) feet of the proposed subdivision boundaries.

(5) Documentation of approval for the construction or modification of a public water supply system from the New Mexico Environment Department will be required before final plat approval.

**5.7.15. Water quality requirements.** The following water quality requirements shall apply to all subdivisions, with the exception of subdivisions that are to be served by an approved State of New Mexico public utility:

(1) The level of a contaminant in water which is delivered to any user of a public or private water supply system shall not exceed the maximum contaminant level (MCL) for any of the primary (health related) contaminants listed in the current New Mexico Drinking Water Regulations (20 NMAC 7.1).

(2) The level of a contaminant in water which is delivered to any user of a public or private water supply system should not exceed the secondary maximum contaminant level (SMCL) for any of the contaminants listed below:

a. Secondary water quality parameters. Aluminum, chloride, color, copper, corrosivity, fluoride, foaming agents, hardness, iron, manganese, odor, pH, silver, sodium, sulfate, TDS, turbidity and zinc.

b. If the level for any of the contaminants listed above exceed the SMCL, the subdivider must state in the disclosure statement on water quality the name of the contaminant exceeded; the contaminant level; the SMCL of the contaminant; the expected adverse effects of the contaminant for domestic water use; and the recommended treatment method to reduce the contaminant level to or below the SMCL.

(3) Siting of a water supply source must be in accordance with the requirements of the County whichever is applicable water well ordinance and the New Mexico Drinking Water Regulations (20NMAC 7.1) whichever is applicable.

(4) The disclosure statement for the subdivision shall contain a statement describing the quality of water available for domestic use within the subdivision.

## **ARTICLE 6. SUMMARY REVIEW PROCESS**

**6.1. Summary Review Procedure.** The following types of subdivisions shall be submitted to the County and the New Mexico Environment Department for consideration under summary review procedure: Type Three subdivisions containing five (5) or fewer parcels or land; and all Type Five subdivisions. Pursuant to NMSA 1978 §47-6-11. The County may require a more stringent review if the smallest parcel is less than three acres in size.

**6.1.1. Conference required.** A pre-application conference is required before application for summary review and approval. The pre-application process is described in Article Three of these Regulations.

**6.1.2. Application and fees.** A subdivider shall prepare a summary review plat and supporting documentation in accordance with the requirements provided in these Regulations. The summary review plat shall be considered as a final plat suitable for filing with the County Clerk. Summary review plat submittal is initiated by completing an application on a prescribed form obtainable from the County Manager and upon payment of the required administrative fees.

**6.1.3. Plat deemed complete.** On receipt of the application, fees, summary review plat, and supporting documentation, the County Manager or Review Committee shall within thirty (30) days of receipt of the application review all materials in order to determine if the preliminary plat is ready to begin the review process. If there are no deficiencies, the summary review plat will be deemed complete for review. If the summary review plat is incomplete or does not comply with the submittal requirements, the subdivider shall be notified and given a maximum time period of forty (40) days to correct the deficiencies and return the summary review plat for consideration.

**6.1.4. Public meeting.** Summary review plats submitted to the County for approval shall be approved or disapproved by the County Commission at a public meeting within forty (40) day of the date the summary review plat is deemed complete.

**6.1.5. Improvement agreement.** If, at the time of approval of the summary review plat, any public improvements have not been completed by the subdivider as required by these Regulations, the Board of County Commissioners may, as a condition preceding approval of the summary review plat, require the subdivider to enter into an agreement with the County, to thereafter complete the improvements at the subdivider's expense.

**6.1.6. Failure to act.** If the County Commission does not act upon a summary review plat within the required period of time, the subdivider shall give the Board of County Commissioners written notice of the County's failure to act. If the Board of County Commissioners fails to approve or reject the summary review plat within forty (40) days after such notice, the Board of County Commissioners shall, upon demand by the subdivider, issue a certificate that the summary review plat has been approved.

## **6.2. Summary Review Data Requirements.**

**6.2.1. Filing Specifications.** The original drawing of the summary review plat shall be submitted in waterproof ink or Mylar or acetate or other durable material suitable for reproducing copies. Summary review plat maps shall be drawn at a scale of three hundred (300) feet to one (1) inch or larger and printed on sheets no larger than eighteen by twenty-four (18x24) inches. The subdivider shall also submit twelve [12] paper copies of the summary review plat map and accompanying information.

**6.2.2. Map specifications.** The summary review plat map shall include the following information:

- a. title, scale, north arrow, and date;
- b. the name and mailing address of the subdivider and designated agent, if any;
- c. the names of owners of land to be subdivided and of contiguous property; subdivision boundary lines, easement and right-of-way lines;
- d. the names of any public dedicated roads; property lines of all lots, with accurate dimensions, and ties to monuments;
- e. acreage measurements and identification numbers for each lot; the location, dimensions, and purpose of all easements;
- f. delineation of any 100-year flood plain as designated by the Federal Emergency Management Agency;

g. the certification of a surveyor registered in New Mexico attesting to the accuracy of the plat and the date of the survey; and

h. a legal description indicating the range, township, and section and a metes and bounds description within which the subdivision is located.

**6.2.3. Affidavit.** The summary review plat shall contain an acknowledged statement that the land being subdivided will be subdivided in accordance with the summary review plat. The owner, subdivider, or authorized agents shall acknowledge the summary review plat in the manner required for the acknowledgment of deeds. Every summary review plat submitted to the County Clerk as a final plat shall be accompanied by an affidavit of the owner and subdivider, or authorized agent, stating whether the proposed subdivision lies within the subdivision jurisdiction of the County. A copy of the summary review plat shall be provided to every purchaser, lessee, or other person acquiring an interest in the subdivision land prior to sale, lease or other conveyance.

**6.2.4. Dedication.** The summary review plat shall contain an acknowledged certificate stating that the Board of County Commissioners has accepted, accepted subject to improvement, accepted subject to limitation or condition, or rejected, on behalf of the public, any land offered for dedication for public use in conformity with the terms of the offer of dedication. Upon full conformity with County road construction standards, the roads may or may not be accepted for maintenance by the County. Acceptance of offers of dedication on a summary review plat shall not be effective until the summary review plat is filed in the office of the County Clerk or a resolution of acceptance by the Board of County Commissioners is filed in that office.

**6.2.5. Disclosure statement.** For all subdivisions, a disclosure statement shall be prepared in accordance with NMSA 1978, Section 47-6-17, as the same may from time to time be amended. It is unlawful to sell, lease or otherwise convey land in a subdivision until the required disclosure statement has been filed with the County Clerk, the Board of County Commissioners and the Attorney General's Office (Subdivider is responsible); and the prospective purchaser, lessee or other person acquiring an interest in the subdivided land has been given a copy of the disclosure statement. The disclosure must state **"Final approval of the public roads or acceptance of dedicated roads does not constitute approval or acceptance of roads by the County for County maintenance. Acceptance into Colfax County road maintenance requires a separate application"**.



**6.2.6. Land Sales Act.** Any subdivider who has satisfied the disclosure requirement of the Interstate Land Sales Full Disclosure Act may submit the approved statement of record in lieu of the disclosure statement required by the New Mexico Subdivision Act. However, any information required in the New Mexico Subdivision Act and not covered in the subdivider's statement of record shall be attached to the statement of record.

**6.2.7. Advertising standards.** The advertising standards covering the sale, lease or other conveyance of subdivided land provided in Article Five/Section 4 of these Regulations shall be applicable to summary review plats.

## **ARTICLE 7. SPECIAL PROCEDURES**

**7.1. Succeeding Subdivisions.** Any proposed subdivision may be combined with a previous subdivision and upgraded for classification purposes by the Board of County Commissioners if the proposed subdivision includes:

a. A part of a previous subdivision that has been created in the preceding twenty (20) year period; or

b. Any land retained by a subdivider after creating a previous subdivision if the previous subdivision was created in the preceding twenty (20) year period.

**7.2. Re-subdivision.** All or a portion of any final plat filed in the office of the County Clerk may be re-subdivided to no less than 3/4 acres by the same procedures prescribed in these Regulations for the subdivision of land. Re-subdivision shall include any change to a lot line, right-of-way line, or utility easement, unless the change is the result of a vacation of plats or a variance granted by action of the Board of County Commissioners.

### **7.2.1. Replat and lot line adjustment.**

#### **(1) Replats**

a. Replats are not subdivisions but are the combination or recombination of portions of previously platted lots which does not increase the total number of lots.

b. Lot line adjustments include any changes to lot lines, right-of-way lines or utility easements to correct any physical or legal encroachments.

#### **(2) Procedures**

a. Replats and lot line adjustments shall follow the minor subdivision (summary review) procedures to the extent that they are applicable. Replats are not excluded from any provisions that may be required by other applicable ordinances or regulations that impose greater restrictions than those of this chapter.

**7.3. Vacation of Plats.** Any final plat or portion thereof, filed in the office of the County Clerk may be vacated if the owners of the land proposed to be vacated sign an acknowledged statement, declaring the final plat or a portion of the final plat to be vacated and the statement is approved by the Board of County Commissioners; or if the Board of County Commissioner finds that a plat was obtained by misrepresentation of fraud and orders a statement of vacation to be prepared by the County.

**7.3.1. Statement of vacation.** The vacation of all or a portion of a final plat shall be initiated by submittal of application for abandonment or vacation to the County Manager along with the names and addresses of all owners of record of property within the subdivided land to be vacated, the names of all owners of record of property contiguous to the subdivided land to be vacated and a fee according to the Fee Schedule for Colfax County Charges.

**7.3.2. Scheduling and notification.** Within sixty (60) days after the date of receipt of the statement of vacation, the Board of County Commissioners shall approve or deny the vacation at a public meeting. At least fifteen (15) days before the proposed meeting, all owners of record of property within the subdivided land to be vacated and all owners of record of property contiguous to the subdivided land to be vacated shall have been notified by mail of the proposed vacation and the date, time and place of the public meeting at which the vacation will be considered by the Board of County Commissioners. The applicant must post and maintain one or more signs as provided by the County, 15 days before and after the date of the hearing or public meeting by the County. The applicant is responsible for removal of the sign(s) sixteen (16) days after the hearing/meeting unless the recommendation is appealed. Failure to properly post and maintain sign(s) is ground for deferral or denial of the request.

**7.3.3. County Treasurer's Tax Certification.** Prior to approval of the vacation of all or a portion of a plat, the Colfax County Treasurer shall certify in writing that all the taxes, penalties, interest and fees due on the real property within the vacated portion of the plat, including taxes through the taxable year in which the plat is vacated, have been paid in full.

**7.3.4. Solid waste fees.** Prior to approval of the vacation of all or any portion of a plat, the Colfax County Manager shall certify in writing that all Colfax County solid waste fees and late charges have been paid by the owner or owners of the real property within the vacated portion of the plat.

**7.3.5. Action.** In approving the vacation of all or a part of a final plat, the Board of County Commissioners shall decide whether the vacation will adversely affect the interests of persons on contiguous land or of persons within the subdivision being vacated. In approving the vacation of all or a portion of a final plat, the Board of County Commissioners may require that roads dedicated to the County in the final plat continue to be dedicated to the County.

**7.3.6. Filing.** The approved statement declaring the vacation of a portion or all of a final plat shall be filed in the office of the County Clerk. The County Clerk shall mark the final plat with the words "Vacated" or "Partially vacated" and refer on the final plat to the volume and page on which the statement of vacation is recorded.

**7.3.7. Utilities.** The rights of any utility existing before the total or partial vacation of any final plat are not affected by the vacation of a final plat.

**7.3.8. Vacation or partial vacation of roads or public lands.** Roads or other public property owned by the County may be altered, vacated, or partially vacated by one of the following methods:

(1) Pursuant to the same steps by which the land or road was acquired, such as by plat or replat.

(2) If the County Manager recommends the discontinuance of the road or other public property, then the County Commission may then issue an order of vacation.

#### **7.4. Variances**

**7.4.1. Planned Development Area.** The County Commission may grant a variance from the standards and requirements of these Regulations if it is presented with a fully developed plan and program for a new town, a complete community, or a neighborhood unit, which, in the judgement of the County Commission provides adequate public spaces, improvements, and service needs of the tract when fully developed and populated, and which also provides such covenants and other legal provisions as will assure conformity to and achievement of the plan.

**7.4.2. Conditions and limitations.** A variance shall not be

granted which will cause the County to absorb costs over and above those typically associated with subdivision approval. In granting variances, the County Commission may require such conditions that will show an undue hardship related to nature of the land and show that the granting of a variance will not undermine the public health, safety and welfare objectives of the regulations.

**7.4.3. Procedures.** The following procedures and requirements shall apply to all requests for variances under these Regulations. Requests for variances shall be submitted in writing at the time of request for preliminary plat approval on a form provided by the County Manager for that purpose, and upon payment of the required administrative fee. Variance requests shall be reviewed by the County Commission in public hearings at the same time public hearings are held for approval of the preliminary plat. Notice of the request for variance shall be given in the same manner as notice is provided for any public hearing required in these Regulations and shall comply with the requirements of the Open Meetings Act of the State of New Mexico. Variance requests shall be submitted to the state or other reviewing agency having expertise with respect to the subject matter for which the variance is sought and shall be governed by the same time limits. The County Commission shall make written findings of fact regarding each of the requirements of these Regulations and shall produce those findings of facts as a portion of its decision and order on each request for variance. The decision and order shall be prepared, signed and filed within fifteen (15) working days after the public hearing at which the variance is considered. The applicant must post and maintain one or more signs as provided by the County, fifteen (15) days before and after the date of the hearing or public meeting by the County. The applicant is responsible for removal of the sign(s) sixteen (16) days after the hearing/meeting unless the recommendation is appealed. Failure to properly post and maintain sign(s) is grounds for deferral or denial of the request.

**7.5. Amendment of Regulations.** These Regulations may be amended from time to time as conditions warrant. Amendments shall be made by ordinance adopted by the Board of County Commissioners in accordance with NMSA 1978 §4-37-1 et seq. as amended, and in accordance with NMSA 1978 §47-6-1 et seq. as amended.

**7.6. Exceptions.**

**7.6.1. Approval Required.** It is unlawful for any person to divide a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future, unless such person:

(a) obtains approval for a subdivision as provided in these Regulations; or

(b) files and obtains approval of an Exception defined in Article 2(M) (1) (7) (8) (9) (12) or (13) of these Regulations as provided in this Article. See ARTICLE 2(M) (1-13) for all exceptions. Approval of an exception defined in Article 2(M). (2), (3), (4), (5), (6), (10) and (11) are not required under these Regulations.

**7.6.2. County Treasurer's Tax Certification.** Prior to approval of a claim of exception, the Colfax County Treasurer shall certify in writing that all taxes, penalties, interest and fees due on the real property through or combined through the taxable year in which the claim for exception is claimed, have been paid in full.

**7.6.3. Solid waste fees.** Prior to approval of a claim of exception, the Colfax County Manager shall certify in writing that all Colfax County solid waste fees and late charges have been paid in full by the owner of the real property.

**7.6.4. Approval of Exception.** Any person claiming an exception under 2. (M). (1), (7), (8), (9), (12) or (13) shall file with the County a written for exception on the form provided by the County and receive approval thereof before making the land division for which the exception is claimed. The County Commission shall review the claim and supporting documents and shall mail written notice of whether the exception has been approved or denied to the person claiming the exception within thirty (30) days after receipt of the completed claim; provided, however, that the thirty (30) day period shall not begin to run until the person claiming the exception has delivered the fee for claim of exception according to the Fee Schedule for Colfax County Charges, a completed Claim Form and all supporting documents to the County Manager's Office. If the Claim is approved, the person claiming the exception may divide the land in the manner proposed in the claim. If the claim is denied, the person making the claim may appeal the denial as provided in Article 9 of these Regulations or may submit an application for subdivision as provided in these Regulations.

## **7.7. Protection of Cultural Properties, Archaeological Sites, and Unmarked Burials.**

**7.7.1. Unmarked Human Burials.** According to state law, each human burial in the state interred in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition. All subdividers (to include summary subdividers) shall comply with the requirements of NMSA 1978 §18-6-11.2, which prohibits the knowing, willful and intentional excavation,

removal, disturbance or destruction of any human burial site, buried, entombed or sepulchered in any unmarked burial ground except by authority of a permit issued by the state medical investigator or by the state cultural properties review committee with the concurrence of the state archaeologist and state historic preservation officer. Any and all construction on the site shall cease immediately upon discovery of any human burial site and shall not commence again until the full requirements of the state law have been fulfilled.

**7.7.2. Registered Cultural Properties.** Any person desiring to subdivide land in the County shall comply with the Cultural Properties Act NMSA 1978 §18-6-1 through 18-6-17.

**7.8. Construction of required improvements.**

**7.8.1. Improvement requirements.** The subdivider shall install and construct such improvements, if any, as are required by these or any other county regulations. Approval of the preliminary plat is authorization for the subdivider to proceed with the minimum improvements required by County regulations. Before the construction of any improvements or the submission of any bond or other improvement guarantee, the subdivider shall furnish the County with all plans necessary for the construction of such improvements. These plans shall be reviewed by the County and, if in accordance with County regulations, shall be approved by the County, allowing the subdivision development to proceed.

**7.8.2. Improvement agreement.** The County may enter into a subdivision improvement agreement with the subdivider. This agreement shall constitute a binding contract between the subdivider and the County and shall contain terms and conditions agreed to by the subdivider and the County.

**7.9. Road development**

**7.9.1. Construction.** Access shall be provided for all subdivided lots. Roads within a subdivision shall be constructed only after a road construction schedule has been approved by the County public works division or the Board of County Commissioners. In approving or disapproving a subdivider's road construction schedule, the County shall consider:

- (a) The proposed use of the subdivision;
- (b) The period of time before the roads will receive substantial use;

(c) The period of time before construction of homes will begin on the portion of the subdivision serviced by the road;

(d) The County Regulations governing phased development; and

(e) The needs of prospective purchasers; lessees and other persons acquiring an interest in the subdivided land in viewing the land within the subdivision.

**7.9.2.** Right-of-way standards for roads, trails, public and private access easements, streets and alleys that provide legal access shall be as required in the County street standards.

**7.9.3.** Minimum improvement standards shall be as required by the County street standards.

**7.9.4.** Where a proposed subdivision abuts or contains an existing street of inadequate right-of-way width, the County may require that additional right-of-way be dedicated to the County by a plat in order to conform to the requirements of subsections (7.9.2.) and (7.9.3.) above.

**7.9.5. Safety.** All proposed roads shall conform to the County's minimum safety standards.

**7.9.6. Demonstration of use/access.** The County shall not approve the grading or construction of roads, unless and until the subdivider can reasonably demonstrate that the roads to be constructed will receive use and that the roads are necessary to provide access to parcels or improvements within twenty-four (24) months after the date of construction of the road. It is unlawful for the subdivider to grade or otherwise commence construction of the roads, unless, the construction conforms to the schedule of road development approved by the County.

#### **7.10. Improvement guarantees.**

**7.10.1. Assurance.** In order for the County to be assured of the completion of the required improvements, the subdivider shall agree to either:

(a) Complete installation of the required improvements before approval of the final plat; or

(b) Assure construction of required improvements after final plat approval.



**7.10.2. Alternatives.** If the subdivider wishes to submit the final plat for review, approval and recording before completion of required improvements, the subdivider shall post a suitable improvements guarantee in an amount approved by the County. The guarantee shall be not less than one hundred twenty-five (125%) percent of the estimated cost of the required improvements. This guarantee may be by bond, letter of credit, escrow deposit, or other method acceptable to the County.

**7.11. Sewer systems.**

**7.11.1.** Sewer systems, which are to be constructed in the right-of-way or public easement, are not to be accepted for public use until the County issues a Certificate of Completion and Acceptance and the final plat is approved.

**7.11.2.** Sewer systems within a subdivision shall be constructed only after a sewer construction schedule has been approved by the County. In approving or disapproving a subdivider's sewer construction schedule, the County shall consider:

- (a) The proposed use of the subdivision;
- (b) The period of time before the sewer system will receive substantial use;
- (c) The period of time before construction of homes will begin on the portion of the subdivision serviced by the sewer system; and
- (d) The County Commission regulations governing phased development.

**7.11.3.** It is unlawful for the subdivider to commence construction of the sewer system unless the construction conforms to the schedule of sewer construction approved by the County.

**7.12. Water systems.**

**7.12.1.** Water systems which are to be constructed in the right-of-way or public easement, are not to be accepted for public use until the County issues a Certificate of Completion and Acceptance and the final plat is approved.

**7.12.2.** Water systems within a subdivision shall be constructed only after a water construction schedule has been approved by the County. In approving or disapproving a subdivider's water construction schedule, the County shall consider:



- (a) The proposed use of the subdivision;
- (b) The period of time before the water system will receive substantial use;
- (c) The period of time before construction of homes will begin on the portion of the subdivision serviced by the water system; and
- (d) The County Commission regulations governing phased development.

**7.12.3.** It is unlawful for the subdivider to commence construction of the water system unless the construction conforms to the schedule of water construction approved by the County.

#### **ARTICLE 8. ADMINISTRATIVE FEES**

Any person desiring to subdivide land in the County shall pay the administrative fees set by the Board of County Commissioners by Resolution for any and all items, e.g., *Preliminary plat. Summary review plat. Variance, Appeal, Claim of Exemption, Statement of vacation. etc.*

#### **ARTICLE 9. APPEALS**

##### **9.1. Who May Appeal.**

**9.1.1.** Any person who is adversely affected by a decision of the County Manager, or Review Committee in approving or disapproving a subdivision plat may appeal to the Board of County Commissioners within fifteen (15) days after the date of the action of the County Manager or Review Committee. The Board of County Commissioners shall hear the appeal and render a decision within forty (40) days after receiving the notice of appeal.

**9.1.2.** Any person who is adversely affected by a decision of the Board of County Commissioners in approving or disapproving a subdivision plat may appeal to the District Court of the county in which the subdivision is located by filing an appeal within thirty (30) days from the date of the action of the Board pursuant to the provisions of Sections 39-3-1.1 NMSA 1978 and Section 47-6-15.

#### **ARTICLE 10. ENFORCEMENT, PENALTIES, AND REMEDIES.**

**10.1.** Violations of the provision of these Regulations shall be prosecuted in the manner provided by law to protect the health,

safety, and welfare of the public according to the County's authority under the New Mexico Subdivision Act, NMSA 1978 §47-6-1 et seq. The remedies provided in these Regulations shall be cumulative and not exclusive.

**10.2.** All written, signed complaints alleging one or more violations of the provision of the New Mexico Subdivision Act or these Regulations may be initiated by or shall be referred to the County Manager for investigation. The County Manager shall investigate the complaint and take such action as is warranted or make a written recommendation to the Board of County Commissioners of what action is warranted. The County Manager shall inform the complainant in writing of what actions have been taken or will be taken in response to the complaint.

**10.3. Penalties and Remedies.** Violations of the provisions of these Regulations shall be subject to the following penalties, remedies and enforcement procedures:

**10.3.1. Utility Connections.** Any water, sewer, electric, or gas utility that connects service to individual parcels within a subdivision before a final plat for the subdivision has been approved by the Board of County Commissioners or before the landowner holds a valid building permit, may be fined a civil penalty of up to five hundred dollars (\$500) by the Board of County Commissioners. The Board of County Commissioners may also require that any utility connected in violation of this section and of NMSA 1978 §47-6-27.2 be disconnected.

**10.3.2. Suspension of Right of Sale.** The Board of County Commissioners may suspend or revoke approval of a plat as to unsold, unleased or otherwise not conveyed portions of a subdivider's plat if the subdivider does not meet the schedule of compliance approved by the Board of County Commissioners.

**10.3.3. Injunctive Relief, Mandamus.** The Board of County Commissioners, the District Attorney or the Attorney General may apply to the District Court for any or more of the following remedies in connection with violations of the New Mexico Subdivision Act and these Regulations: injunctive relief to prohibit a subdivider from selling, leasing, or otherwise conveying any interest in subdivided land until the subdivider complies with the terms of the New Mexico Subdivision Act and these Regulations; injunctive relief to compel compliance by any person with the provisions of the New Mexico Subdivision Act and these Regulations; rescission and restitution for persons who have purchased, leased, or otherwise acquired an interest in subdivided land that was divided, sold, leased or otherwise conveyed in material violation of the New Mexico Subdivision Act or these Regulations; or a

civil penalty of up to five thousand dollars (\$5,000) for each parcel created in knowing, intentional or willful violation of the New Mexico Subdivision Act or these Regulations.

**10.3.4. Bond Not Required.** The Board of County Commissioners, the District Attorney and the Attorney General shall not be required to post bond when seeking a temporary or permanent injunction or mandamus according to the provisions of the New Mexico Subdivision Act.

**10.3.5. Criminal Penalties.** NMSA 1978 §47-6-27 provides that: any person who knowingly, intentionally, or willfully commits a material violation of the New Mexico Subdivision Act is guilty of a misdemeanor, punishable by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one year, or both; and any person who is convicted of a second or subsequent knowing, intentional, or willful violation of the New Mexico Subdivision Act is guilty of a fourth degree felony, punishable by a fine of not more than twenty-five thousand dollars (\$25,000) per violation or by imprisonment for no more than eighteen (18) months, or both. Any violation of the provisions of these Regulations is punishable by a fine not to exceed three hundred dollars (\$300) or imprisonment for not more than ninety (90) days, or both, in accordance with NMSA 1978 §4-37-3.

#### **ARTICLE 11. SEVERABILITY.**

The provisions of these Regulations are severable, and if any provision, sentence clause, section, or part hereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provision, sentences, clauses, sections or parts of these Regulations or their application to other person or circumstances. It is hereby declared to be the intent of the County that these Regulations would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included herein, and if the person or circumstances to which these Regulations or any part thereof are inapplicable had been specifically exempted therefrom.

#### **ARTICLE 12. REPEAL AND EFFECTIVE DATE.**

Upon taking effect these Regulations repeal and replace County Ordinances 1997-6., 1999-1 and 2013-01. These Regulations shall become effective thirty (30) days after filing with the County Clerk and the State Records Administrator.

BOARD OF COMMISSIONERS OF  
COLFAX COUNTY, NEW MEXICO



Bobby LeDoux, Chairman

Roy Fernandez, Vice-Chair

Bret Wier, Member

ATTESTED:

  
Rayetta Trujillo, Colfax County Clerk