

**COLFAX COUNTY
ORDINANCE NO: 2013-01**

**AN ORDINANCE AMENDING THE COLFAX COUNTY
SUBDIVISION REGULATIONS ADOPTED IN ORDINANCE 1999-1**

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

WHEREAS, the Colfax County Commissioners considered and adopted standards as required by the NM Subdivision Act, and on the basis of such considerations agreed upon the form and content of the regulations and adopted Ordinance 1997-6 on May 20, 1997, 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 Board of County Commissioners of Colfax County, New Mexico subsequently held hearings on amending the said Colfax County Subdivision Regulations on March 2, 1999 and March 23, 1999 during which comments and suggestions concerning the proposed amendments to said regulations were provided by the members of the Colfax County Commission and members of the public; and

WHEREAS the Board of County Commissioners of Colfax County, New Mexico agreed upon the form and content of amended regulations and adopted the same as Colfax County Ordinance 1999-1 on August 3, 1999, 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 Board of County Commissioners of Colfax County, New Mexico desires to amend 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;

NOW, THEREFORE, by virtue of the power vested in us as duly elected members 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 these attached amendments to the Subdivision Regulations of Colfax County, NM and authorize and

direct the Colfax County Clerk to file, record and publish such regulations as required by law, including without limitation the New Mexico state records administrator.

ARTICLE 2. DEFINITIONS

DEFINITIONS.--As used in the New Mexico Subdivision Act:

- A. "board of county commissioners" means the governing board of a 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 replat 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 the preceding three years;

- within a building;
- (2) the sale or lease of apartments, offices, stores or similar space
 - (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; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or 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; and

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

Section 2. Pre-application Data Requirements

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.

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; and
 - f. accessibility of site to roads and utilities; and
 - g. a brief description of environmental impacts.

ARTICLE 4. PRELIMINARY PLAT REVIEW PROCESS

5.6 Disclosure statement. The preliminary plat shall be accompanied by a draft disclosure statement in accordance with the standardized format adopted by Resolution of the Board of County Commissioners, in accordance with NMSA 1978, Section 47-6-17, 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. Disclosure must state how the subdivider will accomplish improvements [e.g. a trust has been set up, etc.]. Disclosure must state whether a Protective covenant is in effect. The disclosure 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."**

ARTICLE 5. FINAL PLAT REVIEW PROCESS

Section 3. Final Plat Data Requirement

3.1 Filing specifications. The original drawing of the final plat shall be submitted in waterproof ink on 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] paper copies of the final plat map and accompanying information.

3.2 Map specifications. The final plat map shall include the following information: name of subdivision, scale, north arrow, and date; permanent monuments, or descriptions and ties to such monuments, to which all dimensions, angles, bearings, and similar data on the plat shall be referred; 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 angles, and radii, arcs, and central angles of all curves; 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; 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; 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; names of owners of contiguous un-platted land; delineation of any 100-year flood plain as designated by the Federal Emergency Management Agency; the names of the owner or owners of the subdivision, and the developer if other than the owner; the certification of a surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey; and legal

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

3.3 Affidavit. The final plat shall contain a statement that the land being subdivided is subdivided in accordance with the final plat. The affidavit should state "Final approval of the plat by the county shall not constitute inclusion of the subdivision roads on the county's road maintenance schedules or lists". 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.

3.4. Dedication. The final plat shall contain a certificate stating that the Board of County Commissioners has accepted, 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.

3.5. Disclosure statement. For all subdivisions, a disclosure statement shall be prepared in accordance with the standardized format adopted by Resolution of the Board of County Commissioners, 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.

3.6. Conformity. The Board of County Commissioners shall not approve the plat of any subdivision if the subdivider cannot reasonably demonstrate that he can fulfill the proposals contained in his disclosure statement or if the subdivider has not conformed with the New Mexico Subdivision Act and the County's subdivision ordinance.

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.

3.8. New Mexico Environment Department approval. For any subdivision requiring construction of a public water supply system or a community system, liquid waste system documentation of approval from the New Mexico Environment Department shall be required for final plat approval. The plat may be approved contingent upon receiving the necessary approval from the New Mexico Environment Department and verified to the Board of County Commissioners.

3.9. Recording. The final plat is in full force and effect only after having been recorded in the office of the County Clerk within one (1) year after the date of approval by the Board of County Commissioners.

3.10. Water permit. For all subdivisions containing twenty (20) or more parcels, any one of which is two (2) acres or less in size, the subdivider shall provide a copy of the water permit issued by the State Engineer for subdivision water use. The Board of County Commissioners shall not approve the final plat unless the State Engineer has issued a water permit for the subdivision water use.

3.11. 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 Commissioners 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.

3.12. County Treasurer's Tax Certification. Prior to final plat approval for any subdivision, the Colfax County Treasurer shall certify in writing on said plat that all the 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.

3.13 Solid waste fees. 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 by the owner of the real property to be divided have been paid in full.

ARTICLE 6. SUMMARY REVIEW PROCESS

2.5. Disclosure statement. For all subdivisions, a disclosure statement shall be prepared in accordance with the standardized format adopted by Resolution of the Board of County Commissioners, 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 by the county for county maintenance"**.

ARTICLE 7. SPECIAL PROCEDURES

Section 3. Vacation of Plats

Any final plat filed in the office of the County Clerk may be vacated or a portion of the final plat 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 the Board of County Commissioners finds that a plat was obtained by misrepresentation or fraud and orders a statement of vacation to be prepared by the County.

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 or County Administrator Office, along with the names and addresses of all owners of record

of property within the subdivided land to be vacated and the names of all owners of record of property contiguous to the subdivided land to be vacated.

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, subject to the following: Action shall be taken 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. Relevant utilities and other agencies have been notified.

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.

3.4 Solid waste fees. Prior to approval of the vacation of all or a 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 have been paid in full.

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.

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.

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.

Section 6. Exemptions

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 either obtains approval for a subdivision as provided in these Regulations or files and obtains approval for a Claim of Exemption as provided in this Article. See subdivision definitions for possible exemptions.

6.2. County Treasurer's Tax Certification. Prior to approval of a claim of exemption, the Colfax County Treasurer shall certify in writing on any plat submitted in conjunction with the claim of exemption that all the taxes, penalties, interest and fees due on the real property subject the claim of exemption, including taxes through or combined through the taxable year in which the claim for exemption is made, have been paid in full. If no plat is required to be submitted with the claim for exemption, the person making claim for exemption shall submit a written certification by the Colfax County Treasurer that all the taxes, penalties, interest and fees due on the real property subject the claim of exemption, including taxes through the taxable year in which the claim for exemption is made, have been paid in full.

6.3 Solid waste fees. Prior to approval of a claim of exemption, 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 subject to the claim of exemption.

6.4 Verification of Exemption. Any person claiming entitlement to an exemption under the provisions of these Regulations shall file a written claim of exemption on the form approved by resolution of the Board of County Commissioners with the County Manager or County Administrator before making the land division for which the claim of exemption is made. The County Commission shall review the claim of exemption and

supporting documents and shall mail written notice of whether the exemption has been approved or denied to the person claiming the exemption within thirty (30) days after receipt of the completed claim of exemption; provided, however, that the thirty (30) day period shall not begin to run until the person claiming the exemption has delivered a completed Claim of Exemption and all supporting documents to the County Manager or County Administrator. If the claim of exemption is approved, or if the County Commission fails to mail written notice to the claimant within thirty (30) days after receipt of the completed claim of exemption and all supporting documents, the person claiming the exemption may divide the land in the manner proposed in the claim of exemption without complying with the provisions of these Regulations. If the claim of exemption is denied, the person claiming the exemption may appeal the denial as provided in Article 10 of these Regulations or may submit an application for subdivision as provided in these Regulations.

The foregoing provisions only of SUBDIVISION OF LAND ORDINANCE NO: 1999-1 are hereby repealed, and all of the remaining provisions of said Ordinance No. 1999-1 are continued in full force and effect and are unaffected by these amendments.

DONE in open meeting this 17th day of December, 2013.

BOARD OF COMMISSIONERS OF
COLFAX COUNTY, NEW MEXICO


Jim Maldonado
JIM MALDONADO, CHAIRMAN

William E. Sauble
WILLIAM E. SAUBLE, VICE-CHAIRMAN

James L. Newton
JAMES L. NEWTON, MEMBER

ATTEST:

Freda L. Baca
FRED L. BACA - CLERK OF THE BOARD