

APPENDIX F

Local Ordinances and Reevaluation Letters



September 21, 2005
L-05-661

Ms. Gail Cooke
NMED/AQB
2044 Galisteo
Santa Fe, NM 87505

RE: Dona Ana County Natural Events Action Plan

Dear Ms. Cooke,

The City of Las Cruces has reviewed its current dust control ordinance for the Dona Ana County Natural Events Action Plan (NEAP) and is of the opinion that the current ordinance is satisfactory in terms of protecting the community from man-made sources of windblown dust.

Please advise should you require any additional information regarding this matter. I can be reached at (505) 528-3106 or by e-mail at rkyle@las-cruces.org.

Sincerely,

A handwritten signature in black ink, appearing to read "RKyle", with a long horizontal flourish extending to the right.

Robert Kyle, AICP
Building Official

Cc: Christine Ochs

P.O. BOX 20000
LAS CRUCES
NEW MEXICO
88004-9002
505.541.2000

AN EQUAL OPPORTUNITY EMPLOYER

CERTIFICATION

I, Shirley Clark, duly acting and appointed City Clerk for the City of Las Cruces, New Mexico do hereby certify that the attached are copies of the originals on file in the office of the city clerk.

Council Bill No. 00-040; Ordinance No. 1789: An Ordinance Amending Section 32-3, Repealing Sections 32-206 and 32-207, and Adding a New Article to Chapter 32 of the Las Cruces Municipal Code. The Ordinance Proposes to Address Erosion Control for Dust as Part of the City's Design Standards Within the Municipal Code.

Witness my hand and seal this 7th day of April, 2000.



Shirley Clark, MMC
City Clerk


(SEAL)

AN ORDINANCE AMENDING SECTION 32-2, REPEALING SECTIONS 32-206 AND 32-207, AND ADDING A NEW ARTICLE TO CHAPTER 32 OF THE LAS CRUCES MUNICIPAL CODE. THE ORDINANCE PROPOSES TO ADDRESS EROSION CONTROL FOR DUST AS PART OF THE CITY'S DESIGN STANDARDS WITHIN THE MUNICIPAL CODE.

The City Council is informed that:

WHEREAS, the City of Las Cruces, since 1996, has experienced violations to the federal Clean Air Act and its National Ambient Air Quality Standards, and

WHEREAS, the violations are for PM10 (dust or particulate matter less than 10 microns in size) and such violations are attributed to our local high winds, and

WHEREAS, the U.S. Environmental Protection Agency has created a Natural Events Policy and its Natural Events Action Plan (NEAP), and

WHEREAS, as part of the NEAP, the affected jurisdictions must address those sources of dust created through man-made activities, and

WHEREAS, the NEAP is being developed by the State of New Mexico Environment Department's Air Quality Bureau and has yet to be finalized, and

WHEREAS, City Staff has prepared this ordinance to address dust control within the City limits of Las Cruces in anticipation of the finalized NEAP.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Chapter 32 of the City of Las Cruces Municipal Code is amended by adding a new Article as represented within Exhibit "A", attached hereto, or as amended by Council action and made part of this Ordinance,

THAT Sections 32-206 and 32-207 of the City of Las Cruces Municipal Code are hereby repealed as represented within Exhibit "B", attached hereto, or as amended by Council action and made part of this Ordinance, and

(II)

THAT Section 32-2 of the City of Las Cruces Municipal Code is hereby amended as represented in Exhibit "C", attached hereto, or as amended by Council action and made part of this Ordinance, and

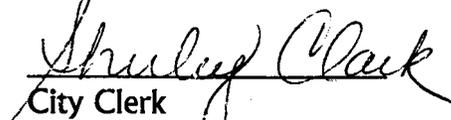
THAT City Staff are hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 3rd day of April, 2000.

APPROVED:

Mayor Ruben A. Smith

ATTEST:


City Clerk
(SEAL)

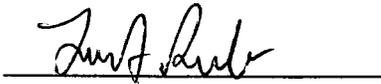
VOTE:

Mayor Smith: aye
Councillor Frietze: aye
Councillor Mattiace: aye
Councillor Valencia: absent
Councillor Trowbridge: aye
Councillor Tomlin: absent
Councillor Haltom: aye

Moved by: Haltom

Seconded by: Frietze

APPROVED AS TO FORM:


City Attorney

ARTICLE V: STANDARDS FOR EROSION CONTROL**Section 5.1 Soil & Water Erosion Control**

5.1A Under this chapter, temporary ponding and terracing is recommended for construction sites during grading operations and measures should be continued until final paving, wall construction and landscaping is in place.

5.1B Ponding below natural grade is encouraged (depressed storage). Construction of dikes to control runoff is not acceptable due to possible dike failure resulting in washouts and greater drainage problems than the original runoff presented.

Section 5.2 Wind Erosion Control**5.2A Purpose and Intent of this Article**

The purpose of this section of Article V is to protect and maintain the natural environment and to reduce the health effects caused by the creation of fugitive dust, more specifically PM10, consistent with the Policies of the City's Comprehensive Plan and the Natural Events Action Plan for Dona Ana County. This article shall accomplish the requirements of these planning documents by preventing or limiting the activities that create fugitive dust, more specifically the operations and activities associated with new or existing construction and development.

The intent of this section of Article V is to prevent the contribution of man-made dust production on a regular basis. This Chapter is also intended to realize that when natural events do occur, such as fugitive dust creation through high winds, the contribution of man-made dust is limited in its negative health and safety impacts. Also, the actions required within this Article are not intended to cease all man-made dust generation activities when such natural events occur and the actions taken to reduce dust generation may be overcome by the natural occurrence.

5.2B Applicability

The provisions of this ordinance shall apply to any activity, equipment, operation and/or practice, man-made or man-caused, capable of generating fugitive dust.

- 1 Exemptions:** Any person seeking an exemption from any of the provisions of this ordinance shall submit a petition to the City Building Official for approval. The following activities are automatically exempted from the provisions of this ordinance:
- a. Regular agricultural operations, including cultivating, tilling, harvesting, growing, the raising of farm animals or fowl, excluding unpaved roads associated with such operations.
 - b. Governmental activities during emergencies, life threatening situations or in conjunction with any officially declared disaster or state of emergency.
 - c. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission, cable television, telephone, water and sewage during service outages and emergency disruptions.
 - d. Temporary use of unpaved roads and parking lots which generate less than 20 vehicle trips per day for less than three (3) successive calendar days.

2. Control Plan Submittal and Requirements. In addition to standards established in subsequent sections of this Article, if the construction and demolition operation or activity are subject to this Article V, a control plan shall be required. The control plan or description requirements may be separate documents or incorporated as part of required building and/or construction plans. The following shall constitute the minimum information required within the control plan or description for Reasonably Available Control Measures (RACM's) as part of building and/or subdivision construction.

- a. Name(s), address(es) and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the control plan and responsible for the dust generating operations.
- b. A plot plan or plat of survey of the site which describes:
 - 1) The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
 - 2) The operation(s) and activities to be carried out on the site;
 - 3) All actual and potential sources of fugitive dust emissions on the site;
 - 4) Delivery, transport and storage areas for the site, including types of materials stored and size of piles.
- c. A description of RACM's or combination thereof to be applied during all periods of dust generating operations to each of the fugitive dust sources described on the plot plan or plat. For each source identified at least one control measure must be implemented. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:
 - 1) If dust suppressants are to be applied, then the type of suppressant,

method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;

- 2) The specific surface treatment(s) and/or other RACM's utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces; and
- 3) For each fugitive dust source at least one auxiliary RACM designated as a contingency measure shall be described in the original control plan. Should the original RACM in the control plan prove ineffective, immediate and effective implementation of the contingency measure shall obviate the requirement of submitting a revised control plan.

3. Control Plan Review and Approval. Review and approval of the RACM's shall be the responsibility of the Building Official or designee. Approval may be conditioned to requiring additional measures, actions, or other activities, in addition to those actions proposed within the control plan documentation.

4. Implementation. Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined RACM's contained within the control plan or description shall mandate the implementation of said RACM's by the developer, contractor, builder, owner, and/or agents as part of construction activities.

5. Other Violation Prohibited. Implementation of RACM's shall not allow the creation of other violations of these Design Standards or other provisions of the Municipal Code.

5.2C General and Non-Construction Activity Standards

1 Ground Cover Removal Prohibited. No person shall disturb the topsoil or remove ground cover on any real property within the city limits and thereafter allow the property to remain unoccupied, unused, vacant or undeveloped unless reasonable actions are taken to prevent generation of dust.

2. Vacant Land - Weed Eradication and Dust Suppression.

- a. For all vacant or undeveloped lots, weed eradication is limited to removal of specific weeds only through mowing or hoeing and not the removal of natural vegetation. Clearing of the entire lot is prohibited.
- b. Once weeds are removed or mowed, dust suppression can be achieved through watering, chemical suppressant application, or the expansion of natural, non-weed vegetation areas on the site. Expansion of natural vegetation areas is encouraged.
- c. Natural vegetation shall consist of those plant varieties that are indigenous to New

Mexico or that are determined to be native or natural plant varieties by the City's Landscape Architect.

- 3. Storage of Materials and Material Transport.** Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or otherwise treated to prevent fugitive dust creation.
- 4. Parking Time Delay Agreements.** For businesses that require an approved Parking Time Delay Agreement and corresponding Business License with the City, the agreement shall include implementation of RACM's during the approved delay period prior to pavement installation.
- 5. Unpaved Parking Lots and Roadways.** Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or otherwise treated to prevent fugitive dust creation. Existing, non-conforming, unpaved parking lots and roadways shall be brought into conformance in accordance with the provisions established for the expansion of Non-Conforming Uses and Structures within the Zoning Code, as amended, and the Control Plan requirements of this Article.
- 6. Existing Operations.** For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations which may continuously generate fugitive dust, individual control plans with corresponding RACM's shall be submitted to the Planning Department for approval. Approval shall be made by the Building Official/Planning Director or designee and shall be communicated in writing to the property/business owner. Letters of approval and approved control plans shall be kept at the property subject to this provision.

5.2D Design and Construction Standards

These standards shall apply for all design and construction activities on real property within the city limits including, but not limited to, Subdivisions, Large Lot Residential, Office, Commercial, and Industrial Building Construction.

- 1. Subdivision requirements.**
 - a. For all subdivisions, RACM's shall be outlined and approved as part of the overall review of the subdivision construction drawings through the Planning Department.
 - b. Developers of the subdivision shall be allowed to grade for the subdivision only after complete subdivision construction drawing approval and permit issuance. No separate grading permits shall be allowed.

c. Letters of credits for all construction activities of the subdivision shall reflect the necessary cost of implementing RACM's for dust suppression.

2. Large Lot Residential, Office, Commercial, and Industrial Construction Requirements. For all large lot residential properties, in which the total area is greater than or equal to 1/2 acre, and for all office, commercial, industrial, institutional, or governmental construction activities, RACM's shall be outlined and approved as part of the building permit by the Planning Department.

a. Grading activities shall only be allowed to commence after building plan approval and permit issuance. No separate grading or site only development permits shall be granted.

b. Letters of credits for dust control plan implementation for the building may be necessary to ensure implementation of RACM's for dust suppression.

3. Cessation of Operations. Once construction has commenced, the disturbed area cannot sit for more than ten (10) successive calendar days. RACM's must be outlined and implemented for all disturbed areas during periods of ceased operations more than two (2) successive calendar days and less than ten (10) successive calendar days.

4. City Construction Projects. Construction activities by the City of Las Cruces shall require RACM's outlined within the Construction Drawings. This applies to those projects not part of a subdivision, i.e., road reconstruction or utility replacements, or buildings not issued building permits by the City of Las Cruces, i.e., new City buildings or utility substations. Compliance to such RACM's shall be the responsibility of the contractor and subject to verification by the Civil Engineering, Utilities Engineering, or Planning Department's Building/Project Inspectors or the City Architect's staff.

5.2E. Reasonably Available Control Measures (RACM's)

Reasonably Available Control Measures to be implemented in accordance with this Article for all construction activities within the city limits shall include, but not be limited to:

1. Designing subdivisions or building sites to utilize existing, pre-development grades;
2. Watering disturbed areas on a regular and minimum basis throughout daily construction activities;
3. Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
4. Constructing snow and/or wind fences;
5. Re-seeding or re-vegetation of graded or disturbed areas;
6. Grading for street and utility placement only as part of subdivision construction;
7. Building all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of all subdivisions and not part of the individual building

permit for each lot. Walls shall serve as wind break and help to reduce the entrainment of dust;

8. Grading the building pad site only plus five feet in all directions of the pad site;
9. Retaining natural vegetation during the construction phase of buildings excluding the building pad site;
10. Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
11. Installing non-natural landscaping or vegetation in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation;
12. Implementing any other proposed dust suppressing agent or activity approved by the Building Official or designee; or
13. Combining any two or more of the above items.

5.2F Corrections, Effective Date, and Enforcement

1. **Correction of Condition.** If the City Inspections, Enforcement, or other Personnel document that a person is in non-compliance with any of the provisions contained within the Article above, he or she will notify the person of that fact and specify a period of time in which the person must achieve compliance. Failure to comply within 24 hours or as the time determined by the City constitutes grounds for a notice of violation per the City's Enforcement Ordinances. Correction of condition may include the amendment of plans to reflect additional or new control measures to be taken in the event that original measures prove to be insufficient or ineffective.
2. **Remedial Action.** The City Planning Department, its designated agent and any other authorized City representative, after proper notice, may enter upon any real property where dust is being generated and take such remedial and corrective action as he or she deems necessary when the owner, occupant, operator, or any tenant, lessee, or holder of any possessory interest or right in the involved land fails to do so.
3. **Costs.** Any costs incurred in connection with any remedial or corrective action taken by the City, pursuant to this section, shall be assessed against the owner of the property involved. Failure to pay the full amount of such incurred costs shall result in a lien against the property. The lien shall remain in full force and effect until all costs have been fully paid, which may include cost of collection and reasonable attorney fees.
4. **Effective Date.** For all existing emission sources governed by this ordinance, the activity must be completed within six (6) months of the effective date or be brought into full compliance. For existing, on-going, and/or permanently-sited institutional, governmental, commercial and/or industrial facilities or operations, the dust control provisions of this ordinance shall be submitted in writing, approved, and implemented within six (6) months of the effective date of this ordinance.

5. **Liability.** All persons owning, operating, or in control of any equipment or property who shall cause, permit, or participate in, any violation of this ordinance shall be individually and collectively liable to any penalty or punishment imposed by and under the Municipal Code for the City of Las Cruces.

6. **Offenses.** Any person who violates any provision of this ordinance, including, but not limited to, any application requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspection, or any requirements by the City is guilty of a misdemeanor and shall pay civil penalty levied by the court of competent jurisdiction. Each day of violation constitutes a separate offense.

EXHIBIT "B" - Repealed Sections

LCMC - Chapter 32
Sections 32-206 & 32-307.

Article III, Division 5
Pg 1

~~DIVISION 5. EROSION CONTROL~~

~~Sec. 32-206. Water erosion control.~~

~~—— (a) Under this chapter, temporary ponding and terracing is recommended for construction sites during grading operations and measures should be continued until final paving, wall construction and landscaping is in place.~~

~~—— (b) Ponding below natural grade is encouraged (depressed storage). Construction of dikes to control runoff is not acceptable due to possible dike failure resulting in washouts and greater drainage problems than the original runoff presented.~~

~~Sec. 32-207. Wind erosion control.~~

~~—— (a) Under this chapter, erosion from severe winds should be controlled by the use of existing or proposed vegetation.~~

~~—— (b) When possible, existing vegetation should not be removed until immediately prior to building. If a site has been graded and the soil has been exposed for a minimum of eight months, the owner must install temporary irrigation and vegetation by way of seeding or an equal approved by the city's landscape architect.~~

DIVISION 6. DETAILS - ~~renumbered to DIVISION 5~~

~~Sec. 32-206 - 32-235. Reserved. - placed at the end of DIVISION 4.~~

EXHIBIT "C"

LCMC - Chapter 32
Section 32-2.

Article I
Pg 1

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ADT means average daily traffic, which is the total traffic for a year divided by 365.

Alley means a minor public way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access. Land owned or controlled by the Stationary Source and to which public access is precluded by a fence, physical barriers, or other effective means is exempted from the ambient air.

Arterial street means a street which is used primarily for serving large volumes of comparatively high-speed traffic from one area of the city to another.

Asphalt treated base means base course aggregate and bituminous material mixed in a central plant, spread and compacted on a prepared surface in substantial compliance with the specifications, lines, grades, thicknesses and typical cross section shown on the plans.

Backfill means that soil which is replaced in a hole after excavation and placement of irrigation lines, plant materials, conduits and structures.

Bikepath means a portion of a roadway or separate pathway designated for use by bicycles.

Building setback means the right angle distance from a point on or within street right-of-way to the closest point of any building structure.

Channel means any arroyo, stream, swale, ditch, diversion, or watercourse that conveys storm runoff, including manmade facilities.

Channel stability means a condition in which a channel neither degrades to the degree that structures, utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent property is endangered.

Channel treatment measure means a physical alteration of a channel for any purpose.

Chemical Soil Stabilization/Suppression means a method of dust control implemented by any person to mitigate PM10 emissions by applying petroleum resins, asphaltic emulsions, acrylics, adhesives, or any other approved material that are not prohibited for use by the City, the New Mexico Environment Department, the Environmental Protection Agency, or any other law, rule, or regulation.

Collector street means a street that carries traffic from local streets to the major arterial streets and highways.

Construction and Demolition Activities means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

Control Plan means a written description of all Reasonably Available Control Measures (RACM's) to be implemented at a work site and/or in transit to and from a work site for any earth moving, construction, or potential dust generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

Crown means the cross slope or difference in elevation between the high point of a street (usually the centerline of the street) and the gutter line, adjacent to the pavement edge, for any given cross section. Crown is normally expressed as a percentage.

Cul-de-sac means a minor street with only one outlet and culminated by a turnaround.

Curb cut means a depressed segment of a vertical roadway curb.

Curb return means a curved segment of curb used at each end of an opening in the roadway curb.

Design storm means a storm that deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control and erosion control measures.

Design year means the year during which the roadway improvements shall reach life expectancy with normal maintenance.

Development review committee means an informal group of representatives employed or retained by the city whose duties include reviewing subdivision or subdivision-related proposals and resolving conflicting comments, recommendations or design differences between city reviewing departments and developers. The committee's decision

shall be final unless overruled by the planning and zoning commission or board of adjustment or city council.

Disturbed Area means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or movement will or has occurred.

Double penetration means, commonly, two or three successive applications of asphaltic material and mineral aggregate.

Drainage means storm drainage.

Drainage course means a natural watercourse or indenture for the drainage of surface waters.

Drainage plan means a plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of (i) the existing storm drainage conditions of a proposed development, and (ii) the disposal of the increased runoff which is generated by the proposed development.

Driveway means a point of vehicular access between a street and an abutting property, and is further defined to include:

(1) The area between the face of curb and the right-of-way line for streets with curbs.

(2) The area between the edge of pavement of the outside travel lane and the right-of-way line for strip paved streets.

(3) The area between the right-of-way line and 15 feet from the right-of-way line toward the street for completely unimproved streets.

Drought tolerant plants means plants from the state and other dry areas that can survive on very little water, such as that which falls in Southern New Mexico in normal rainfall years.

Dust Generating Operation means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

Easement means the right, liberty, advantage or privilege that one individual or entity has in land of another, either express or imputed (utility, grant, or necessity).

Engineer means a person who is engaged in the practice of engineering and is

qualified to so practice as attested by his legal registration as a professional engineer in the state.

Erosion means the transportation of soil particles, or mass movement of soil (mass wasting), by water, wind front leaving, or mechanical means.

Erosion control means treatment measures for the prevention of damages due to soil movement and to deposition from the ten-year design storm runoff.

ETZ means extraterritorial zone.

Flood control means the treatment measures necessary to protect life and property from the 100-year design storm runoff.

Flood hazard area means an area subject to inundation from the 100-year design storm runoff.

Freeway means a divided multilane highway for through traffic with all crossroads separated in grade and with full control of access.

Frontage road means a local street which is parallel to and adjacent to another street, normally a highway or a freeway.

Fugitive dust means any particulate matter entrained in the ambient air which is caused from man-made and natural activities without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown dust. Excluded particulate matter includes matter emitted directly from the exhaust of motor vehicles, or from other combustion devices, portable brazing, soldering or welding equipment, and pile drivers.

Grading plan means a plan describing the existing topography and proposed grading, including retaining walls and details, interfaces with adjacent properties, streets, alleys and channels, referenced to mean sea level based on a city benchmark, and showing sufficient contours, spot elevations and cross sections to allow a clear understanding by reviewers, contractors and inspectors.

High wind event means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measure implementation. Notwithstanding other climatic conditions, the average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

Hot mix asphaltic concrete means high-quality, thoroughly controlled hot mixture of asphalt cement and well-graded, high-quality aggregate, thoroughly compacted into a uniform dense mass.

Improvements includes infrastructure such as streets; curbs; gutters; sidewalks; fire hydrants; storm drainage facilities; bikepaths; trails; and water, sewer, and gas systems or parts thereof.

ITE means Institute of Transportation Engineers.

Landscaping means a combination of trees, shrubs, perennials, ground covers and artifacts, arranged in such a manner as to effect a design that follows the principles of this chapter.

Local street means a street of relatively short length that provides access to a collector street and is designed to discourage its use by through traffic.

Lot means a portion of a subdivision or other parcel of land intended for the purpose of development, whether immediate or future. It also is tract of land described by metes and bounds and held in separate ownership, as shown on the records in the county assessor's office.

Maintenance means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

Major arroyo means any channel whose watershed exceeds 320 acres in a 100-year design storm, whether such watershed is in its natural or unaltered state or has been altered by development, runoff diversions, or detention facilities.

Native plants means plants that are indigenous to the state from other places that have become established in wildlands without cultivation.

Natural cover means any vegetation which exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

One-hundred year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a one-percent chance of being equaled or exceeded in any given year.

Ornamental plants means plants cultivated in this area for landscaping purposes.

PM10 means particulate matter, both filterable and condensable, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers.

Palliative means any agent used to lessen or reduce dust emissions.

Parking area means that portion of a lot, the use of which is devoted to more than four off-street parking spaces.

Parkway means that area of a public street that is between the curb and sidewalk or between the sidewalk and the property line, which is used for planting purposes.

Particulate matter means any material emitted or entrained into the air as liquid or solid particulate, with the exception of uncombined water.

Public rights-of-way means the total area of land deeded, reserved by plat, or otherwise acquired by the city, the county, or the state.

Reasonably Available Control Measures (RACM) means techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

Roadway means that portion of the street available for vehicular traffic.

SCS means Soil Conservation Service.

Sidewalk means a pedestrian walkway with permanently improved surfacing.

Slope means an inclined piece of land, three feet or higher vertical rise, with a five horizontal to one vertical incline or greater.

Street means a public way that has been dedicated or reserved by plat, other than an alley, which affords the principal means of access to abutting property.

Street trees means trees planted in the public right-of-way along city streets for beautification and benefit of the general public.

Surveyor means a person who is engaged in the practice of surveying and is qualified to so practice as attested by his legal registration as a professional surveyor in the state.

Ten-year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a ten-percent chance of being equaled or exceeded in any given year.

Topsoil means soil which is with the A-1 horizon of a soil profile, containing organic matter, nutrients, and the microorganisms necessary for normal plant growth.

Visible dust emission means dust of such opacity as to obscure an observer's view to a degree equal to or greater than an opacity of 20%, for a period or periods aggregating more than three minutes in any one hour.

Water conservation means proper water management procedures, including design as well as maintenance procedures by using drip irrigation, drought tolerant plant materials and gray water.

Wildlife means indigenous or naturalized bird, reptilian, mammalian, fish, or invertebrate life found in the out-of-doors.

Wind speed means the average wind velocity, regardless of direction, based on a 60-minute average from the nearest weather report or PM10 monitoring station, or by a portable wind instrument located at the site.

EXHIBIT "D"

LCMC - Chapter 32
Section 32-2.

Article I
Pg 1

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

ADT means average daily traffic, which is the total traffic for a year divided by 365.

Alley means a minor public way which is used primarily for vehicular service access to the back or side of properties otherwise abutting on a street.

Ambient air means that portion of the atmosphere, external to buildings, to which the general public has access. Land owned or controlled by the Stationary Source and to which public access is precluded by a fence, physical barriers, or other effective means is exempted from the ambient air.

Arterial street means a street which is used primarily for serving large volumes of comparatively high-speed traffic from one area of the city to another.

Asphalt treated base means base course aggregate and bituminous material mixed in a central plant, spread and compacted on a prepared surface in substantial compliance with the specifications, lines, grades, thicknesses and typical cross section shown on the plans.

Backfill means that soil which is replaced in a hole after excavation and placement of irrigation lines, plant materials, conduits and structures.

Bikepath means a portion of a roadway or separate pathway designated for use by bicycles.

Building setback means the right angle distance from a point on or within street right-of-way to the closest point of any building structure.

Channel means any arroyo, stream, swale, ditch, diversion, or watercourse that conveys storm runoff, including manmade facilities.

Channel stability means a condition in which a channel neither degrades to the degree that structures, utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent property is endangered.

Channel treatment measure means a physical alteration of a channel for any purpose.

Chemical Soil Stabilization/Suppression means a method of dust control implemented by any person to mitigate PM10 emissions by applying petroleum resins, asphaltic emulsions, acrylics, adhesives, or any other approved material that are not prohibited for use by the City, the New Mexico Environment Department, the Environmental Protection Agency, or any other law, rule, or regulation.

Collector street means a street that carries traffic from local streets to the major arterial streets and highways.

Construction and Demolition Activities means any on-site activities preparatory to or related to building alteration, rehabilitation, removal or razing, or improvement on real property, including the placement and upkeep of mobile or manufactured homes or buildings. "Construction" also means construction of roadway systems including, arterials, expressways, interstates, tunnels, overpasses, bridges, interchanges, residential and commercial streets within a subdivision, and airport runway improvements.

Control Plan means a written description of all Reasonably Available Control Measures (RACM's) to be implemented at a work site and/or in transit to and from a work site for any earth moving, construction, or potential dust generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

Crown means the cross slope or difference in elevation between the high point of a street (usually the centerline of the street) and the gutter line, adjacent to the pavement edge, for any given cross section. Crown is normally expressed as a percentage.

Cul-de-sac means a minor street with only one outlet and culminated by a turnaround.

Curb cut means a depressed segment of a vertical roadway curb.

Curb return means a curved segment of curb used at each end of an opening in the roadway curb.

Design storm means a storm that deposits a stated amount of precipitation within a stated period over a defined area and which is used in calculating storm runoff and in designing drainage control, flood control and erosion control measures.

Design year means the year during which the roadway improvements shall reach life expectancy with normal maintenance.

Development review committee means an informal group of representatives employed or retained by the city whose duties include reviewing subdivision or subdivision-related proposals and resolving conflicting comments, recommendations or design differences between city reviewing departments and developers. The committee's decision

shall be final unless overruled by the planning and zoning commission or board of adjustment or city council.

Disturbed Area means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or movement will or has occurred.

Double penetration means, commonly, two or three successive applications of asphaltic material and mineral aggregate.

Drainage means storm drainage.

Drainage course means a natural watercourse or indenture for the drainage of surface waters.

Drainage plan means a plan indicating an on-site drainage proposal, the passage of stormwaters through the development and safe discharge of runoff onto adjacent lands or into storm drainage facilities. Also, a comprehensive analysis of (i) the existing storm drainage conditions of a proposed development, and (ii) the disposal of the increased runoff which is generated by the proposed development.

Driveway means a point of vehicular access between a street and an abutting property, and is further defined to include:

- (1) The area between the face of curb and the right-of-way line for streets with curbs.
- (2) The area between the edge of pavement of the outside travel lane and the right-of-way line for strip paved streets.
- (3) The area between the right-of-way line and 15 feet from the right-of-way line toward the street for completely unimproved streets.

Drought tolerant plants means plants from the state and other dry areas that can survive on very little water, such as that which falls in Southern New Mexico in normal rainfall years.

Dust Generating Operation means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

Easement means the right, liberty, advantage or privilege that one individual or entity has in land of another, either express or imputed (utility, grant, or necessity).

Engineer means a person who is engaged in the practice of engineering and is

qualified to so practice as attested by his legal registration as a professional engineer in the state.

Erosion means the transportation of soil particles, or mass movement of soil (mass wasting), by water, wind front leaving, or mechanical means.

Erosion control means treatment measures for the prevention of damages due to soil movement and to deposition from the ten-year design storm runoff.

ETZ means extraterritorial zone.

Flood control means the treatment measures necessary to protect life and property from the 100-year design storm runoff.

Flood hazard area means an area subject to inundation from the 100-year design storm runoff.

Freeway means a divided multilane highway for through traffic with all crossroads separated in grade and with full control of access.

Frontage road means a local street which is parallel to and adjacent to another street, normally a highway or a freeway.

Fugitive dust means any particulate matter entrained in the ambient air which is caused from man-made and natural activities without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown dust. Excluded particulate matter includes matter emitted directly from the exhaust of motor vehicles, or from other combustion devices, portable brazing, soldering or welding equipment, and pile drivers.

Grading plan means a plan describing the existing topography and proposed grading, including retaining walls and details, interfaces with adjacent properties, streets, alleys and channels, referenced to mean sea level based on a city benchmark, and showing sufficient contours, spot elevations and cross sections to allow a clear understanding by reviewers, contractors and inspectors.

High wind event means a climatological occurrence in which the average wind speed exceeds a threshold in which fugitive dust will be generated from undisturbed areas, naturally covered areas, disturbed areas, and construction sites, regardless of reasonably available control measure implementation. Notwithstanding other climatic conditions, the average wind speed for high wind events is a sustained wind speed of 25 miles per hour or greater.

Hot mix asphaltic concrete means high-quality, thoroughly controlled hot mixture of asphalt cement and well-graded, high-quality aggregate, thoroughly compacted into a uniform dense mass.

Improvements includes infrastructure such as streets; curbs; gutters; sidewalks; fire hydrants; storm drainage facilities; bikepaths; trails; and water, sewer, and gas systems or parts thereof.

ITE means Institute of Transportation Engineers.

Landscaping means a combination of trees, shrubs, perennials, ground covers and artifacts, arranged in such a manner as to effect a design that follows the principles of this chapter.

Local street means a street of relatively short length that provides access to a collector street and is designed to discourage its use by through traffic.

Lot means a portion of a subdivision or other parcel of land intended for the purpose of development, whether immediate or future. It also is tract of land described by metes and bounds and held in separate ownership, as shown on the records in the county assessor's office.

Maintenance means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control and erosion control facilities, but not including the cost of power consumed in the normal operation of pump stations.

Major arroyo means any channel whose watershed exceeds 320 acres in a 100-year design storm, whether such watershed is in its natural or unaltered state or has been altered by development, runoff diversions, or detention facilities.

Native plants means plants that are indigenous to the state from other places that have become established in wildlands without cultivation.

Natural cover means any vegetation which exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

One-hundred year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a one-percent chance of being equaled or exceeded in any given year.

Ornamental plants means plants cultivated in this area for landscaping purposes.

PM10 means particulate matter, both filterable and condensable, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers.

~~*Palliative* means any agent used to lessen or reduce dust emissions.~~

Parking area means that portion of a lot, the use of which is devoted to more than four off-street parking spaces.

Parkway means that area of a public street that is between the curb and sidewalk or between the sidewalk and the property line, which is used for planting purposes.

Particulate matter means any material emitted or entrained into the air as liquid or solid particulate, with the exception of uncombined water.

Public rights-of-way means the total area of land deeded, reserved by plat, or otherwise acquired by the city, the county, or the state.

Reasonably Available Control Measures (RACM) means techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

Roadway means that portion of the street available for vehicular traffic.

SCS means Soil Conservation Service.

Sidewalk means a pedestrian walkway with permanently improved surfacing.

Slope means an inclined piece of land, three feet or higher vertical rise, with a five horizontal to one vertical incline or greater.

Street means a public way that has been dedicated or reserved by plat, other than an alley, which affords the principal means of access to abutting property.

Street trees means trees planted in the public right-of-way along city streets for beautification and benefit of the general public.

Surveyor means a person who is engaged in the practice of surveying and is qualified to so practice as attested by his legal registration as a professional surveyor in the state.

Ten-year design storm means that storm whose precipitation within a six-hour period and resulting runoff has a ten-percent chance of being equaled or exceeded in any given year.

Topsoil means soil which is with the A-1 horizon of a soil profile, containing organic matter, nutrients, and the microorganisms necessary for normal plant growth.

Visible dust emission means dust of such opacity as to obscure an observer's view to a degree equal to or greater than an opacity of 20%, for a period or periods aggregating more than three minutes in any one hour.

Water conservation means proper water management procedures, including design as well as maintenance procedures by using drip irrigation, drought tolerant plant materials and gray water.

Wildlife means indigenous or naturalized bird, reptilian, mammalian, fish, or invertebrate life found in the out-of-doors.

Wind speed means the average wind velocity, regardless of direction, based on a 60-minute average from the nearest weather report or PM10 monitoring station, or by a portable wind instrument located at the site.



Doña Ana County

DEPARTMENT OF PLANNING AND DEVELOPMENT

Doña Ana County Annex Building • 430 South Main Street • Las Cruces, New Mexico 88001-1205
(505) 647-7237 • FAX (505) 647-7310 • TOLL FREE 1 (877) 827-7200 ext. 7237

October 25, 2005

Ms. Gail Cooke
New Mexico Environmental Department -- Air Quality Bureau
2048 Galisteo St.
Santa Fe, NM 87505

Re: Doña Ana County Natural Events Action Plan

Dear Ms. Cooke:

Doña Ana County adopted the Erosion Control Regulations, Ordinance No. 194-2000 as part of our Natural Events Action Plan on December 19, 2000. The Ordinance has been in effect for over five years and has been effective in helping to control problems associated with soil erosion. Staff has re-evaluated the Ordinance and still considers the Ordinance an effective tool toward reducing dust problems. The Best Controllable Measures (BCMs) that are identified in the Ordinance, especially to regulate development from the building industry, has also been effective. We are confident that the BCMs via an Erosion Control Plan have been adequate to control fugitive dust within Doña Ana County.

Should you have any questions or need additional information, please do not hesitate to call.

Sincerely,

Chuck McMahon
Director



DOÑA ANA COUNTY EROSION CONTROL REGULATIONS

**Ordinance No. 194-2000
Effective January 19, 2001**

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**DOÑA ANA COUNTY ORDINANCE No. 194-2000
EROSION CONTROL REGULATIONS**

ARTICLE 1. GENERAL PROVISIONS

Section 1.1. Authority and Purpose. The Board of Commissioners of Doña Ana County is authorized by statute, in particular NMSA 1978, § 4-37-4, to enact ordinances to protect and promote the health, safety, and general welfare of the residents of the unincorporated areas of Doña Ana County. The purpose of this Ordinance is to protect and maintain the natural environment and to reduce the negative health effects caused by the creation of fugitive dust, more specifically "PM10", which refers to a size of particulate matter within dust that has been identified by the scientific and medical communities and by the federal Environmental Protection Agency ("EPA") as a significant health risk in high concentrations in the air. This Ordinance is enacted consistent with the goals and policies of the Comprehensive Plans for Doña Ana County and for the Las Cruces Extraterritorial Zone, and as a part of New Mexico Environment Department's Natural Events Action Plan (NEAP) for Doña Ana County and the State of New Mexico. This Ordinance shall accomplish the requirements of these documents by preventing, limiting, or mitigating the effects of activities which create fugitive dust (which includes PM10's), or have a tendency to make land more vulnerable to natural erosion forces that create fugitive dust. The objective of the Ordinance is to ensure that all surface disturbance activities use erosion control measures to mitigate visible fugitive dust on an ongoing basis for the protection of health and safety of the residents of Doña Ana County. The Ordinance also attempts to ensure that when natural events do occur, such as fugitive dust creation through high winds, the contribution of human generated dust is limited in its negative health and safety impacts. Emissions that are regulated by federal or State law to require filtering or similar treatment prior to release into the air are not considered "fugitive", and are not regulated by this Ordinance.

Section 1.2. Applicability. Under the conditions outlined below, the provisions of this Ordinance shall apply to any human activity, operation and/or practices, or any condition caused by human activity, which generates dust, causes water erosion, or makes the land more vulnerable to erosion by natural erosion forces. In the development of County land for public purposes, County policies shall be consistent with the purposes of this Ordinance, and shall be conducted so as to minimize the creation or aggravation of erosive forces.

Section 1.3. Interpretation and Conflict. Where this Ordinance imposes greater restrictions than those imposed by other rules, regulations, agreements, or County Ordinances or Resolutions, the provisions of this Ordinance shall be prevailing and controlling. Where two or more provisions of this code are conflicting, the most restrictive shall apply.

Section 1.4. Severability. If any article, section, paragraph, sentence, phrase or part hereof is declared unconstitutional or invalid, the remaining portions shall apply.

Section 1.5. Appeal. A determination that a property requires an (Erosion Control Plan)

ECP or Erosion Mitigation Plan (EMP), or that a proposed ECP or EMP is insufficient, or both, shall be subject to administrative appeal to the County Manager, and then to the Board of County Commissioners. A property owner wishing to appeal a determination shall request an appeal in writing, directed to the County Manager.

Section 1.6. New Development. Any development that requires a permit under any County Ordinance, other than for construction of a single family dwelling unit (multiple applications within a subdivision shall not apply), shall require an Erosion Control Plan to be submitted consistent with Article 2. Grading for all construction, including single family dwelling units shall be limited to the building pad site, pond and driveway plus an additional five feet in all directions of these areas.

Section 1.7. Existing Conditions. The owner of any property that is determined to be in a condition vulnerable to erosion by natural forces due to human development of the property may be required to submit an Erosion Mitigation Plan (EMP) consistent with Article 2, if the condition of the property is determined to pose a significant health threat due to the nature or extent of the vulnerable condition of the property, or its location near concentrations of vulnerable populations, such as of school children, or ill or elderly persons.

Section 1.8. Exempt Activities. Although Doña Ana County encourages the use of reasonable Erosion Control Measures in all activities, the following activities are exempt from the regulations and restrictions of this Ordinance:

- A. Regular agricultural operations covered by the Right to Farm Act, NMSA 1978, §§ 47-9-1 through 47-9-7(1991), including cultivating, tilling, growing, and harvesting crops, and the raising of farm animals or fowl.
- B. Governmental activities during life threatening situations or other emergencies, or in connection with any officially declared disaster or state of emergency.
- C. Operations conducted by essential service utilities to provide electricity, natural gas, oil and gas transmission lines, telephone, water and sewage during or to avoid service outages and emergency disruptions.
- D. Temporary use of unpaved roads and parking lots that generate less than 20 vehicle trips per day for less than three (3) successive calendar days.

Section 1.9. Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Active operations” means any human activity that is capable of generating, or generates visible fugitive dust, including bulk material storage, handling and processing; earth moving; construction/renovation/demolition activities; and the movement of motorized vehicles on any unpaved roadways and parking areas.

“Bulk material” means sand, gravel, soil, aggregate and any other inorganic or organic solid matter capable of releasing visible fugitive dust.

“Chemical soil stabilization/suppression” means a method of dust control implemented by any person to mitigate PM10 emissions by applying asphaltic emulsions, acrylics, adhesives, or any other approved material that are not prohibited for use by the New Mexico Environment Department, the Environmental Protection Agency, or any other law, rule, or regulation.

“Disturbed area” means any area in which the soil will be altered by grading, leveling, scraping, cut and fill activities, excavation, brush and timber clearing, grubbing, and unpaved soils on which vehicle operations and/or movement will or has occurred.

“Dust generating operation” means any activity capable of generating fugitive dust, including, but not limited to, activities associated with creating a disturbed area, construction and demolition activities, and the movement of vehicles on unpaved roadways or parking areas.

“Dust suppressant” means water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment to reduce visible fugitive dust emissions. Dust suppressants shall be used as recommended by the manufacturer and in concentrations and application frequencies sufficient to prevent violation of this Ordinance.

“Erosion Control Measures (ECM)” means techniques used to limit the emission and/or airborne transport of fugitive dust from its original site to accomplish satisfactory results for temporary and/or extended suppression of dust and PM10 emission(s).

“Erosion Control Plan (ECP)” means a written description of all Reasonably Available Control Measures (RACM’s) to be implemented at a work site and/or in transit to and from a work site for any earth moving, construction, or potential dust generating operation. Such written description may be incorporated into building and construction plans or a separate document submitted with said plans.

“Fugitive dust” means any particulate matter entrained in the ambient air that is caused from man-made and natural activities without first passing through a stack or duct designed to control flow, including, but not limited to, emissions caused by movement of soil, vehicles, equipment, and windblown dust. Excluded particulate matter includes matter emitted directly from the exhaust of motor vehicles, or from other combustion devices, portable brazing, soldering or welding equipment, and pile drivers.

“High wind conditions” means on-site hourly average wind speed greater than 15 m.p.h., gusts of 20 m.p.h. or an active Wind Advisory issued by National Weather Service for Doña Ana County.

“Native plants” means plants that are indigenous to the state from other places that have become established in wildlands without cultivation.

“Natural cover” means any vegetation that exists on the property, prior to any construction activity or achieved through vegetation restoration back to a natural state, including the placement of sod.

“PM10” means particulate matter, both filterable and condensable, with an aerodynamic

diameter less than or equal to a nominal ten (10) micrometers.

“Palliative” means any agent used to lessen or reduce dust emissions.

“Particulate matter” means any material emitted or entrained into the air as liquid or solid particulate, with the exception of uncombined water.

“Reasonably Available Control Measure (RACM)” means any device, system, process modification, apparatus, technique, or control measure, or combination thereof, which results in the lowest emissions rate possible taking into consideration the RACMs technological and economical feasibility as determined by approval of the Erosion Control Plan.

“Stabilized” or “Stabilization” means the ongoing process necessary to reduce the fugitive dust generating capability of a surface by paving, dust suppression, watering, compacting or revegetating the disturbed surface sufficient to prevent a violation of this Ordinance.

“Track-out” means visible bulk material deposited upon a paved public or private roadway and capable of going airborne due to mechanical actions.

ARTICLE 2. DEVELOPMENT STANDARDS AND PROCESS

Section 2.1. Erosion Control Plan (ECP) Requirements for Development. Other than for a single family dwelling unit, any grading, construction, demolition, or other development requiring a permit or other form of approval under any County ordinance shall have an approved Erosion Control Plan (ECP) in place prior to receiving a permit. The ECP may be separate documents or incorporated as part of required building and/or construction plans.

Section 2.2. Documentation. The following shall constitute the minimum information required within the ECP to be submitted as part of an application for building and/or subdivision construction to describe the Erosion Control Measures (ECMs) proposed for the project. For all subdivisions, ECMs shall be outlined and approved as part of the overall review of the subdivision construction drawings through the Engineering and Planning Departments.

- A.** Name(s), address(es) and phone number(s) of person(s) responsible for the preparation, submittal and implementation of the ECP , and for the dust generating operations generally.
- B.** A site plan or plat of survey of the site that describes:
 - 1.** The total area of land surface to be disturbed and the total area of the entire project site, in acres or square feet, depending on scale;
 - 2.** The operation(s) and activities to be carried out on the site;
 - 3.** All anticipated sources of fugitive dust emissions on the site;
 - 4.** Temporary drainage and/or ponding facilities to minimize soil erosion and localized flooding of adjacent properties from water utilized on site for development or for dust control;

5. Delivery, transport and storage areas for the site, including types of materials to be stored, and proposed maximum sizes of stockpiles for different types of materials.
- C. A description of ECMs or combination thereof to be applied during all periods of dust generating operations to each of the fugitive dust sources described on the site plan or plat. For each source identified at least one control measure must be implemented. The same control measure(s) may be used for more than one dust generating activity. Specific details must include:
1. If dust suppressants are to be applied, then the type of suppressant, method, frequency, and intensity of application, the number and capacity of application equipment to be used, and any pertinent information on environmental impacts and/or certifications related to appropriate and safe use for ground applications;
 2. The specific surface treatment(s) and/or other ECMs utilized to control material track-out and sedimentation where unpaved and/or access points join paved surfaces;
 3. For each fugitive dust source at least one auxiliary ECM designated as a contingency measure shall be described in the original control plan. Should the original ECM in the control plan prove ineffective, immediate and effective implementation of the contingency measure shall obviate the requirement of submitting a revised control plan; and
 4. ECMs to be implemented prior to any period of inactivity of ten (10) days or more, due to any reason other than extended rainfall.
- D. A description of ECMs or combination thereof to be used to minimize the negative effects of water usage on site during the development activities. All approved measures should be continued until final paving, wall or fence construction and landscaping is in place.
- E. The person responsible for implementing the objectives of the ECP shall keep accurate records and document all activities in carrying out the ECP. These records shall be made available upon request by the County staff.

Section 2.3. Control Plan Review and Approval. Review and approval of a proposed ECP shall be the responsibility of the County Engineering, Planning Departments or designee. Approval may be conditioned upon the implementation of additional measures, actions, or other activities, in addition to those included in the proposed ECP. Approval and issuance of the building and/or subdivision construction permit(s) and the approval of all outlined ECMs contained within the control plan or description shall constitute a mandate that the approved ECMs be implemented by the developer, contractor, builder, owner, and/or agents as part of construction activities.

Section 2.4. Erosion Control Measures (ECMs). Erosion Control Measures included with an Erosion Control Plan required by this Ordinance may include, but are not necessarily limited to, any one or more of the following measures:

2.4.1. General Guidelines.

1. Designing subdivisions or building sites to utilize existing, pre-development

- grades;
- 2. Watering disturbed areas on a regular and minimum basis throughout daily construction activities;
- 3. Applying palliatives or chemical soil suppressant/stabilizer for idle construction periods;
- 4. Constructing snow and/or wind fences;
- 5. Re-seeding or re-vegetation of graded or disturbed areas;
- 6. Grading for street and utility placement only as part of subdivision construction;
- 7. Building some or all interior and perimeter cinder block, rockwalls, and retaining walls as part of the overall construction of all subdivisions and not part of the individual building permit for each lot;
- 8. Retaining natural vegetation during the construction phase of buildings excluding the building pad site;
- 9. Utilizing existing or natural vegetation as part of the required landscaping for the site as elsewhere required within these design standards, to limit grading activities, to promote water conservation, and to reduce dust generation;
- 10. Installing vegetation or non-natural landscaping elements in the latter part of construction to reduce the amount of disturbed area and the potential for dust generation; or
- 11. Implementing any other reasonable dust suppressing agent or activity.

2.4.2. Active Operations in Construction Areas and Other Land Disturbances.

- 1. Short term control measures may include:
 - a. Regularly scheduled wet suppression;
 - b. Dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
 - c. Upwind temporary windbreaks, including fabric fences with the bottom of the fence sufficiently anchored to the ground to prevent material from blowing underneath the fence;
 - d. Starting construction upwind and stabilizing disturbed areas before disturbing additional areas; and/or
 - e. Stopping active operations during high wind periods.
- 2. Long term control measures may include:
 - a. Site stabilization using dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
 - b. Reseeding using native grasses;
 - c. Xeriscaping;
 - d. Tree planting; and/or
 - e. Permanent perimeter and interior fencing.

2.4.3. Specific Construction Guidelines. The following additional ECMs may be incorporated in a proposed ECP to mitigate the effects of the specified activities.

- 1. **Unpaved Roadways.**
 - a. Paving using asphalt, recycled asphalt, asphaltic concrete, concrete,

or double-penetration (consistent with subdivision or zoning requirements);

- b. Dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer; Regularly scheduled wet suppression; and/or
- c. The use of traffic controls, including decreased speed limits with appropriate enforcement; vehicle access restrictions and controls; road closures and barricades; and off-road vehicle access controls and closures.

2. Trucks Hauling Bulk Materials on Public Roadways.

- a. Properly secured tarps or cargo covering that covers the entire surface of the load;
- b. Dust suppressants applied in amounts and rates recommended by the manufacturer;
- c. Maintain 6 inches of freeboard from the rim of the truck bed. Freeboard means the vertical distance from the highest portion of the load to the lowest part of the rim of the truck bed; and/or
- d. Prevent leakage from the truck bed, sideboards, tailgate or bottom dump gate.

3. Bulk Material Handling.

- a. Spray bars;
- b. Wetting agents (surfactants) added to bulk material;
- c. Wet suppression through manual application;
- d. Dust suppressants added to bulk materials in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- e. Stop bulk material handling during high wind conditions;
- f. Reduce process speeds; and/or
- g. Reduce drop heights.

4. Industrial Sites.

- a. Pave roadways and parking area with asphalt, recycled asphalt, asphaltic concrete, and concrete;
- b. Regularly scheduled vacuum street cleaning;
- c. Regularly wet suppression of unpaved areas;
- d. Dust suppression applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- e. Wind breaks;
- f. Enclosures;
- g. Increase wet suppression applications during high wind conditions;
- h. Slow active operations during high wind conditions; and/or
- i. Stop active operations during high wind conditions.

5. Demolition and Renovation Activities When Asbestos Containing

Materials Are Not Present: If asbestos containing material may be present, all demolition or renovation activity shall be performed in accordance with the federal standards referenced in 20 NMAC 11.64, Emission Standards for Hazardous Air Pollutants for Stationary Sources. In other instances, the following ECMs may be utilized:

- a. Constant wet suppression on the debris piles during demolition;
 - b. Dust suppression applied on the debris piles in amounts and rates recommended by the manufacturer;
 - c. Enclosures;
 - d. Curtains or shrouds;
 - e. Negative pressure dust collectors; and/or
 - f. Stop demolition during high wind conditions.
- 6. Milling, Grinding or Cutting of Paved or Concrete Surfaces.**
- a. Constant wet suppression;
 - b. Ongoing clean up of milled, ground or cut material;
 - c. Dust suppression applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer.
 - d. Enclosures;
 - e. Negative pressure dust collectors; and/or
 - f. Curtains or shrouds.
- 7. Pressure Blasting Operations.**
- a. Use of non-friable abrasive material;
 - b. Curtains or shrouds;
 - c. Negative pressure dust collectors;
 - d. Constant wet suppression; and/or
 - e. Ongoing clean up of abrasive material.

ARTICLE 3. GENERAL NON-CONSTRUCTION ACTIVITY STANDARDS

Section 3.1. Ground Cover Removal Prohibited. No person shall disturb the topsoil or remove ground cover on any real property within the County unless reasonable actions are taken to prevent generation of dust caused by the disturbed condition.

3.1.1. Weed Eradication and Dust Suppression.

1. Weed eradication is limited to removal of specific weeds; clearing of the entire lot is prohibited.
2. Once weeds are removed or mowed, dust suppression can be achieved through watering, chemical suppressant application, or the expansion of natural vegetation areas on the site. Expansion of natural vegetation areas is encouraged.

3.1.2. Storage of Materials and Material Transport. Actions shall be taken to ensure that such areas or uses with the potential of becoming or generating fugitive dust and particulate matter, shall be covered, moistened, compacted, or otherwise treated to prevent fugitive dust creation.

ARTICLE 4. EXISTING CONDITIONS

Section 4.1. Existing Human Created Vulnerable Conditions. If the condition of a property is determined to pose a significant health threat, due to the nature or extent of existing development that makes the property vulnerable to natural erosion forces, or due to its location near concentrations of vulnerable populations, such as of school children, or

ill or elderly persons, an Erosion Mitigation Plan (EMP) shall be required.

Section 4.2. Determination. The initial determination that a property is in such a condition may be made by any law enforcement or code enforcement, or other County agent authorized to make such a determination, subject to review by the Planning Director.

Section 4.3. Plan Submission Requirement. Once the determination has been made in writing, the property owner shall be required to submit within thirty (30) working days a proposed Erosion Mitigation Plan, which may include any of the Erosion Control Measures (ECMs) presented in this Ordinance, or other reasonable plans for eliminating or mitigating the vulnerable condition of the property. The Plan may include a proposed time line for implementation.

Section 4.4. Review of EMP. Upon receipt of a proposed EMP by the County representative making the determination that a Plan is required, the EMP shall be submitted for review to the County Engineering and Planning Departments. The determination of whether the EMP is sufficient shall be made by the County Planning Director or other authorized County staff member. If the Plan is determined to be insufficient, that determination and the reasons there shall be provided to the applicant in writing, and the applicant shall be given ten (10) working days to revise the EMP to address the insufficiencies.

ARTICLE 5. ENFORCEMENT

Section 5.1. Enforcement Provisions. Any violation of the provisions of this Ordinance, including any failure to implement any ECM of an approved ECP or EMP, may be subject to any penalties or remedies allowed by law, including but not limited to a fine of up to Three Hundred Dollars (\$300), up to ninety (90) days in jail, or both, for each violation, as allowed by NMSA 1978, § 4-37-4, or as allowed consistent with any subsequent legislation providing for penalties for violations of county ordinances. In addition, the County may enforce the provisions of this Ordinance through the procedures in the County Abatement Ordinance, No. 169-96, or any similar ordinance subsequently enacted. The County may also pursue injunctive relief, or any other remedies available under the law.

Section 5.2. Effective Date. This Ordinance shall become effective thirty (30) days after an executed copy is recorded in the Doña Ana County Clerk's Office.

ADOPTED by the Board of Commissioners of Doña Ana County this 15th day of December, 2000.

Original Signed - Carlos E. Garza
Carlos E. Garza, Chairman

Original Signed - Joseph R. Cervantes
Joseph R. Cervantes, Vice-Chairman

Original Signed - Gilbert T. Apodaca
Gilbert T. Apodaca, Member

ATTEST:

Original Signed - Rita Torres
Rita Torres, County Clerk

Original Signed - Kenneth D. Miyagishima
Kenneth D. Miyagishima, Member

Original Signed - Miguel G. Silva
Miguel G. Silva, Member

*Filed at the Dona Ana County Clerk's Office
at 3:44 pm on December 19, 2000.
Book 247 Pages 333-342*