



RIO ARRIBA COUNTY SAND
AND GRAVEL MINING
ORDINANCE 2000-02

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RIO ARRIBA BOARD OF COUNTY COMMISSIONERS

AN ORDINANCE 2000-02 COMPILING, AMENDING, ADOPTING, RESTATING AND SUPPLEMENTING A SYSTEM OF SAND AND GRAVEL MINING REGULATIONS THROUGHOUT RIO ARRIBA COUNTY; PROVIDING FOR ZONING OF LAND IN RIO ARRIBA COUNTY; PROVIDING FOR A SYSTEM OF USE PERMITS FOR SAND AND GRAVEL OPERATIONS IN RIO ARRIBA COUNTY; SETTING FORTH PERFORMANCE STANDARDS FOR MINING OPERATIONS IN RIO ARRIBA COUNTY; PROVIDING FOR ADMINISTRATION OF THE ORDINANCE; AND PROVIDING FOR PENALTIES FOR VIOLATIONS

WHEREAS, this Ordinance will supplement Ordinance No. 2000-01 which provides land use planning guidelines and locational criteria for use in reviewing permitted uses and for reviewing, approving or denying requests for changes of uses, agricultural uses, mixed use permits, industrial use permits, mining use permits, tower use permits, large scale residential uses and planned unit developments.

WHEREAS, this Ordinance will, with respect to sand or gravel mining uses which are under the more general classification of heavy industrial uses, provide additional guidelines with respect to such sand or gravel mining uses.

ARTICLE 1. GENERAL PROVISIONS

Section 1. Title

This ordinance shall be known and may be cited as the "Rio Arriba County Sand and Gravel Mining Ordinance 2000-02" and shall be referred to elsewhere herein as "this Ordinance."

Section 2. Authority

This Ordinance is created pursuant to the enabling authority set forth in §§ 3-21-14 NMSA.

Section 3. Purpose

This Ordinance is adopted for those purposes set forth in Ordinance No. 2000-02 and to provide for and protect the public health, safety and general welfare of the County;

Section 4. Jurisdiction

This Ordinance shall apply to the same portion of the territory of Rio Arriba County as does Ordinance 2000-01.

Section 5. Exemptions

This Ordinance shall not apply to:

1. persons who mine sand and gravel on their own properties for their own personal use to the extent that disturbance shall not consist of more than half (.50) acre in any five (5) continuous years;
2. off-site processing activities; and,
3. exploratory activities which do not result in the mining and/or removal from the property of more than ten (10) cubic yards of material.
4. Exemptions may be approved administratively by the Planning Director

Section 6. Interpretation

The provisions of this Ordinance are held to be minimum requirements. Whenever any provisions of this Ordinance conflict with other laws, rules, regulations, covenants, or ordinances, the more restrictive shall govern. This Ordinance shall be construed broadly to promote the purposes for which it is adopted.

Whenever the Board of County Commissioners (BCC) or its delegate is required this Ordinance to make a decision, the decision shall be in writing and supported by the Findings of fact which are sufficient for meaningful review.

ARTICLE 2. DEFINITIONS

A-Weighted - Specific weighting of the sound pressure level for the purpose of determining human response to sound as described in American National Standards Institute (ANSI) S1.4-1983.

Background Sound Level - The A-weighted sound level which is exceeded 90 percent of the time during the period of observation, during which times sounds from routine motor vehicular traffic and other transient sources is inaudible. The period of observation need not necessarily be contiguous; however, the period of observation must be at least 10 minutes of duration.

Basal Cover - The vegetative cover or extent of cover found at the crown or base of a plant.

Board of County Commissioners (BCC) - The Rio Arriba County Board of Commissioners

dB(A) - Unit of sound level expressed in decibels (dB) as measured on the A-weighted scale.

Discharges - Any measurable, natural or man-made, release of water, sediment or other particulates into the environment.

Disturbed Area - The area within the property which is altered by the mining and related activities, including but not limited to road, utility and facilities construction, and materials stockpiling areas.

Existing Mine - Any sand or gravel extraction operation lawfully existing and in operation on the effective date of this Ordinance.

Exploration Operation – Any mine development exploration operation existing prior to the effective date of this Ordinance and related to the determination of the geologic and economic extent of a sand and gravel resources.

Foliar Cover - The percentage of ground cover covered by the vertical projection of the aerial portion of plants and excluding small openings in the canopy.

Fugitive Dust - Particulate matter not emitted from a duct or stack which becomes airborne during operations or windy conditions.

Ground Cover - The amount (measured as a percentage) of rock, litter, and vegetative basal cover covering the ground. This is further broken down into the components; such as percent litter, percent rock and percent basal cover.

Impulse Noise - Any single sound pressure peak (with either a rise time less than 200 milliseconds or total duration less than 200 milliseconds) or multiple sound pressure peaks (with either rise time less than 200 milliseconds or total duration less than 200 milliseconds) spaced at least by 200 millisecond pauses.

Impoundments - A closed basin, naturally formed or constructed, having the effect or purpose of water or sediment detention or retention

Mine (mine site) - That portion of the disturbed area on the property from which the sand and gravel resource is removed or extracted by whatever means.

Mitigation Measures - Any proposed or undertaken activity taken for the purpose of lessening or eliminating adverse impacts resulting from mining and related activities.

Mulch- Vegetation residues or other materials that aid in stabilizing soils and conserving soil moisture.

Native Vegetation - Indigenous vegetation

Noise Sensitive Zone - Areas where ensuring of exceptional quiet is of importance during day and night hours. Noise sensitive activities include, but are not limited to, operations of schools, libraries open to the public, churches, hospitals, and nursing homes.

Ordinance No. 2000-01 – Rio Arriba County Design and Development Regulation System.

Overburden - Consolidated or unconsolidated materials of any nature, that overlay a sand and gravel deposit.

Owner(s) of Record (as pertaining to the mine property) - is defined by any one or a combination of the relationships outlined in 1. and 2. below:

1.
 - a. being a permittee of a sand gravel operation;
 - b. based on instruments of ownership or voting securities, owning of record in excess of 50 percent of an entity; or,
 - c. having other relationships which give one person authority directly or indirectly to control the manner in which an applicant, an operator, or other entity conducts sand and gravel operations.
2. The following relationships constitute ownership or control unless it can be demonstrated that the person subject to the presumption does not in fact have the authority directly or indirectly to control the manner in which the relevant sand and gravel operation is conducted:
 - a. being an officer or director of an entity;
 - b. being the operator of a sand and gravel operation;
 - c. having the ability to commit the financial or real property assets or working resources of an entity;

- d. being a general partner in a partnership;
- e. based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or
- f. owning or controlling sand and gravel resources to be mined by another person under lease, sublease or other contract and having the right to receive such sand and gravel after mining or having authority to determine the manner in which that person or another person conducts a sand and gravel mining operation.

Owners of Record (as pertaining to public notice requirements of this ordinance)- Property owners on record with the Office of the Rio Arriba County Assessor as of 30 days prior to the date of any public hearing held pursuant to the provisions of this ordinance, but no earlier than 45 days prior to the date of the hearing.

Planning and Zoning Committee (PZC) - The Planning and Zoning Committee of Rio Arriba County.

Post-Mining Land Use - Specific uses or management-related activities that follow closure of a mine.

Property - Lands that have a legal description and recorded ownership attached, that are the subject in part or in whole to mining, or proposed mining related activities.

Property-line-noise-source - Any equipment or facility, or combination thereof, mobile or stationary, which is capable of emitting sound beyond the property line of the land on which the mining operations are conducted.

Reclamation- Those activities taken to return mined and disturbed lands to an approved post-mining land use. These activities may include: backfilling, grading, compacting, soil stabilization, reseeding, re-vegetation, and planting of nursery stock.

Sand and Gravel - Rock or similarly occurring consolidated or unconsolidated, naturally occurring materials, including but not limited to, stone, sand, gravel, aggregate, and riprap.

Suitable Material - Soil, subsoil or geologic material with sufficient nutrient content and that can be used to support vegetation in a post-mining land use.

Traditional Community - A community which has been continuously occupied since 1925 and has a village center and which the County by Ordinance has placed into a zoning district designating it as a historical area pursuant to §3-22-1 NMSA 1978.

ARTICLE 3. REZONING AND PRELIMINARY PLAT REVIEW APPROVAL PROCESS

Section 1. Site Criteria Performance Standards

Mining use permits may only be approved if similar uses have been established as non-conforming on contiguous or adjacent locations; or if the rezoning is compatible with neighboring uses.

Use permits for mining may not be permitted on tracts of land smaller than two (2.0) acres in area, except as follows:

1. Temporary extraction permits
2. Permits for extraction for preparation of a home site or accessory structures
3. Small mining operations not exceeding two (2.0) acres

These uses may be approved administratively provided the submittal requirements pursuant to Article II, Section IV – C of the Rio Arriba Design and Development Regulations System Ordinance 2000-01 are complied with.

At the Planning Directors discretion additional submittals may be required or upon approval conditions may be imposed.

Use permits for mining will only be issued for tracts of land of such size and configuration that all setback requirements set forth in County Ordinances will be met.

Use permits for mining will not be issued if the boundary of the disturbance area is within 1000 feet of schools, traditional communities, hospitals, clinics and other health care facilities.

Section 2. Performance and Development Standards for Mining Permit Uses

Performance and development standards for mining permit uses shall be in addition to those set out in County Ordinance No. 2000-01:

A. Terrain Management Performance Standards Soils

Soils having severe limitations, or which are shown as unsuitable for the intended purposes should not be used for the purpose unless the operator has clearly shown in the terrain management plan how these limitations will be overcome.

Grading

All land excavating, grading, filling, and clearing operations shall be designed to fulfill the following requirements as outlined below.

1. Preserve, match or blend with the natural contours of the land.
 - a. The plan should adequately describe how all grading and excavating operations will be performed to blend slopes and fills into the natural contours of the land.
 - b. The plan should indicate whether the operator intends to retain or replace trees and other native vegetation, to stabilize slopes, retain moisture, reduce erosion, reduce runoff, and preserve the natural scenic beauty.
 - c. The plan should prevent the deposition of sediment into floodplains, drainage channels, water courses, and water bodies.
2. The following off-site discharges attributable to the mining activity are prohibited whether the discharge is direct or indirect:
 - a. sediment and other organic or earthen materials discharged into a water course, water body, drainage channel or floodplain; and,
 - b. materials placed in any position which would make it susceptible to erosion and deposition into a water body, drainage channel, water course or floodplain.
 - (1). The plan for excavating, grading or land forming, and protective cover should provide for the prevention of soil erosion and sedimentation.
 - (2). The plan should call for temporary or permanent structural measures to prevent damaging runoff waters from originating on the site.
 - (3). Planned structural measures should adequately provide for the limitations of the site.
3. Whenever the native ground cover is removed or disturbed, or whenever fill material is placed on site, the plan should provide for the exposed surfaces to be treated to the extent necessary to prevent dust from blowing off the site.
4. The maximum cut and fill slopes should be compatible with soil stability or erodibility as shown on the soil survey.

5. The plan should include provisions to prevent runoff from flowing over cut slopes.

B. Storm Drainage and Flood Control Management Performance Standards

Development of a mining site is almost certain to affect runoff, erosion, and sedimentation. The possible adverse affects of mining activities on runoff, erosion and sedimentation should be carefully analyzed, and adverse impacts mitigated. All mining operations shall be planned, maintained and conducted to:

1. protect and preserve existing natural drainage channels except where erosion and water control measures are found necessary and approved by the County;
2. Provide measures to prevent damaging runoff waters from leaving the site;
3. Protect structures and other works from flood hazards using the 100-year frequency storm for calculating flood levels;
4. Provide a system wherein runoff water within the site is removed without causing harm or damage to the environment, property, or persons, inside or outside the site;
5. Assure that water drained from the site does not contain pollutants or sedimentary materials of a greater quantity that would occur in the absence of the mining operation; and,
6. Assure that waters are drained from the site in such a manner that they will not cause erosion outside of the site to any greater extent than would occur in the absence of the mining operation.

All storm drainage systems shall be constructed in accordance with the standard of the Rio Arriba County Soil and Water Conservation District in which the site is located. The preferred method of watershed hydrology evaluation is NRCS (National Resources Conservation Service) Technical Release 55, Urban Hydrology for Small Watersheds or Chapter 2 of the NRCS Engineering Field Manual. Other methods such as HEC I, HEC2, HYMO/AHYMO, or the Rational Method are acceptable if sufficient supporting data is presented and deemed adequate by the County.

C. Special Provisions for Mining in Arroyos Performance Standards

In addition to all other requirements contained in this Ordinance, proposed mining operations that will take place within arroyos, watercourses or other similar drainages shall adhere to either Option A or Option B of the following operational criteria:

A. Option A - Mining without Engineering Analysis

At the option of the operator, in channel mining may take place without additional engineering analyses if the operation adheres to the following default restrictions:

1. No in-channel excavation shall take place within:
 - a. 10 feet from the toe of the arroyo banks in a straight channel reach,
 - b. 10 feet from the toe of the arroyo bank along the inside channel bend on a curved reach,
 - c. a setback equivalent to one-half (1/2) the channel width along the outside channel bend on a curved channel reach.
2. No excavation within 50 feet of property boundaries.
3. Depth of excavation shall be limited to a maximum of five (5) feet below the low-flow channel.
4. No excavation shall take place within 100 feet downstream and 50 feet upstream of a public roadway grade crossing of the arroyo.
5. No excavation shall take place within 100 feet of any bridge or drainage structure.
6. No excavation shall take place within 100 feet of any buried utilities.
7. No excavation shall take place within 100 feet of utility poles.
8. No excavation shall take place within 100 feet of any acequias.
9. No excavation shall take place within 100 feet of any water supply well.
10. If more than one criteria apply, the more stringent shall be applied.
11. To ensure compliance with the requirements of this Section, the operator shall establish a permanent, surveyed marker on the site. The elevation of the marker shall be established to the nearest hundredth of a foot.

B. Option B - Mining With Engineering Analysis

The operator, at his discretion, may submit hydrologic and geologic analyses, prepared by a qualified specialist, supporting mining criteria other than the default criteria described under Option A.

D. Cultural Resources Protection Plan Performance Standards

In order to preserve and enhance the unique heritage of the County of Rio Arriba, mining operations shall be established in a manner that respects and avoids disturbance of historic, cultural or archaeological sites, natural and man-made landmarks, acequias, and unmarked human burials. Such sites and landmarks include, but are not limited to structures which are designated by the Official Register of Cultural Properties maintained by the New Mexico Cultural Properties Review Committee or are properties which may contain historic or pre-historic structures, ruins, sites of objects, the desecration or destruction of which would result in loss to the public.

A cultural preservation plan shall be required for each proposed mining operation. The plan shall consist of the following:

1. a detailed description of historic, cultural or archaeological sites that are more than 50 years old on the property;
2. a description of how the proposed mining activity will disturb or adversely impact identified historic, cultural or archaeological sites and artifacts located on the property;
3. a description of how adverse impacts will be mitigated, including methods of restoration, preservation, and salvage; and,
4. the identity and qualifications of all individuals who are involved in the preparation and implementation of the Cultural Resources Plan.

E. Unmarked Human Burials

According to state and federal law, any human burial in the state in any unmarked burial ground is accorded the protection of law and shall receive appropriate and respectful treatment and disposition.

All applicants shall comply with the requirements of §18-6-11.2 NMSA 1978, which prohibits the knowing, willful and intentional excavation, removal, disturbance or destruction of any human burial, buried or entombed or sepulchered in any unmarked burial ground except by permit issued by the state medical investigator or by the state cultural properties review committee with the concurrence of the state archaeologist and state historic preservation officer.

F. Registered Cultural Properties

Any person desiring to extract sand and gravel in the County and affecting registered cultural properties shall comply with the Cultural Properties Act §§18-6-1 through 18-6-17 NMSA 1978. Additional compliance may be required with Federal regulations if the mined material from the property will be used on Federally funded projects.

G. Environmental Protection Plans Performance Standards

Any proposed mining activity shall utilize standard techniques available in order to minimize noise, vibration, smoke and other particulate matter; odorous matter, toxic or noxious matter; radiation hazards; fire and explosive hazards; or electromagnetic interference. If it is determined that the development will create any dangerous, injurious, noxious or otherwise objectionable condition, noise or vibration; smoke, dust, odor or other form of air pollution, electrical or other disturbance, glare or heat, in a manner which causes a significant adverse impact to the adjacent areas, a plan shall be submitted which states how such conditions will be mitigated.

Environmental protection plans shall consist of the following:

1. An air quality protection plan;
2. A noise and vibration mitigation plan;
3. A visual impacts mitigation plan;
4. Detailed descriptions and graphics showing the steps and methods that will be taken to protect the environment and mitigate adverse impacts; and,
5. Plans that are prepared and implemented in a manner consistent with all applicable County, State and Federal rules, regulations and permit conditions.

H. Air Quality Performance Standards

A dust abatement plan shall be submitted with the application and development plan to the Planning Director.

Sand and gravel mining and processing operations shall use dust suppression techniques so there are no visible emissions beyond property boundaries.

Truck traffic areas and haul roads going in and out of the site shall be watered, treated with a surface stabilizing agent, or paved with an appropriate surface as necessary.

Sites of overburden removal and active pit areas shall be watered as necessary dependent upon existing wind speeds and soil moisture content.

Areas of disturbance shall be minimized to the extent feasible.

All loads shall be covered.

Should the Planning Director deem it necessary, the operator shall maintain certified daily records of hours and dates of operation, the daily production rates and activities, and the frequency of application of water or equivalent dust suppression methods. This information shall be retained at the site and shall be made available to County personnel upon request.

Should the nearest school, residence, office building, or occupied structure, excluding the immediate operations complex, not be within two miles of the site or the access road, dust control measures with regards to this Ordinance may be reduced or waived at the discretion of the Planning Director.

I. Sound and Vibration Mitigation Performance Standards

A Sound and Vibration Mitigation plan shall be submitted with the application to the Planning Director. The plan shall include:

1. A description and location of all significant sources of noise and vibration (mobile and stationary) that will be associated with the proposed mining and processing activity;
2. A description of existing and proposed sound and vibration abatement measures, and the schedule of their implementation (if any).
3. The predicted sound level estimated out to a radius of one-half mile from the mining property as a result of implementation of the proposed operation with abatement measures;
4. A description of how vibration from off-site heavy equipment and truck traffic associated with the proposed mining operation may affect structures on properties adjacent to travel routes taken by the heavy equipment and trucks; and,
5. A description of vibration mitigation measures for heavy equipment and truck traffic that will be taken (i.e. traffic volume, speed and weight limits, access and route control).

J. Noise Performance Standards

Sound abatement measures under this Ordinance do not apply to any equipment or facility, or combination thereof, that are incapable of emitting sound beyond the property line on which operated.

A sand and gravel mining operation shall not cause or allow the emission of any sound from any property-line-noise-source (impulse or continuous) which exceeds the allowable A-weighted sound levels specified in the following table when measured at any point.

1. Classification of Adjacent Land Use

	Allowable Sound Pressure Levels (dB) of Emitted Sound
Residential, Single-Family, Mobile Homes	70 dBA
Residential, Multi-family	70 dBA
Schools, Churches, Hospitals, Nursing Homes	70 dBA
Offices, Business, Commercial and Professional Buildings	70 dBA
Industrial, Utilities, Agricultural	75 dBA
Undeveloped Public Lands	75 dBA

In mixed-use areas the more restrictive allowable sound emission level shall apply

Should background sound levels exceed the above, noise produced from sources other than at blasting shall not exceed, at the mine property boundary 10 dB(A) past above background in a residential zone, and 16 dB(A) past at all other boundaries.

The peak noise from any blast shall be limited to 130 dB (unweighted) at the boundary of the mining property.

All sound pressure levels shall be measured at the mining property line. All measurements shall be made following the appropriate and most current ANSI or equivalent procedures. Measurements shall be made during times the property-line-noise-source(s) are operating.

No property-line-noise-sources, stationary and mobile, shall be operated during the following holidays in a non-industrial zone: Holidays of New Year’s Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

Property-line-noise-sources, stationary and mobile, and including heavy equipment traffic, shall be limited in operation near a residential zone, or at a boundary of a non-industrial portion of a mixed-use zone, from 5:00 p.m. to 8:00 a.m.

Sounds emitted from mandatory emergency devices shall not be regulated by this ordinance except that property line noise sources, stationary and mobile, and including those emitted from heavy equipment and trucks shall not be operated from 5:00 p.m. to 8:00 a.m.

2. Vibration Performance Standards

Vibration due to blasting shall be limited to a maximum resultant peak particle velocity in any plane at the site of a protected structure for the following:

Peak Particle Velocity (Inches/second)	F	Frequency (Hz)
0.20		1 or less
0.75		1-12
0.80		13
0.90		14
1.00		15-100

In addition, the Planning Director may further limit such blasting vibration where, in his/her opinion, the density of population or other resources in the area warrants additional protection.

Blasting shall be restricted to the hours of 9:00 am to 5:00 pm. No blasting shall occur on Saturdays or Sundays.

K. Visual Impacts Mitigation Performance Standards

Adverse visual impacts due to the mining or processing activities shall be avoided or minimized to the extent practical through the following location and site design techniques:

1. minimizing the area of disturbance due to the mining activity pursuant to a phasing program;
2. minimizing excavation in visually sensitive areas;
3. avoiding location of structures, machinery and equipment storage and repair areas, utility lines, access roads, mined material stockpiles, and mine waste piles in visually sensitive areas;
4. locating, designing or screening excavated portions of the mine site, structures, machinery and equipment storage and repair areas, utility

lines, access roads, material stockpiles and mine waste piles in a manner sensitive to the natural color, form and texture of the surrounding area; and,

5. protecting visually sensitive areas visible along highways, and state, county or federally designated scenic areas, areas visible from traditional communities and contemporary communities.

L. Lighting Performance Standards

The applicant shall provide outdoor lighting as necessary to enhance the safety of the site. Outdoor lighting shall be designed in a manner that not only enhances work-site security and public safety but in a manner that conserves energy and prevents spillover, nuisance or hazard effects of light and glare on adjacent locations and uses of land.

An outdoor lighting plan shall be submitted that shows the location, mounting height, types of luminaries, accessory equipment such as shades and deflectors, and the beam direction. The manufacturer's photometric data shall also be provided. All light sources shall be shielded so that they are not directly visible from adjacent residences. All light bulbs shall be shielded. Low or high pressure sodium lamps or other energy efficient sources shall be used in all installations. Spillover of lighting into adjacent residential properties shall not exceed one half of one (0.5) foot-candle measured at any point ten feet beyond a property line.

M. Safety and Traffic Control Performance Standards

1. Blasting

All blasting shall be carried out in compliance with all applicable Federal and State standards and permitting requirements. Copies of all applicable permits shall be provided to the County at least 30 days prior to blasting.

The operator shall provide reasonable notice of the planned blasting schedule to the public in the area likely to be affected by blasting noise and vibration.

2. Roads and Traffic

If an applicant seeks to permit a sand and gravel mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise description of the public road, the particular part to be relocated, where and when the relocation is to occur, and the duration of the relocation.

The applicant shall submit a traffic route plan that illustrates all likely private and public roads that will be used by the operation to transport heavy equipment, supplies

and sand and gravel within a ten mile radius of the property or to the nearest paved state or federal highway with a level of service equivalent to U.S. 84-285 and S.R. 68.

The amount of traffic generated by the mining and processing activity shall not cause public roads to operate at a level less than what can be met by current capacity and structural conditions, or cause deterioration to County roads as a result of the activity without just compensation to the County.

If it is determined by the County that the mining operation will increase the burden, or cause deterioration to any County road, the operator shall be required to undertake a pro-rata share of the cost of improvements or repairs to the County roads which are shown to be caused by the mining-related use. The Rio Arriba County Public Works Director will determine the pro-rata share.

3. **Signs and Markers**

The mining operator shall provide perimeter and other on-site and off-site signs and markers advising the public of the mining activity and related hazards that may be present including but not limited to, warning of truck traffic, open pit hazards, open water hazards, operating equipment, blasting, stockpile and waste pile collapse.

The operator shall submit a signage plan that shows the number, type, size and location of signs and markers.

The signs required under this Section shall:

- A. be posted and maintained by the person who conducts the sand and gravel mining operations, in addition:
 - 1. Shall be maintained during the conduct of all mining related activities;
 - 2. Shall be posted at each point of access to the permit area from public roads;
 - 3. Be posted on the perimeter of a permit area before the beginning of mining operations.
- B. be of a uniform design such that they can be easily seen and read;
- C. Be constructed of a durable material; and,
- D. Conform to all state and local ordinances.

N. Reclamation Plans Performance Standards

A reclamation plan is required for the mine site and associated disturbed areas, and for each phase of the mining operation. Reclamation are those activities taken to restore mined and disturbed lands to an approved post-mining land use. These activities may include; backfilling, grading, compacting, soil stabilization, reseeding, re-vegetation, and planting of nursery stock. A contemporaneous plan may be required if the Board of County Commissioners (BCC) determines the need for such a plan.

The plan will address issues of long-term soil and slope stability, water quality and water conservation, and compatibility with the surrounding environment and land uses. The BCC will make reasonable allowances that recognize future land use and areas that cannot be practically re-vegetated because of slope, rock substrate conditions or other limiting factors.

1. Plan Requirements

A reclamation plan shall consist of the following:

- a. A determination of which parts of land shall be reclaimed; (The operator, in consultation with the owner and the County, and subject to the approval of the County, shall determine which parts of the land shall be reclaimed.)
- b. A description of post-mining land use, including concurring documentation from the legal or equitable owner of record of the surface of the mining property;
- c. A description of how reclamation is to be achieved;
- d. An estimated timetable for each phase of the mining operation and contemporaneous reclamation activities;
- e. An estimated cost of accomplishing each phase of the reclamation plan;
- f. A description of the manner in which the plan is consistent with local physical, environmental and climatological conditions, both on-site and in the general area as follows:
 1. a description of all streams, arroyos and bodies of water;
 2. a description and maps of soils and geologic conditions;
 3. A scaled plan in cross-section showing existing and planned profiles of slope of affected areas;

4. An inventory of existing vegetation, wildlife and wildlife habitat;
5. A plan for revegetation, including but not limited to descriptions of the quantities of each species of vegetation that will be used, time and method of planting, proposed seeding rates, use of fertilizer, mulching and supplemental irrigation;
6. A detailed description of measures to limit soil erosion and off-site sediment transport; and,
7. A detailed description of measures to be taken to ensure protection of surface and groundwater quality and water conservation.

2. Reclamation Performance Standards

- a. All reclamation activities shall comply with applicable state and federal laws and regulations.
- b. Disturbed areas shall be restored to standards set forth in the approved reclamation plan. These standards shall be measurable and verifiable.
- c. Reclamation shall be conducted as contemporaneously as possible with the mining operations.
- d. Reclamation shall result in the establishment of structurally stable slopes and soils through the use of compaction, the use of vegetation and/or engineered materials.
- e. When backfilling pits is part of the reclamation plan, such backfilling or earthmoving operations shall be conducted so as to assure both stability of the materials and the protection of ground waters, such that adjacent properties are not damaged.
- f. Any mine waste material piles will be stabilized and protected to ensure they do not degrade air, surface water and ground water quality.
- g. In the revegetation portion of the approved reclamation plan, topsoil or other suitable rooting medium shall be replaced and the affected land shall be revegetated in such a way as to establish a diverse, effective, and long-lasting vegetative cover that is capable of re-

seeding itself and spreading. Revegetation should be at least equal in extent of cover to that of the natural vegetation of the surrounding area. Native species shall comprise the largest proportion of the seed mixture.

- h. Plants that die or are not established after a two year period shall be replaced. Revegetation shall be monitored for a minimum of three (3) years. The success of reseeding and revegetation shall be demonstrated by the operator and approved by the County. Success of revegetation shall be measured by techniques approved by the County or a professional expert. Measurements of foliar and basal cover shall be taken no sooner than the third year following planting. The vegetative cover (both foliar and basal) shall be deemed successful if these are 80% or greater within three years of planting, of the quantitative standard. If vegetative cover is not sufficient, additional efforts of revegetation shall be undertaken and additional efforts of revegetation and additional measurements of revegetation success shall be conducted two years after each planting.
- i. Upon cessation of mining, all buildings, structures, mining waste piles and other related items not necessary for environmental protection of the mine site, shall be removed, reclaimed or stabilized according to the approved reclamation plan.
- j. If a new, post-mining land use is not established and implemented within six (6) months of a mine's closure, reseeding or planting of vegetation is required on all disturbed portions of the site. Such revegetation effort shall include both native and introduced species to insure stabilization of the mine site.

Section 3. Additional Required Submittals for Mining Permit Uses

In addition to the information required by Ordinance No. 2000-01 the applicant shall provide the following information:

- A. name and mailing address of the applicant or designated agent;
- B. name of owner or owners of the land;
- C. a description of surrounding land uses and a terrain management plan which shall include:
 - 1. **Vicinity Map** - A map, to a scale of not more than 2,000 feet to one inch, showing the relationship of the site to its general

surroundings, and the location of all existing drainage channels, water courses and water bodies within one and half (1.5) miles of the site. This map shall display the topographic contours at 20-foot intervals. A mark-up of a USGS topographic map is acceptable.

2. **Natural Features Map** - A map of the site (at the same scale as the preliminary plat map) showing directly, by overlay, or by narrative where appropriate:
 - a. the boundaries of the site;
 - b. the existing contours with intervals of not less than twenty (20) foot where the slope is less than 8% and not more than five (5) feet where the slope is 8% or greater;
 - c. all areas with natural slopes of 25% or greater clearly recorded by scale, line, or color;
 - d. the location of all drainage channels, watercourses, and water bodies;
 - e. the location of all major rock outcropping; and,
 - f. the location of the major vegetation types showing the plant species included and the cover density.
3. **Soil Survey** - A soil survey of the site including:
 - a. an overlay of the natural features map showing the location of each soil type;
 - b. a description of the soil types; and,
 - c. interpretations of the limitations from a soil survey for each soil type.
4. **Grading Plan** - A series of maps, cross sections, and profiles showing the location and impact of the planned mining to the natural land form shall include:
 - a. an overlay of the natural features map showing the location of all proposed excavations, roadways, water and erosion control structures, and utilities and utility easements in relation to the existing contours;

- b. an overlay showing the finished contours after mining is completed using contour intervals equal to or less than those on the existing contour map;
 - c. the location of all cuts and fills, including the grades, lengths, and depths thereof displayed using the necessary cross sections and profiles to adequately describe and display the planned mining;
 - d. the location of all areas where the planned mining and associated activities will be changed by more than three feet;
 - e. description of methods of stabilization in areas of cut and fill, embankment compaction, and re-vegetation of steep slopes; and,
 - f. if mining is to take place within an arroyo bed, a pre-development profile and cross sections of the arroyo shall be prepared. The profile shall extend at least 200 feet upstream and 200 feet downstream of the proposed excavation site. Cross sections shall be taken at 100 foot intervals and shall extend at least 100 feet beyond each bank top.
5. **Erosion and Drainage Plan** - This shall include the necessary charts, drawings, location maps, and calculations to support the plan:
- a. a watershed map showing all the upper watershed area draining into or through the site; it should show the water courses and topographic conditions;
 - b. storm drainage computations for the 100-year frequency storm both reaching and leaving the site in the pre-development conditions;
 - c. storm drainage calculations for mining and post mining conditions; and,
 - d. the location, type, and size of all proposed drainage and erosion control structures with adequate detail of the design and supporting calculations.

6. **Construction Schedule** – This shall include statements describing:
 - a. the start and finish dates for all land clearing and grading activities;
 - b. the duration of exposure of disturbed areas;
 - c. the stabilization date for disturbed areas; and,
 - d. the installation date of all storm drainage system components.

Section 4. The Process for Application for Mining Permit Uses, Hearings and Administrative Procedure

The process for making application for mining permit uses, hearings and administrative procedures shall be as set forth in County Ordinance No. 2000-01 including but not limited to Article I, Section X and Article II, Sections I, II and VI.

Section 5. Professional Expert or Consultant Review

If it is necessary for the County to hire a consultant to assist in the review of a mining application, said consultants fee shall be assessed to the applicant or developer.

Section 6. Application Review For Mining Use, Subdivision Of Land For Mining Uses And Building Permits For Mining Uses Process

Applications for mining use permits, subdivision of land for mining use and building permits for mining uses shall be processed as provided in County Ordinance No. 2000-01, Article II, Sections I, II, III and IV.

- A. Original drawing of final plat. 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 plats shall be prepared at a scale of 200 feet to one (1) inch or larger, and printed on sheets no larger than twenty-eight by thirty-six (28 x 36) inches. Sheets shall be numbered in sequence if more than one sheet is used. The applicant shall also submit two (2) paper copies of the final plat and three (3) copies of the development plan and all supporting documentation.
- B. Map specifications. The final plat map shall include the following information:
 1. title, scale, north arrow, and date;

2. permanent monuments, or descriptions and ties to such monuments, to which all dimensions, angles, bearings, and similar data on the plat shall be referred;
3. tract boundary lines, and easement and right-of-way lines;
4. acreage of mining area to the nearest one-hundredth (0.01) of an acre;
5. ownership of contiguous lands;
6. location of utilities;
7. delineation, if applicable, of any 100-year flood plain as designated by the Federal Emergency Management Agency;
8. names and addresses of the owner or owners of the land to be mined;
9. the certification of surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey; and,
10. legal description indicating the range, township, and section within which the site is located.

C. Final Requirements Prior to Commencement of Mining. Sand and gravel mining shall not take place within the County on lands that have not been specifically use permitted for such purposes and for which plat and development plan approvals have not been obtained in accordance with the provisions of County Ordinances. The BCC in considering either approval or conditions for approval of mining use permits may take into consideration the past or current performance of the applicant at other sites and operations. The BCC shall approve the final plat and development plan if the applicant demonstrates that he can fulfill the proposals and requirements contained in the development plan and, that all State and Federal agency permits applicable to the mining, and processing of sand and gravel at the site have been issued and no ground disturbance or mining shall commence on the subject property before the following conditions are met:

1. Final plat and development plan approval. The development plan and final plat are approved by the Board of County Commissioners, and the plat is filed with the office of the County Clerk;
2. Financial security. All required securities set forth by the Board of County Commissioners have been provided.

3. Agreements. All applicable agreements or conditions set forth by the BCC as pre-conditions to mining, have been implemented;
4. Permits. All applicable pre-conditions to mining set forth in State or Federal permits have been met.
5. Improvement requirements. The applicant shall install and construct such improvements, as are required by this Ordinance and permit conditions set forth by the BCC in the manner and to the design standards provided in this Ordinance. In the absence of specific designs and specifications, the applicant shall install and construct such improvements in a manner consistent with the intent and purpose of this Ordinance.

Before construction of any improvements or the submission of any bond or other performance security, the applicant shall furnish the County with all plans and specifications necessary for construction of such improvements. These plans shall be reviewed by the Planning Director and, if in accordance with this Ordinance and permit requirements, shall be approved by the County, allowing mining to proceed.

6. Improvement Guarantees Assurance. In order for the County to be assured of the completion of all required improvements, the applicant shall agree to either:
 - a. complete installation of the required improvements before final plat and development plan approval; or,
 - b. assure construction of required improvements after final plat and development plan approval.

D. Alternatives. If the applicant wishes to submit the final plat and development plan for approval before completion of required improvements, the applicant shall post a suitable improvement's guarantee in an amount approved by the County. The amount of the guarantee shall not be less than 125 percent (125%) of the estimated cost of the required improvement. The guarantee shall be by a method acceptable to the County pursuant to Article 3, Section 6.E of this Ordinance.

E. Financial Security. An assurance agreement in a specific sum shall be executed by the applicant as a principal and for the purposes of required improvements pursuant to Article 3 and Section 6.C and the Reclamation Plan. Financial Security shall be supported by the deposit of one of the following instruments with Rio Arriba County:

1. a cash account, which is deposited as cash in one or more federally-insured accounts, payable only to Rio Arriba County upon demand;
2. negotiable bonds of the United States, a State, or a municipality, endorsed to the order of Rio Arriba County, and placed in the possession of the Planning Director;
3. negotiable certificates of deposit, made payable or assigned to Rio Arriba County and held by a federally-insured bank;
4. an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to Rio Arriba County upon presentation;
5. a perfected, first-lien security interest in real property acceptable to the County in favor of Rio Arriba County only; or,
6. other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of Rio Arriba County, and placed in the possession of the Planning Director.

F. Notice to proceed. The applicant shall provide all necessary documentation to the Planning Director, and the Planning Director shall verify that the applicant has met all pre-conditions. Upon submittal of all documentation, the Planning Director shall have ten (10) days to verify compliance. If all pre-conditions have been met the Planning Director shall provide the applicant with a written notice-to-proceed within 15 calendar days of submittal. If pre-conditions have not been met, the Planning Director shall inform the applicant in writing within 15 calendar days of submittal which pre-conditions have not been met.

G. Improvement agreement. If, at the time of approval of the final plat and development plan, any improvement has not been completed by the applicant as required by this Ordinance, the Board of County Commissioners shall, as a condition preceding approval of the final plat and development plan, require the applicant to enter into an agreement with the County, on mutually agreeable terms, to thereafter complete the improvements at the applicant's expense.

ARTICLE 4. SPECIAL PROCEDURES

Section 1. Expedited Review and Approval Procedure

At the election of the applicant the reviews and approvals specified in Articles 3 and 4 of this Ordinance may be combined into a single review and approval process, in accordance with the provisions of this Section.

- A. Application/fees. An applicant shall prepare preliminary plat and mining use permit application and supporting documents in accordance with the requirements of Articles 3 and 4 in this Ordinance. The applicant shall also prepare a final plat and development plan and supporting documentation in accordance with the requirements of Articles 3 and 4 in this Ordinance. Submittal is initiated by completing the applications on prescribed forms available from the Planning Director, and upon payment of the required administrative fees.
- B. Application deemed complete. On receipt of the applications, fees, plats, and supporting documentation, the Planning Director shall review all materials in order to determine if the applications are ready to begin the review process. If there are no deficiencies, the applications are deemed complete for review by written notice to the applicant 60 days after the date of application. If the applications are incomplete or do not comply with the submittal requirements provided herein, the applicant shall be notified and be given a maximum time period of 75 days to correct the deficiencies and return the application for consideration. This time period may be extended upon written request to the Planning Director. If after 75 days the application remains incomplete, the application will be voided and the application fee will be retained by the County.

Section 2. Public Hearings, Notice Participation and Record

- A. Public hearings and notice of public hearing shall be as otherwise provided in County Ordinance 2000-01.
- B. Participation in public hearings and record thereof shall be as provided by County Ordinance 2000-01.

ARTICLE 5. VACATION OF PLATS

- A. Any final plat on file in the office of the County Clerk may be vacated if as a result of an application for a mining permit use or subdivision for purpose of mining may be vacated if:
 - 1. the owners of the land sign an acknowledged statement, declaring the final plat or a portion of the final plat to be vacated, and the declaration is approved by the BCC; or,
 - 2. the BCC finds that the plat was obtained by misrepresentation or fraud and order a declaration of vacation be prepared by the County.

- B. Statement of vacation. The vacation of all or a portion of a final plat shall be initiated by submittal of the declaration of vacation to the County Clerk.
- C. Scheduling and notification. Within 60 days after the date of receipt of the declaration of vacation from the owner, the BCC shall approve or deny the declaration of vacation, subject to the following:
 - 1. action shall be taken at a public meeting;
 - 2. at least 15 calendar days before the proposed meeting, all owners of record of adjacent properties 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.
- D. Action. In approving the declaration of vacation of all or part of the final plat, the BCC shall decide whether the declaration of vacation will adversely affect the interests of persons on contiguous land.
- E. 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 declaration of vacation is recorded.

ARTICLE 6. VARIANCES

Applications for variance for issuance of a mining permit use shall be as provided in Rio Arriba Design and Development Regulation System County Ordinance 2000-01, Article II, Section VI.

ARTICLE 7. EXISTING CURRENT USES/GRANDFATHER CLAUSE

- A. Legal non-conforming uses shall be determined pursuant to Article I, Section IX of County Ordinance No. 2000-01 and in addition a non-conforming use of extraction or exploration shall not be recognized unless the operator provides to the Planning Director within ninety (90) days after the effective date of this Ordinance a description of operations on the effective date of this Ordinance. Within 180 days the applicant shall submit:
 - (1) documentation which conforms to the requirements set forth in Article III, Section II of this Ordinance, and
 - (2) copies of all permits or approvals which it holds from State and Federal agencies.

For the purposes of Article I, Section IX of County Ordinance No. 2000-01 “discontinued” means for an extraction site, no extraction by the operator has occurred for more than 6 months and for an exploration site, no exploration has occurred by the operator for more than six (6) months.

1. The Planning Director shall investigate all claims of non-conforming use through independent field checks, inspections and interviews. The findings of these field inspections shall document through a narrative report and photographs the historical extent of any exploration or extraction use on each property.
2. The Planning Director after consultation with a professional expert determines that a claimed non-conforming use creates a dangerous, injurious, noxious or otherwise objectionable condition which causes an adverse impact to the surrounding areas or uses, the person seeking to exercise the legal non-conforming use status shall submit a plan and a time schedule for action which states how such conditions will be mitigated and if the plan is not implemented the non-conforming use status shall expire.

ARTICLE 8. ADMINISTRATIVE FEES

Any person desiring to mine sand and gravel in the County shall pay the administrative fees set by the County for:

Preliminary Plat	\$ 25.00
Rezoning	\$ 75.00
Final Plat	\$ 25.00
Development Plan Permit	\$ 25.00
Variance	\$ 75.00
Appeal	\$ 75.00
Statement of Vacation	\$ 25.00
Temporary Permit	\$ 75.00

ARTICLE 9. ENFORCEMENT, PENALTIES, AND REMEDIES

Enforcement, penalties and remedies shall be as provided in Article III of County Ordinance No. 2000-01.

ARTICLE 10. SEVERABILITY

The provisions of this Ordinance are severable, and if any provision, sentence, clause, section, or part hereof is held illegal, invalid, or unconstitutional, or inapplicable to any person or circumstance, the illegality, invalidity, unconstitutionality or inapplicability shall

not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the intent of the County that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, sentence, clause, section, or part had not been included herein, and if the person or circumstances to which this Ordinance or any part thereof are inapplicable has been specifically exempted therefrom.

ARTICLE 11. ADOPTION

EFFECTIVE DATE

Pursuant to 4-37-7 NMSA 1978 it is hereby declared by the Board of County Commissioners of Rio Arriba County that there is an immediate danger of the public health, safety and welfare of Rio Arriba County and therefore this Ordinance shall take effect immediately upon signature by the County Commissioners, signature and recording by the County Clerk and publication by title and general summary in a newspaper of general circulation in Rio Arriba County.

REVIEWED, APPROVED AND ADOPTED ON THIS 26th DAY OF August, 1999 BY
THE RIO ARRIBA BOARD OF COUNTY COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS
RIO ARRIBA COUNTY

ALFREDO L. MONTOYA
DISTRICT II COMMISSIONER

RAY TAFOYA
DISTRICT I COMMISSIONER

MOISES MORALES
DISTRICT III COMMISSIONER

ATTEST:

J. FRED VIGIL, COUNTY CLERK

CERTIFICATE OF FILING

I, J. Fred Vigil, County Clerk, do hereby certify that the foregoing Ordinance designated as Ordinance 2000-02 was filed in my office on the 27th day of August 1999 in Book Number 2, Pages 84-117.

J. FRED VIGIL, COUNTY CLERK