

#8473

SAN MIGUEL COUNTY ORDINANCE SMC-07-13-99-ORD-3
SAND AND GRAVEL MINING ORDINANCE

WHEREAS, the County's Land Development Standards were adopted July 8, 1986, as part of San Miguel County Ordinance No. 86-2, the effective date of which was August 18, 1986; and,

WHEREAS, said Land Development Standards (Zoning Ordinance) may be out-dated, impracticable, and otherwise not sufficiently adequate to protect and promote the public health and safety, and advance the general welfare, of the citizens of San Miguel County, in that said Land Development Standards may not adequately set forth reasonable county requirements for (1) land reclamation for mining, gas, oil, soil and gravel extractions; (2) other problems and concerns pertaining to such extractions; (3) terrain management and such other matters, requirements and restrictions as may be necessary and proper to insure that development in San Miguel County is well planned, giving consideration to population density in the county and within specific and affected geographic areas within San Miguel County; and,

WHEREAS, the San Miguel County Planning and Zoning Commission and Land Use Task Force have proposed a more comprehensive ordinance for sand and gravel extraction after considerable discussion; and

WHEREAS, County Ordinance No. SMC-07-13-99-ORD-3, which replaces and supersedes Section 5190 of the Land Development Standards heretofore adopted as San Miguel County Ordinance No. 86-2, was proposed and submitted for adoption by the Board of County Commissioners at a public meeting and after a public hearing held at Las Vegas, New Mexico on the 13th day of July, 1999; and

County of San Miguel
Rebecca A. Medina,
County Clerk
Filed for Record on July 14, 1999
Date July 14, 1999
Time 12:34 PM
Book 238 of Misc pg. 4815
Deputy Julian Rivera
Witness My Hand and Seal

WHEREAS, the County Planning and Zoning Supervisor conducted hearings in various communities within San Miguel County to receive comments on said proposed County Ordinance No. SMC-07-13-99-ORD-3; and

WHEREAS, the County Manager published the title and a general summary of the subject matter of the proposed ordinance in a newspaper of general circulation within San Miguel County as required by the notice and hearing provisions of Sections 4-37-7, and 10-15-1, NMSA 1978, and as otherwise required by law.

BE IT NOW, THEREFORE, RESOLVED, ORDAINED AND DETERMINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO, that San Miguel County Ordinance No. SMC-07-13-99-ORD-3, being and constituting the County's Sand and Gravel Ordinance and consisting of Articles 1 to 9, inclusive of the appendices thereto attached, be and the same is hereby adopted, approved and ordained this 13th day of July, 1999.

MOVED, SECONDED, ADOPTED AND ORDAINED this 13th day of July, 1999, by the Board of County Commissioners of San Miguel County, New Mexico.

SAN MIGUEL COUNTY
BOARD OF COUNTY COMMISSIONERS



Lawrence R. Rascon, Chairman

LeRoy H. Garcia, Commissioner

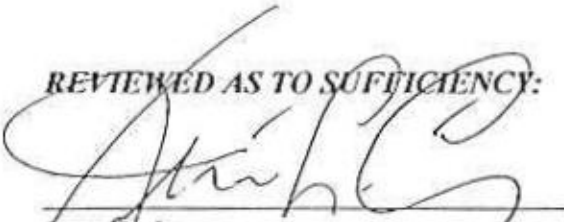


Arthur J. Padilla, Vice-Chairman



Eloy Gonzalez, Member

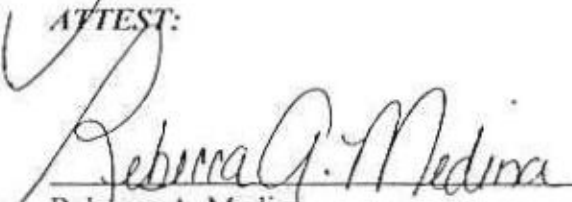
REVIEWED AS TO SUFFICIENCY:



Jesus V. Lopez
San Miguel County Attorney

Willie R. Salas, Commissioner

ATTEST:



Rebecca A. Medina
San Miguel County Clerk

SAN MIGUEL COUNTY

SAND AND GRAVEL MINING ORDINANCE

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ARTICLE 1. GENERAL PROVISIONS

Section 1. Title

This ordinance shall be known and may be cited as the "San Miguel County Sand and Gravel Mining Ordinance" and shall be referred to elsewhere in as "this Ordinance."

Section 2. Authority

This Ordinance is created pursuant to the enabling authority set forth in §§ NMSA 1978; §§ NMSA 1978; § NMSA 1978.

Section 3. Purpose

This Ordinance is adopted for the following purposes:

1. To provide for and protect the public health, safety and general welfare of the County;
2. To guide the future development of sand and gravel mining and processing operations within the County;
3. To provide for the most beneficial relationship between existing land uses and mining activities and to minimize conflicts among existing land uses and mining activities;
4. To protect traditional, agricultural communities;
5. To provide for a reasonable, fair and unambiguous system for the permitting of development of the resource;
6. To protect and conserve the value of land and cultural and environmental resources;
7. To assure the reclamation of affected areas;
8. To establish reasonable standards for the location and development of mining operations; and,
9. To prevent the pollution of air, streams and acequias, and to safeguard the aquifers; and to ensure the wise use and management of natural resources throughout the County in order to preserve the integrity, stability, and beauty of the community and the value of the land.

Section 4. Jurisdiction

This Ordinance shall govern all persons who conduct or intend to conduct sand and gravel mining and processing activities within the County and not within the boundaries of municipalities. Jurisdiction may be extended to Federal (non-Indian) and State lands where allowed by the managing agency.

Section 5. Exemptions

This Ordinance shall not apply to:

- a. 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 one-half (0.5) acre in any five (5) continuous years;
- b. off-site processing activities; and,
- c. exploratory activities which do not result in the mining and/or removal from the property of more than ten (10) cubic yards of material.

Section 6. Written Decisions

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

Section 7. Interpretations

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 they were adopted.

ARTICLE 2. DEFINITIONS

A-Weighted	Specific weighting of the sound pressure level for the purpose of determining human response to sound as described in ANSI S1.4-1983.
Basal Cover	The vegetation cover or extent of cover at the crown or base of a plant.
dB(A)	The vegetative cover or extent of cover found at the crown or base of a plant.
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.
Exploration	Any activity related to the determination of the geologic and economic extent of a sand and gravel resource.
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 the 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.

Overburden Consolidated or unconsolidated materials of any nature, that overly 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 outlines in (i). and (ii). below:

- (i)(a) being a permittee of a sand gravel operation;
 - (b) based on instruments of ownership or voting securities, owning of records 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.
- (ii) 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 or 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 requirement of this ordinance)

Property owners on record with the office of the San Miguel 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.

Post Mining Land Uses 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 subject in part or in whole to mining, or proposed mining related activities.

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, revegetation, 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 rip rap.
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.

ARTICLE 3 CONDITIONAL USE AND PRELIMINARY PLAT REVIEW APPROVAL PROCESS

Section 1. Application Submittal

Sand and gravel mining shall not take place within the County on lands that have not been specifically approved for such purposes and for which plat and development plan approvals have not been obtained in accordance with the provisions of this Ordinance.

- 1.1 Preliminary plat required. Preliminary plats shall be submitted for all proposed sand and gravel mining operations.
- 1.2 Application/fees. An applicant shall prepare a preliminary plat and supporting documentation in accordance with the requirements provided in this Ordinance. The submittal is initiated by completing an application on a prescribed form available from the Planning & Zoning Supervisor, and upon payment of the required administrative fees.
- 1.3 Plat and conditional use application deemed completed. On receipt of the application, fees, preliminary plat, and supporting documentation, the Planning & Zoning Supervisor shall review all materials in order to determine if the preliminary plat and conditional use application are ready to begin the review process. If there are no deficiencies, the application is deemed complete for review by written notice to the applicant within 30 days after the date of the application.

- 1.4 Incomplete applications. If the application is incomplete or does not comply with the submittal requirements provided herein, the applicant shall be notified and be given 60 days to correct the deficiencies and return the application for consideration. This time period may be extended with a written request to the Planning & Zoning Supervisor. If after 60 days the application remains incomplete, the application will be voided and the application fee will be retained by the County. Within seven (7) days, County staff shall convey to the members of the Mining Plans Review Board (MPRB) copies of the complete application and plat.

SECTION 2. Public Hearings

- 2.1 Scheduling. The County shall conduct a public hearing no sooner than 30 days after the plat and application have been deemed complete, and the Planning and Zoning Commission or the BCC has received the findings of fact and recommendations from county staff and Mining Plans Review Board (MPRB). The public hearings shall be scheduled pursuant to Section 7030 of the San Miguel County Ordinance 86-2.
- 2.2 Notice. The County shall publish notice of the public hearing in a newspaper of general circulation in the county at least 15 calendar days prior to the date of the hearing and it shall contain the following information:
- a. the subject of the hearing;
 - b. time and place of the hearing;
 - c. manner for interested persons to view the application and supporting documentation.
- 2.3 Notification by the County. The applicant shall notify by certified mail, return receipt requested, at least 15 calendar days prior to the hearing, owners of record of lands located within one-half mile from the edge of the property boundary for which the conditional use is requested, and at least ten (10) closest property owners of record. The County shall notify by First-Class Mail at least 15 calendar days prior to the hearing, any interested person who previously requested such notice and who has provided a stamped self-addressed envelope for such purpose, State and Federal agencies, and other public or private organizations which may have an interest in the application, as determined by the Planning & Zoning Supervisor.
- 2.4 Participation and record. At the public hearing, the County shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, and to question witnesses providing testimony at the hearing. A record of the public hearing shall be kept.
- 2.5 Approval. Approval or conditional approval of a conditional use application and preliminary plat shall not constitute approval of the proposed sand and gravel mining

operation, but shall only serve as a guide in the preparation of the final plat and development plan.

Section 3. Conditional Use/Preliminary Plat Data Requirements

- 3.1 Purpose. At a minimum, the supporting documentation for the conditional use and preliminary plat review is intended to provide sufficient information for the County to determine that:
- a. use of the land for mining is reasonably compatible with other uses in the area affected by the mining use, including but not limited to the traditional patterns of land use, recreational uses, and present and planned population centers;
 - b. there is a history or significant mining activity in the area;
 - c. there is a likelihood that the applicant will be able to obtain all necessary State and Federal approvals; and
 - d. there is satisfactory access and appropriate roads to meet the requirements of the proposed business.
- 3.2 Filing specifications. The applicant shall submit three (3) copies of the conditional use application, preliminary plat and supporting documentation. Preliminary 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 map shall show the following:

- a. title, scale, north arrow, and date;
- b. existing topography indicating contour intervals sufficient for planning purpose;
- c. existing and proposed boundary lines, in bearings and distances, for the property boundary and proposed disturbed areas;
- d. proposed acreage of all disturbed areas;
- e. the location, dimension, and purposes of existing easements;
- f. names, right-of-way widths, weight limits and other restrictions of existing roadways on and adjacent to the site;
- g. existing and proposed utilities on and adjacent to the site;
- h. location of the site in relation to well known landmarks;
- i. ownership of contiguous lands;
- j. location of archaeological, historical, or culturally significant features on the site, or located within one-thousand (1000) feet of the site;

- k. delineation, if applicable, of any 100-year flood plain as designated by the Federal Emergency Management Agency;
- l. names and addresses of the owner or owners of the land to be mined, and those of the registered land surveyor, and;
- m. legal description indicating the range, township, and section within which the site is located.

3.4 Permits. The applicant shall provide a complete listing of all State and Federal agency reviews, approvals and permits that may be required for sand and gravel mining on the site.

Section 4. Site Criteria

- 4.1 Location. The conditional use may be approved if similar uses have been established as non-conforming on contiguous and adjacent locations; if the conditional use is compatible with neighboring uses; or if it is the consensus of the local community to allow the proposed rezoning and use.
- 4.2 Minimum lot size. Tracts of land smaller than five (5.0) acres in area shall not be approved for sand and gravel extraction. However, temporary extraction permits may be issued for tracts smaller than five (5.0) acres pursuant to Article 5, Section 5.5 of this Ordinance.
- 4.3 Setbacks. Tracts of land proposed for sand and gravel extraction shall be of such size and configuration that all setback requirements set forth in this Ordinance will be met.

Other requirements. Land may not be approved for sand and gravel extraction if the boundary of the disturbance area is within 1000 feet of schools, traditional or historical communities, hospitals, clinics and other health care facilities.

Section 5. Mining Plans Review Board

A Mining Plans Review Board (MPRB) shall be appointed by the BCC in order to insure that the technical components of conditional use and development plan applications are appropriately reviewed, impact assessments are accurate, mitigation measures are appropriate and adequate, operations and reclamation plans are feasible, and that cost estimates for reclamation are reasonable and adequate for the purposes of financial security.

Composition and Duties. The MPRB shall consist of three (3) members, shall meet on a case-by-case basis, shall review all operation, reclamation and environmental impact studies and mitigation plans, and shall make findings and recommendations based on its findings to the Planning and Zoning Commission. Members of the MPRB shall have the following credentials:

- a. one (1) member with at least five years expertise in geology or mining geology;
 - b. one (1) member with at least five years expertise in hydrology or geohydrology;
 - c. one (1) member with at least five years expertise in the field of environmental studies, ecology, biology or land use planning.
- 5.2 Appointment. Each member shall be appointed to a term of two (2) years. In the event a member develops a conflict of interest, such member shall file a statement of disclosure as set forth by this subsection. Upon filing of such disclosure the BCC shall, at its next regularly scheduled meeting, determine whether the conflict of interest is cause for removal.
- 5.3 Meetings. Meetings of the MPRB shall be held on an as-needed-basis and shall be coordinated by the county's administrative staff. All meetings of the MPRB shall be held in accordance with the requirements for public meetings.
- 5.4 Submittals. Within 30 days of receipt of the complete application and plat each member of the MPRB shall submit his or her written findings and conclusions, in his or her area of expertise, to the Planning & Zoning Supervisor. The Planning & Zoning Supervisor shall submit the member reports to the Planning and Zoning Commission within five (5) working days of receipt.
- 5.5 Reviews. All reviews by the MPRB shall be conducted in a manner consistent with the stated intent and purpose of this Ordinance and the specific provisions contained herein. Findings shall be based on the responsiveness of the applicant to the requirements of this Ordinance and appropriateness of the plans. The findings and conclusions of the MPRB shall not be set aside, unless new or additional technical or factual information is presented to the MPRB. At the public hearing, convened pursuant to Article 3.2, Article, 4.2, and Article 5.5.7, the applicant and members of the public shall have the right to question those MPRB members requested by the Planning and Zoning Commission or by the Planning & Zoning Supervisor to be present.
- 5.6 Consultants. In the event the MPRB is unable to convene or to be formed, the BCC may contract with appropriate experts to review and find on the submittals, with such review to be done in the same manner and procedure as is required of the MPRB.
- 5.7 Conflict of Interest. All members of the MPRB, or experts contracted by the County under the preceding paragraphs, shall be required to file a conflict of interest statement prior to appointment to the MPRB. No members of the MPRB or experts shall receive or shall have received, during the previous two (2) years, a portion of their income directly or indirectly from permit holders, operators or applicants for a permit, or permittees seeking to participate in the permitting process. All members or experts shall, upon acceptance of their appointment and prior to the performance

of their duties, file a statement of disclosure with the County disclosing any amount of money or item of value, and its source, that they received directly or indirectly from permit holders, operators or applicant for a permit, or permittee seeking to participate in the permitting process. No MPRB member or experts with a significant financial interest affected or potentially affected by a permit action may participate in any decision pertinent to the permit action.

ARTICLE 4. DEVELOPMENT PLAN REVIEW AND PERMIT APPROVAL PROCESS

Section 1. Final Plat and Development Plan Submittal

- 1.1 Conformity. Following conditional use and preliminary plat approval or conditional approval, the applicant shall prepare final plat and development plan in substantial conformity with the approved or conditionally approved preliminary plat and conditional use approval.
- 1.2 Application/fees. An applicant shall prepare a final plat, development plan supporting documentation in accordance with the requirements provided in this Ordinance. Final plat and development plan review is initiated by completing an application on a form available from the Planning & Zoning Supervisor, and upon payment of the required administrative fees.
- 1.3 Plat and development plan deemed complete. The Planning & Zoning Supervisor shall review all materials in order to determine whether the final plat and development plan are complete. If there are no deficiencies, the final plat and development plan are deemed complete for review by written notice to the applicant within 30 days after the date of application. If the application is incomplete or does not comply with the submittal requirements provided herein, the application shall be notified and be given 60 days from the date of notification to correct the deficiencies and return them for consideration. This time period may be extended with a written request to the Planning & Zoning Supervisor. This time period may be extended with a written request to the Planning & Zoning Supervisor. If after 60 days the application remains incomplete, the application will be voided and the application fee will be retained by the County.

Section 2. Public Hearing

- 2.1 Scheduling. The County shall conduct public hearings no sooner than 30 days after the final plan and development plan have been deemed complete, and the Planning and Zoning Commission has received the findings and recommendations from County staff and the Mining Plans Review Board (MPRB).
- 2.2 Notice. The County shall publish a notice of the public hearing in a newspaper of

general circulation in the County at least 15 calendar days prior to the date of the hearing that shall contain the following information:

- a. subject of the hearing;
- b. time and place of the hearing;
- c. manner for interested persons to view the application and supporting documentation.

2.3 Notification by the County. The County shall notify by certified mail, return receipt requested, at least 15 calendar days prior to the hearing, owners of record of lands located within one-half mile from the edge of the property boundary for which the permit is requested, at least the ten (10) closest property owners of record. The County shall notify by First Class mail at least 15 calendar days prior to the hearing, any interested persons who previously requested such notice and who has provided a stamped self-addressed envelope for such purpose, State and Federal agencies, and other public or private organizations which may have an interest in the application, as determined by the Planning & Zoning Supervisor.

2.4 Participation/record. At the public hearing, the County shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, and to question witnesses providing testimony at the hearing. A record of the public hearing shall be kept.

Section 3. Final Plat Data Requirements

3.1 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) one 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 final plat and three (3) copies of the development plan and all supporting documentation.

3.2 Map specifications. The final plat map shall include the following information:

- a. title, scale, north arrow, and date;
- b. permanent monuments, or descriptions and ties to such monuments, to which all dimensions, angles, bearings, and similar data on the plat shall be referred;
- c. tract boundary lines, and easement and right-of-way lines;
- d. acreage of mining area to the nearest one-hundredth (0.01) of an acre;
- e. ownership of contiguous lands;
- f. location of utilities;
- g. delineation, if applicable, of any 100-year flood plan as designated by the

- h. Federal Emergency Management Agency;
- i. names and addresses of the owner or owners of land to be mined;
- j. the certification of surveyor registered in New Mexico attesting to the accuracy of the plat, and the date of the survey; and,
- k. legal description indicating the range, township, and section within which the site is located;

3.3 Approval. The BCC in considering either approval or conditions for approval may take into consideration the past or current performance of the applicant at other sites and operations in New Mexico. The BCC shall approve the final plat and development plan if the applicant demonstrates the following:

- a. that he can fulfill the proposals and requirements contained in the development plan, and;
- b. that all State and Federal agency permits applicable to the mining, and processing of sand and gravel at the site have been issued.

Section 4 Requirements Prior to Commencement of Mining

No ground disturbance or mining shall commence on the subject property before the following conditions are met:

- 4.1 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;
- 4.2 Financial security. All required securities set forth by the Board of County Commissioners have been provided.
- 4.3 Agreements. All applicable agreements or conditions set forth by the Board of County Commissioners as pre-conditions to mining, have been implemented.
- 4.4 Permits. All applicable pre-conditions to mining set forth in State or Federal permits have been met.
- 4.5 Notice to proceed. The applicant shall provide all necessary documentation to the Planning & Zoning Supervisor, and the Planning & Zoning Supervisor shall verify that the applicant has met all pre-conditions. Upon submittal of all documentation, the Planning & Zoning Supervisor shall have ten (10) days to verify compliance. If all pre-conditions have been met the Planning & Zoning Supervisor 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 & Zoning Supervisor shall inform the applicant in writing within 15 calendar days of submittal which pre-conditions

have not been met.

- 4.6 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.

Section 5. Development Plan Data Requirements

All applications for sand and gravel mining permits shall include the supporting documentation described in this Ordinance. All development plans for mining uses shall include the following:

- a. maps, plans, graphics, and reports that specify:
 - 1) a detailed description of the method(s) or techniques of mining to be employed in each stage of the operation where surface disturbance will occur;
 - 2) a description of all earth moving activities, including excavation and backfilling;
 - 3) the location and size of all water diversions, impoundments and discharges;
 - 4) the size, areal extent, dimensions, and location of area(s) to be disturbed including excavations, and their project depths, overburden spoils and topsoil stockpiles, roadways, typical cross -sections of cut faces or walls greater than three (3) feet in height, excavation, stockpiles and roadways;
 - 5) storage areas for vehicles and equipment;
 - 6) location and size of all structures;
 - 7) areas designated for reclamation;
 - 8) hours and days of operation;
- b. a description of all processing methods, and methods for transporting the material offsite;
- c. a description of how each phase of exploration and extraction is contemporaneous to and corresponds with the reclamation plan;
- d. a time table for each phase of operations and reclamation;
- e. a description of the steps to be taken to comply with applicable State and Federal agency regulations and permits and all applicable health and safety standards;
- f. a terrain management plan, including drainage plans prepared in accordance with the requirements of Appendix A of this Ordinance;

- g. a cultural resources plan prepared in accordance with Appendix B of this Ordinance;
- h. an Environment protection plan in accordance with Appendix C of this Ordinance including:
 - 1) air quality protection
 - 2) noise and vibration abatement
 - 3) visual quality protection
- i. a safety and traffic control plan prepared in accordance with Appendix D of this Ordinance;
- j. a reclamation plan prepared in accordance with Appendix E of these regulations;

Section 6. Agency Permits

The applicant shall obtain all applicable State and Federal agency permits that are required to mine or process sand and gravel on the relevant tract of land. Copies of these permits, and supporting applications and documentation shall be furnished the County. The Planning & Zoning Supervisor shall review these documents and verify that the described location, resources extracted, magnitude of the operation, method of operation and all other relevant data, are consistent with the application pending before the County.

ARTICLE 5. SPECIAL PROCEDURES

Section 1. Expedited Review and Approval Procedure

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

- 1.2 Application/fees. An applicant shall prepare preliminary plat and conditional use applications and supporting documents in accordance with the requirements of Article 3 in this Ordinance. The applicant shall also prepare a final plat and development plan and supporting documentation in accordance with the requirements of Article 4 in this Ordinance. Submittal is initiated by completing the applications on prescribed forms available from the Planning & Zoning Supervisor, and upon payment of the required administrative fees.
- 1.3 Application deemed complete. On receipt of the applications, fees, plats, and supporting documentation, the Planning & Zoning Supervisor 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 application 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 with a written request to the Planning & Zoning Supervisor. 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 Hearing on Applications

- 2.1 Scheduling. The County shall conduct a hearing within 60 days after the plat and application have been deemed complete, and the Planning and Zoning Commission has received the final reports of the Mining Plans Review Board (MPRB).
- 2.2 Notice. The County shall publish a notice of public hearing at least 15 calendar days prior to the date of the hearing in a newspaper of general circulation in the county and shall contain the following information:
 - a. subject of the hearing;
 - b. time and place of the hearing;
 - c. manner for interested persons to review the application and supporting documentation.

The applicant shall submit to the County an affidavit of publication from the publisher.

- 2.3 Notification by the County. The County shall notify by certified, return receipt mail requested, at least 15 calendar days prior to the hearing owners of record of lands located within one-half mile from the edge of the property boundary for which the conditional use requested, and at least ten (10) days closest property owners of record. The County shall notify by First-Class Mail at least 15 calendar days prior to the hearing, any interested person who previously requested such notice and who has provided a stamped self-addressed envelope for such purpose, State and Federal agencies, and other public or private organizations which may have an interest in the application, as determined by the Planning & Zoning Supervisor.
- 2.4 Participation/record. At the public hearing, the County shall allow all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, and to question witnesses providing testimony at the hearing. A record of the public hearing shall be kept.

Section 3. Vacation of Plats

- 3.1 Cause. Any final plat on file in the office of the County Clerk may be vacated if:
- a. 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 statement is approved by the BCC; or,
 - b. The BCC finds that the plat was obtained by misrepresentation or fraud and order a statement of vacation be prepared by the County.
- 3.2 Statement of Vacation. The vacation of all or a portion of a final plat shall be initiated by submittal of the statement of vacation to the County Clerk.
- 3.3 Scheduling and Notification. Within 60 days after the date of receipt of the statement of vacation, the BCC shall approve or deny the vacation, subject to the following:
- a. action shall be taken at a public meeting;
 - b. 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.
- 3.4 Action. In approving the vacation of all or part of the final plat, the BCC shall decide whether the vacation will adversely affected the interests of persons on contiguous land.
- 3.5 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 volumes and page on which the statement of vacation is recorded.

Section 4. Variances

- 4.1 Conditions and Limitations. A variance shall not be granted which shall:
- a. adversely affect the health, safety, and general welfare of the public;
 - b. be inconsistent with the general purpose and intent of these regulations;
 - c. be injurious or detrimental to adjacent lands, and;
 - d. cause the county to absorb costs over and above those typically associated with sand and gravel mining permit approvals.
- 4.2 Procedures. The following procedures and requirements shall apply to all requests for variances under this Ordinance.

- 4.2.1. Written Requests. Requests for variances shall be submitted in writing at the time of preliminary plat and conditional use application on a form provided by the Planning and Zoning Supervisor for that purpose, and upon payment of the required administrative fee.
- 4.2.2. MPRB. Variance requests shall be reviewed by the Mining Plans Review Board (MPRB), which shall submit written comments to the Planning & Zoning Supervisor.
- 4.2.3. Public Notice. Public notice of the request for variance shall be given in the same manner as notice is provided for under Articles 4 and 5 of this Ordinance.

Section 5. Temporary Permits

Applications for permits to extract construction materials on a temporary basis may be granted by the Planning & Zoning Supervisor subject to the requirements of this Section. Such temporary use shall not be used by either the applicant, his successor, the Planning & Zoning Supervisor or the Board of County Commissioners as justification for permanent zoning approval to permit sand and gravel extraction for a period of at least five years.

- 5.1 Such permits shall not exceed 180 calendar days, and may be renewed for a one-time period not to exceed 90 calendar days. No further renewals shall be granted. Any further mining and processing activities may only be permitted pursuant to Articles 3 and 4 of these regulations.
- 5.2 The Planning & Zoning Supervisor in consultation with the MPRB shall direct the applicant to submit such information as he deems necessary to make a determination that granting the temporary permit will not:
 - a. adversely affect the health, safety, and general welfare of the public;
 - b. be inconsistent with the general purpose and intent of these regulations;
 - c. be injurious or detrimental to adjacent lands.
- 5.3 If the Planning & Zoning Supervisor in consultation with the MPRB determines that the development will create any dangerous, injurious, noxious or otherwise objectionable condition which causes an adverse impact to the adjacent areas, the applicant shall submit a plan, which states how such conditions will be mitigated.
- 5.4 The applicant shall obtain all applicable State and Federal Agency permits that are required to mine or process sand and gravel on the relevant tract of land. Copies of these permits, and supporting applications and documentation shall be furnished the County. The MPRB shall review these documents and verify that the described location, resources extracted, magnitude of the operation, method of operation and location, resources extracted, magnitude of the operation, method of operation and

all other relevant data are consistent with the application pending before the County.

- 5.5 The requirements of the performance standards presented in Appendices A through E shall be adhered to.
- 5.6 Public Hearings on Applications.
 - 5.6.1 Scheduling. The Planning & Zoning Supervisor shall conduct a public hearing within 30 days after the application has been deemed complete, and the findings and recommendations from County staff and the Mining Plans Review Board (MPRB) and provided that notice requirements can be met.
 - 5.6.2 Notice. The County shall publish a notice of public hearing in a newspaper of general circulation in the County at least 15 calendar days prior to the public hearing that shall contain the following information:
 - a. subject of the hearing;
 - b. time and place of the hearing;
 - c. manner for interested persons to review copies of the application and supporting documentation.
 - 5.6.3 Notification by the County. The applicant shall notify by certified mail, return receipt requested, at least 15 calendar days prior to the hearing owners of record of lands located within one-half mile from the edge of the property boundary for which the conditional use was requested, and at least the ten (10) closest property owners of record.
 - 5.6.4 Participation/Record. At the public hearing, the Planning & Zoning Supervisor shall allow all interested persons opportunity to submit data, views, or arguments, orally or in writing, and to question witnesses providing testimony at the hearing. A record of the public hearing shall be kept.
 - 5.6.5 Action. Either at the conclusion of the hearing or within five (5) days after the public hearing the Planning & Zoning Supervisor shall approve, approve with conditions, or disapprove the application. The Planning & Zoning Supervisor shall inform the applicant in writing of his decision.
- 5.7 No ground disturbances or mining shall commence on the subject property before the following conditions are met:
 - a. the development plan has been approved by the Planning & Zoning Supervisor;
 - b. all required financial securities as set forth by the Planning & Zoning Supervisor have been provided;

- c. all applicable agreements or conditions set forth by the Planning & Zoning Supervisor as pre-conditions to mining, have been implemented;
- d. all applicable pre-conditions to mining set forth in State or Federal permits have been met;
- e. the applicant shall provide all necessary documentation to the Planning & Zoning Supervisor, and the Planning & Zoning Supervisor shall verify that the applicant has met all pre-conditions.

Upon submittal of all documentation, the Planning & Zoning Supervisor shall have ten (10) days to verify compliance. If all pre-conditioned have been met the Planning & Zoning Supervisor shall provide the applicant with a written notice-to-proceed within 15 days of submittal. If pre-conditions have not been met, the Planning & Zoning Supervisor shall inform the applicant in writing within 15 days of submittal which pre-conditions have not been met.

Section 6. Continuance of Existing Mining Uses

- 6.1 Effective date. Extraction uses in existence at the time of the effective date of this Ordinance and which were initiated in full compliance with all applicable County, State, and Federal regulations shall not be subject to the requirements of this ordinance except the operator shall provide to the Planning & Zoning Supervisor within 12 months after the effective date of this Ordinance, (1) a description of current operations which conforms to the requirements of Article 4, Section 5 of this Ordinance, and (2) copies of all of its permits or approvals which it holds from State and Federal agencies.
- 6.2 Non-conforming Use and Abandonment. An existing extraction use shall be permitted to continue as a non-conforming use in accordance with the provisions of this Ordinance, until it is abandoned or expanded. For the purpose of this Section "abandoned" means an extraction site on which no extraction use by the operator has occurred for more than 6 months.

Extraction uses and operations shall be deemed to be in existence on the site on the effective date of this Ordinance if actual construction has commenced on a substantial portion of any structures and improvements subsequently used in extraction use and/or a substantial portion of the planned extraction operation has begun.

Mining sites that have been established, historical pattern of intermittent use shall not be deemed abandoned if the operator submits a description of such use pursuant to Section 5.1.

Mining uses in existence on or prior to the effective date of this Ordinance may not be enlarged upon, expanded or extended without obtaining conditional use approval and a development permit as described in Articles 3 and 4.

6.3 County Review.

- 6.3.1 Verification. The Planning & Zoning Supervisor shall verify all claims of non-conforming usage through independent field checks and inspections. The findings of these field inspections shall document through a narrative report and photographs the historical extent of mining on each property.

MPRB. The Planning & Zoning Supervisor shall transmit all documents provided by the operator to the Mining Plans Review board (MPRB). The MPRB shall review the documents in the same manner and procedure as is required under Articles 3 and 4 of this Ordinance. The Planning & Zoning Supervisor in consultation with the MPRB, shall direct the applicant, to submit such information as it deems necessary to make a determination that the continued mining uses will not:

1. adversely affect the health, safety, and general welfare of the public;
2. be inconsistent with the general purpose and intent of these regulations;
3. be injurious or detrimental to adjacent lands.

If the Planning & Zoning Supervisor, in consultation with the MPRB determines that the present use creates a dangerous, injurious, noxious or otherwise objectionable condition which causes an adverse impact to the adjacent areas, the applicant shall submit a plan which states how such conditions will be mitigated.

- 6.3.2 Verification. The Planning & Zoning Supervisor shall verify that the operator has obtained all applicable State and Federal agency permits that are required to mine and process sand and gravel on the property.

ARTICLE 6. REQUIRED IMPROVEMENTS

Section 1. Construction of required improvements

- 1.1 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 & Zoning Supervisor and, if in accordance with this ordinance and permit requirements, shall be approved by the county, allowing mining to proceed.

- 1.2 Improvement Agreement. The County may enter into an improvement agreement with the applicant. This agreement shall constitute a binding contract between the applicant and the County and shall contain those conditions agreed to by the applicant and the County.

Section 2. Improvement Guarantees

- 2.1 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.
- 2.2 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 9, Section 4 of this Ordinance.

ARTICLE 7. 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	\$ 300.00
Conditional Use	\$ 150.00
Final Plat	\$ 300.00
Development Plan Permit	\$ 150.00
Variance	\$ 200.00
Appeal	\$ 200.00
Statement of Vacation	\$ 200.00
Temporary Permit	\$ 200.00

This Article 7 amended by Ordinance No. SMC-08-12-03-ORD-4.

ARTICLE 8. APPEALS

Section 1. Who May Appeal

- 1.1 Planning & Zoning Supervisor. Any person who is adversely affected by a decision of the Planning & Zoning Supervisor may appeal to the BCC within 15 calendar days after the date of the action by the Planning & Zoning Supervisor. The BCC shall hear the appeal and render a decision within 30 days after receiving the notice of appeal.

- 1.2 BCC. Any person who is adversely affected by a decision of the BCC in approving or disapproving a plat application or a development permit may appeal to the District Court of the County within 30 days after date of the action of the Board.

Section 2. Appeal Process

- 2.1 The appeal shall consist of a whole record review, and the reviewing authority, whether it be the BCC or the District Court, shall only set aside the action of the lower tribunal if it is found to be:
 - a. arbitrary, capricious or an abuse of discretion; or,
 - b. not supported by substantial evidence; or,
 - c. otherwise not in accordance with law.
- 2.2 Any party to the action in District Court shall have full appellate rights in accordance with the laws of the State of New Mexico and the rules of appellate procedure for the State of New Mexico.
- 2.3 The appeal shall be perfected by filing a written notice which sets forth the specific portion or portions of the decision being appealed. A copy of the decision or order being appealed shall be attached to the notice of appeal.

ARTICLE 9. ENFORCEMENT, PENALTIES, AND REMEDIES

Section 1. Purpose

Violations of the provisions of these regulations shall be prosecuted in the manner provided by law to protect the health, safety, and welfare of the public according to the County's authority. The remedies provided in this Ordinance shall be cumulative and not exclusive.

Section 2. Investigation of Alleged Violations

All written, signed complaints alleging one or more violations of the provisions of this Ordinance, or conditions of approval and terms of agreements pertaining to development plan approvals and permits shall be referred to the Planning & Zoning Supervisor or District Attorney for investigation. The Planning & Zoning Supervisor or District Attorney shall investigate the complaint and take such action as is warranted, or make a written recommendation to the BCC of what action is warranted. The Planning & Zoning Supervisor or District Attorney shall inform the complainant in writing of what actions have been taken or will be taken in response to the complaint.

Section 3. Penalties and Remedies

Violations of the provisions of this Ordinance or conditions of approval and terms of agreements

pertaining to development plan approvals and permits shall be subject to the following penalties, remedies and enforcement procedures:

- 3.1 Permits and approvals. Any person who begins mining or any ground disturbance for the purpose of initiating mining without obtaining the necessary permits and approvals from the County or other regulatory agency, may be fined a civil penalty of up to \$300.00 for each violation. Each day of illegal activity shall constitute a separate violation.
- 3.2 Suspension/Revocation. The Planning & Zoning Supervisor or Board of County Commissioners may suspend or revoke the development plan permit if the applicant does not meet the requirements of compliance approved by the BCC.
- 3.3. Other Permits. The Planning & Zoning Supervisor or BCC may suspend or revoke the development plan permit if any State or Federal agency permit lapses, is suspended or revoked.
- 3.4 Injunctive relief. The BCC may apply to the District Court for any one or more of the following remedies in connection with violations of this Ordinance:
 - a. injunctive relief to prohibit any mining, processing or transporting of materials until the person complies with the provisions of these regulations and the terms of any agreements;
 - b. injunctive relief to compel compliance by any person with the provisions of this Ordinance;
 - c. civil penalties.

Section 4. Financial Security

An assurance agreement in a specific sum shall be executed by the applicant as a principal and for the purposes or required improvements (pursuant to Article 6) or the Reclamation Plan (pursuant to Appendix E). Financial Security shall be supported by the deposit of one of the following instruments with San Miguel County:

1. a cash account, which is deposited as cash in one or more federally-insured accounts, payable only to San Miguel County upon demand;
2. negotiable bonds of the United States, a State, or municipality, endorsed to the order of San Miguel County, and placed in the possession of the Planning and Zoning Supervisor.
3. negotiable certificates of deposit, made payable or assigned to San Miguel 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 San Miguel County upon presentation;
5. a perfected, first-lien security interest in real property in favor of San Miguel 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 San Miguel County, and placed in the possession of the Planning & Zoning Supervisor.

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. REPEAL AND EFFECTIVE DATE

This Ordinance shall become effective on the _____ day of _____, 1999.

This Ordinance repeals and replaces Section 5190 of San Miguel County Ordinance No. 86-2 adopted July 8, 1986.

#8232

SAN MIGUEL COUNTY
ORDINANCE NO. SMC-08-12-03-ORD-4

AN ORDINANCE ESTABLISHING FEES FOR SAND AND GRAVEL MINING APPLICATIONS AND ALL MATTERS INCIDENT THERETO; REPEALING AND SUPERCEDING ORDINANCE SMC-07-13-99-ORD-3: ARTICLE 7 ADMINISTRATIVE FEES, AND SETTING A SCHEDULE OF PUBLICATION AND NOTIFICATION FEES AND A TECHNICAL REVIEW FEE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County of San Miguel is authorized by New Mexico State Statute to set reasonable fees approximating the cost of determining compliance with land development standards to include Sand and Gravel Mining Ordinance SMC-07-13-99-ORD-3; and

WHEREAS, said fees are necessary and reasonable to help defray the administrative processing cost to San Miguel County and shall be collected and utilized to offset the costs of determining compliance with Ordinance SMC-07-13-99-ORD-3, which fees shall not be refundable, it is now, therefore,

ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, NEW MEXICO, that:

Section 1:

ARTICLE 7. 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	<u>\$900.00</u>	
Conditional Use	<u>\$450.00</u>	
Final Plat	<u>\$900.00</u>	
Development Plan Permit	<u>\$450.00</u>	
Variance	<u>\$600.00</u>	
Appeal	<u>\$600.00</u>	
Statement of Vacation	<u>\$600.00</u>	
Temporary Permit	<u>\$600.00</u>	
Publication and Notification	<u>\$246.00</u>	<u>Minimum Fee</u>
<u>(Planning and Zoning)</u>		
Publication and Notification	<u>\$246.00</u>	<u>Minimum Fee</u>
<u>(County Commission)</u>		
Technical Review Fee	<u>\$2,250.00</u>	<u>Minimum Fee</u>

COUNTY OF SAN MIGUEL
 PAUL MAEZ
 COUNTY CLERK
 FILED FOR RECORD ON:
 DATE: 8-22-03
 TIME: 9:45AM
 BOOK: 24 OF MISC PG 4106
 DEPUTY M. Davis
 WITNESS MY HAND AND SEAL

Section 2. Minimum Fees:

Said fees identified in Section 1 as minimum fees are the minimum amounts that applicant(s) shall be required to submit by check or money order payable to San Miguel County at the time application is submitted to the Planning and Zoning Division. All fees, including said minimum amounts, are required to be paid as a condition of application being determined complete. Any and all costs incurred by San Miguel County relevant to publication and notification and relevant to technical review that are above and greater than said minimum amounts identified in Section 1 shall be paid by the applicant(s) upon receipt of proper documentation provided by San Miguel County indicating said costs.

Section 3. Reclamation Bond:

The Board of County Commissioners may require the applicant to provide a bond in an amount sufficient to ensure the accomplishing and completion of the reclamation plan required by Section 5, Development Plan Data Requirements (j) prepared in accordance with Appendix E of San Miguel County Ordinance SMC-07-13-99-ORD-3, which bond amount shall be not less than 20% of the estimated cost of each phase of the reclamation plan or not less than 20% of the estimated total cost of the entire reclamation plan.

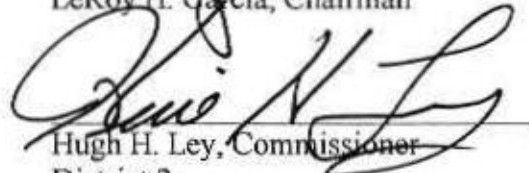
Underlined indicates new language

Section 4. Repeal. Article 7 of San Miguel County Ordinance SMC-07-13-99-ORD-3 relating to Administrative Fees as therein set forth, is hereby repealed.

Section 5. Effective Date. The effective date of this ordinance shall be thirty (30) days after it has been recorded in the office of the San Miguel County Clerk as required by Section 4-37-9, NMSA, 1978.

MOVED, SECONDED, ADOPTED AND ORDAINED this 12th day of August, 2003 by the Board of County Commissioners of San Miguel County, New Mexico.

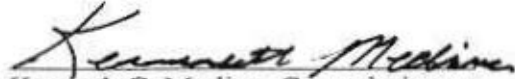

LeRoy H. Garcia, Chairman


Hugh H. Ley, Commissioner
District 2


Susano F. Ortiz, Commissioner
District 3

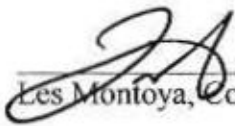


Lawrence R. Rascon, Commissioner
District 4



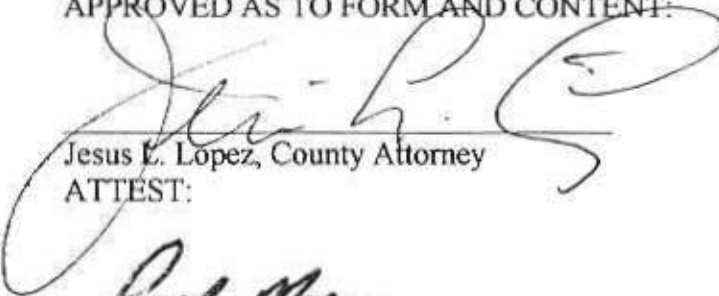
Kenneth C. Medina, Commissioner
District 5

SUBMITTED:



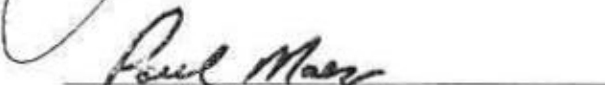
Les Montoya, County Manager

APPROVED AS TO FORM AND CONTENT:



Jesus E. Lopez, County Attorney

ATTEST:



Paul Maez, County Clerk

(Seal)

**APPENDIX A
TERRAIN MANAGEMENT**

THE TERRAIN MANAGEMENT PLAN 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 location of all existing drainage channels, water courses and water bodies within three 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 2 feet where the slope is less than 8% and not more than 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 revegetation of steep slopes;
 - 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, drawing, 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.
 - 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
- a. The start and finish dates for all land clearing and grading activities.
 - b. Duration of exposure of disturbed areas.
 - c. Stabilization date for disturbed areas.
 - d. Installation date of all storm drainage system components.

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.

- A. Preserve, match or blend with the natural contours of the land.
 - 1. 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.
 - 2. 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.
 - 3. The plan should prevent the deposition of sediment into floodplains, drainage channels, watercourses, and water bodies.
- B. The following off-site discharge attributable to the mining activity are prohibited whether the discharge is direct or indirect.
 - 1. Sediment and other organic or earthen materials discharged into a water course, water body, drainage channel or floodplain.
 - 2. Materials placed in any position which would make it susceptible to erosion and deposition into a water body, drainage channel watercourse or floodplain.
 - a. The plan for excavating, grading or land forming, and protective cover should provide for the prevention of soil erosion and sedimentation.
 - b. The plan should call for temporary or permanent structural measures to prevent damaging runoff waters from originating on the site.
 - c. Planned structural measure should adequately provide for the limitations of the site.
- C. 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.
- D. The maximum cut and fill slopes should be compatible with soil stability or erodibility as shown on the soil survey.

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

Storm Drainage and Flood Control Management

Development of a mining site is almost certain to effect runoff, erosion, and sedimentation. The possible adverse effects 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:

- A. protect and preserve existing natural drainage channels except where erosion and water control measures are found necessary and approved by the County;
- B. provide measures to prevent damaging runoff waters from leaving the site;
- C. protect structures and other works from flood hazards using the 100-year frequency storm for calculating flood levels.
- D. 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;
- E. 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;
- F. assure that waters are drained from the site in such 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 San Miguel County Soil & Water Conservation District in which the site is located. The preferred method of watershed hydrology evaluation is NRCS Technical Release 55, Urban Hydrology for Small Watersheds or Chapter 2 of the NRCS Engineering Field Manual. Other methods such as HEC1, HEC2, HYMO/AHYMO, or the Rational Method are acceptable if sufficient supporting data is presented and deemed adequate by the County.

Special Provisions for Mining in Arroyos

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

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:

- A. Non in-channel excavation shall take place within:
 - 1. 10 feet from the toe of the arroyo banks in a straight channel reach,
 - 2. 10 feet from the toe of the arroyo bank along the inside channel bend on a curved reach,
 - 3. A setback equivalent to one-half ($\frac{1}{2}$) the channel width along the outside channel bend on a curved channel reach.
- B. No excavation within 50 feet of property boundaries.
- C. Depth of excavation shall be limited to a maximum of five (5) feet below the low-flow channel.
- D. No excavation shall take place within 100 feet downstream, and 50 feet upstream of a public roadway grade crossing of the arroyo.
- E. No excavation shall take place within 100 feet of any bridge or drainage structure.
- F. No excavation shall take place within 100 feet of any buried utilities.
- G. No excavation shall take place within 100 feet of utility poles.
- H. No excavation shall take place within 100 feet of any acequias.
- I. No excavation shall take place within 100 feet of any water supply well.
- J. If more than one criteria apply, the more stringent shall be applied.
- K. 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.

Option B - Mining With Engineering Analysis

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

APPENDIX B CULTURAL RESOURCES PROTECTION PLAN

In order to preserve and enhance the unique heritage of San Miguel County, 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 prehistoric structures, ruins, sites of objects, the desecration or destruction of which would result in an irreplaceable loss to the public.

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

- a. A detailed description of historic, cultural or archaeological sites that are more than 50 years old on the property.
- b. 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.
- c. A description of how adverse impacts will be mitigated, including the methods of restoration, preservation, and salvage.
- d. The identity and qualifications of all individuals who are involved in the preparation and implementation of the Cultural Resources Plan.

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 stated cultural properties review committee with the concurrence of the state archaeologist and state historic preservation officer.

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.

**APPENDIX C
ENVIRONMENTAL PROTECTION PLANS
AND
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:

- a. air quality protection plan;
- b. noise and vibration mitigation plan;
- c. visual impacts mitigation plan;
- d. detailed descriptions and graphics showing the steps and methods that will be taken to protect the environment and mitigate adverse impacts; and,
- e. plans shall be prepared and implemented in a manner consistent with all applicable County, state and federal rules, regulations and permit conditions.

Air Quality Performance Standards

A dust abatement plan shall be submitted with the application and development plan to the Planning & Zoning Supervisor.

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 & Zoning Supervisor 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 distance from the nearest school, residence, office building, or occupied structure, excluding the immediate operations complex, exceed two miles from 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 & Zoning Supervisor and in consultation with the MPRB.

Noise and Vibration Mitigation Performance Standards

1. **Impulse Noise**

Impulse noise shall not exceed 80 dB (unweighted) peak sound pressure level any time in a residential zone, at a boundary of non-industrial portion of a mixed-use zone, or in a noise sensitive zone.

Impulse noise shall not exceed 100dB (unweighted) peak sound pressure level any time in an industrial zone at the boundary of the subject property.

2. **Average Noise Levels**

Noise levels at any of-site non-industrial zone shall not exceed average an average of 55 dB(A) fast during evening and nighttime hours and an average of 65 dB(A) fast during the daytime and evening hours.

Should background noise levels exceed the above, noise produced from other sources other than blasting or impulse noise shall not exceed, at the property boundary 10 dB(A) fast above background in a residential zone, at a boundary of non-industrial portion of a mixed-use zone, or in a noise sensitive zone and 16 dB(A) fast above background for an industrial zone at the boundary of the subject property.

3. **Peak Noise**

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

4. **Vibration**

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)	Frequency (Hz)
0.2	1 or less
0.75	1-12
0.8	13
0.9	14
1.0	15-100

In addition, the Planning & Zoning Supervisor may further limit such blasting vibration where, in its opinion, the density of population or other resources in the area warrants additional protection.

Each vibration produced from sources other than blasting shall not exceed 0.05 inches per second at any protected structure not on the subject property.

5. **Time of Operation**

Noise generating operations shall not occur during the following holidays in a non-industrial zone: Holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, or other holidays as determined by the Planning Supervisor or the Board of County Commissioners.

6. **Control Methods**

Noise and vibration controls include, but are not limited to the following: buffer areas, screening, earth berms, vegetative screens, and mufflers.

7. **Measurements**

Measurements shall be taken by a qualified professional during normal site operations.

A summary sheet for all sound level measurements shall be completed and signed by the qualified professional to include date, time, location, noise source(s), make, model and serial number of instrument, pre and post field calibration results, monitored levels, and site sketch indicating noise source(s), measurement location, directions, relative distances, and obstructions.

All sound level measuring instruments must meet Type O, I, or II specifications under American National Standards Institute (ANSI) S1.4-1983.

The County reserves the right to witness noise measurements.

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.

- a. minimizing the area of disturbance due to the mining activity pursuant to a phasing program;
- b. minimizing excavation in visually sensitive areas;
- c. 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;
- d. 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;

- e. visually sensitive areas are areas visible along highways, and state, County or federally designated scenic areas, areas visible from traditional communities and contemporary communities;
- f. lighting.

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 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.

APPENDIX D
SAFETY AND TRAFFIC CONTROL

A. 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 the County at least 30 days prior to blasting.

B. 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 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.

C. 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:

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

APPENDIX E RECLAMATION PLANS

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 restored mined and disturbed lands to an approved post-mining land use. These activities may include; backfilling, grading, compacting, soil stabilization, reseeding, revegetation, 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 revegetated because of slope, rock substrate conditions or other limiting factors.

Plan Requirements

A reclamation plan shall consist of the following:

- a. 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 climatologic 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;
- 7. a detailed description of measures to be taken to ensure protection of surface and groundwater quality and water conservation.

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 back-filling pits is part of the reclamation plan, such back-filling 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 re-vegetated in such a way as to establish a diverse, effective, and long lasting vegetative cover that is capable of reseeding 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 are not established after a two year period shall be replaced. Revegetation shall be monitored for a minimum of five years. The success of reseeding and revegetation shall be demonstrated by the operator and approved by the County. Success revegetation shall be measured by techniques approved by the County after consultation with the Mining Plans Review Board. 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.

SAN MIGUEL COUNTY
PLANNING & ZONING DIVISION
PAYMENT OF ADMINISTRATIVE FEES

NO. _____

SAND & GRAVEL MINING FEES:

_____	Preliminary Plat	\$900.00
_____	Conditional Use	\$450.00
_____	Final Plat	\$900.00
_____	Development Plan Permit	\$450.00
_____	Variance	\$600.00
_____	Appeal	\$600.00
_____	Statement of Vacation	\$600.00
_____	Temporary Permit	\$600.00
_____	Sand & Gravel Mining Ordinance	\$25.00
_____	Publication & Notification (Planning & Zoning)	\$246.00 (Minimum Fee)
_____	Publication & Notification (County Commission)	\$246.00 (Minimum Fee)
_____	Technical Review Fee	\$2,250.00 (Minimum Fee)

THESE FEES ARE NON-REFUNDABLE

NAME OF PERSON MAKING PAYMENT _____

AMOUNT PAID _____

DATE PAID _____

FOR TREASURER'S OFFICE

TOTAL AMOUNT COLLECTED: _____

CASH: _____ CHECK: _____ CHECK NUMBER: _____

TREASURER'S RECEIPT NO: _____
