

ORDINANCE NO. 2009-01

AN ORDINANCE PROVIDING A REGULATORY FRAMEWORK FOR THE BALANCE BETWEEN PROTECTION OF THE UNIQUE RESOURCES OF LINCOLN COUNTY WITH THE FURTHERANCE OF COMMERCIAL MINING IN THE COUNTY; PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; REPEALING ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE COUNTY OF LINCOLN, NEW MEXICO:

Section 1: Statement of Purpose.

The Commissioners of Lincoln County, New Mexico have found and declare:

1. The citizens of Lincoln County are its most important asset. Consequently, the protection of the health, safety and welfare of the citizens of Lincoln County is the highest and most important duty of the elected officials and public officers of Lincoln County.
2. Lincoln County has aesthetic, cultural, historical, and environmental assets that are unique to Lincoln County, and these assets are worthy of protection for the benefit of the health, safety, welfare, education and enjoyment of the citizens of Lincoln County.
3. Lincoln County has a history which includes periodic mining of the County's minerals which have been, and will be in the future, a valuable asset to the County and its citizens.
4. A regulatory framework, applicable uniformly to all of Lincoln County is necessary to balance the protection of the unique resources of the County and the furtherance of commercial mining in Lincoln County. This framework will ensure compatibility between commercial mining operations on private and public land and surrounding land uses, and will ensure that any adverse environmental impacts caused by commercial mining will be minimized to the greatest practical extent.
5. This Ordinance is not intended to conflict with, or be duplicative of, federal or state law or applicable regulation.
 - a. There are several areas impacted by commercial mining which are not adequately regulated by either state or federal laws or regulations which call for concurrent jurisdiction and regulation by Lincoln County.

b. Lincoln County, in enacting this Ordinance, does not seek to deprive any party of rights afforded under federal or state law.

c. Lincoln County, in enacting this Ordinance, does not seek to prohibit commercial mining within the County, but to reasonably regulate it to protect the health, safety and welfare of its citizens.

d. To the extent that any part of this Ordinance is found to be in conflict with, or duplicative of, any federal or state law or applicable regulation, then that portion of this Ordinance found to be in conflict with, or duplicative of, said law or regulation shall not be enforced, and said state or federal law or regulation shall control. The remaining portions of the Ordinance not found to be in conflict with, or duplicative of, state or federal law, shall continue to remain in full force and effect.

Section 2: Definitions.

The listed terms shall have the following meanings where used in this Ordinance:

A. "affected area" means the area outside of the permit area where the land surface, surface water, ground water or air resources are impacted by mining operations within the permit area;

B. "Commission" means the Lincoln County Commission;

C. "Director" shall mean the Director of the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department of the State of New Mexico;

D. "existing mining operation" means a mining operation that produced and marketed minerals for a total of at least two continuous years between January 1, 2000 and the effective date of this Ordinance, and that operated in compliance with all federal and state laws and regulations during that period of time;

D. "exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no, or very little, surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration are excluded from the meaning of "exploration";

E. "mineral" means any non-living material that is extracted from the earth for use or conversion into a saleable or usable product, but does not include clays, adobe, flagstone, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for construction, surface water or ground water, geothermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are regulated by the Nuclear Regulatory Commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act;

F. "mining" means the process of obtaining minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operations, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing;

G. "new mining operation" means any mining operation that engages in mining that is not an existing mining operation, and any extension of the affected area of an existing mining operation;

H. "permit area" means the geographical area defined in the permit for a new mining operation on which mining operations are conducted or cause disturbance; and

I. "reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources.

Section 3: Excluded Operations.

The following activities are expressly excluded from the definition of "mining" and therefore are exempted from the operation of this Ordinance:

A. The exploration and extraction of sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal Nuclear Regulatory Commission;

B. Existing mining operations;

C. Prospectors, gold-panners and rock collectors causing no measurable surface disturbance with their activities;

D. Mining by one individual and that individual's immediate family, causing excavation(s) totaling less than twelve (12) cubic yards per year;

Section 4: Permitting Process.

4.1 Mining Operations Permit Required. No person or entity may engage in mining operations within the territorial boundaries of Lincoln County without obtaining, prior to initiating such mining operations, a Mining Operations Permit (*MOP*) issued by Lincoln County.

4.2 Mining Operations Permit Application Procedure.

A. The Commission possesses the sole authority to issue a MOP in accordance with this Ordinance.

B. Seven copies of an Application for a MOP shall be submitted to the Commission via the County Manager at:

Lincoln County Manager
P.O. Box 711
Carrizozo, NM 88301

The Application shall contain the following:

1. If the Applicant seeks solely to conduct exploration mining operations, then Applicant shall submit the *Application for Permit for Exploration Operations* required to be filed with the Director pursuant to the regulations adopted by the New Mexico Mining Commission at NMAC 19.10.4.402(D), specifically including the Reclamation Plan meeting all the standards and requirements identified in NMAC 19.10.4.403, and as hereafter amended. In the event that an *Application for Permit for Exploration Operations* is not required by the New Mexico Mining Act or the regulations promulgated thereunder for the proposed exploration operations, but a MOP is required under this Ordinance, then the Applicant shall prepare an *Application for Permit for Exploration Operations* containing all the information identified by NMAC 19.10.4.402(D), specifically including the Reclamation Plan meeting all the standards and requirements identified in NMAC 19.10.4.403, as hereafter amended, for said mining operation and file the same with the Application for the MOP. The fees required to be tendered under NMAC 19.10.4.402(D) need not be tendered to the County;

2. If the Applicant seeks to conduct a new mining operation, or if the Applicant proposes to expand its operations beyond solely exploration mining operations, then Applicant shall submit the *Application for Permit for New Mining Operations* required to be filed with the Director pursuant to the regulations adopted by the New Mexico Mining Commission at NMAC 19.10.6.602(D), specifically including the Reclamation Plan meeting all the standards and requirements identified in NMAC 19.10.6.603, and as hereafter amended. In the event that an *Application for Permit for*

Mining Operations is not required by the New Mexico Mining Act or the regulations promulgated thereunder for the proposed new mining operations, but a MOP is required under this Ordinance, then the Applicant shall prepare an *Application for Permit for Mining Operations* containing the information identified by NMAC 19.10.6.602(D), specifically including the Reclamation Plan meeting all the standards and requirements identified in NMAC 19.10.6.603, as hereafter amended, for said mining operation and file the same with the Application for the MOP. The fees required to be tendered under NMAC 19.10.6.602(D) need not be tendered to the County;

3. A description of the estimated facilities, personnel, equipment, and vehicles that will be brought into or constructed within the county to be used directly or indirectly in the proposed mining operations;

4. A statement of the days of the week and times of the day when the proposed mining operations will foreseeably occur;

5. A description of the manner or method by which personnel, equipment, mined substances or any materials associated with the proposed mining operations will be moved, transported or otherwise conveyed to, from, at, or around the proposed permit area;

6. A description of the nature and source(s) of power, electrical or otherwise, that will be used at the proposed permit area for the proposed mining operations and any infrastructure which will have to be constructed to deliver said power to the proposed permit area;

7. A description of any foreseeable extensions, continuations or modifications of the proposed mining operation, which description should be based upon the Applicant's knowledge that undisclosed foreseeable extensions will not be granted a subsequent MOP permit by Lincoln County;

8. A study performed by an engineer licensed by the State of New Mexico regarding the ability of the proposed permit area to collect and hold all runoff caused by a 25, 40 and 100 year flood event as identified by the Federal Emergency Management Agency for the proposed permit area;

9. A study performed by an engineer licensed by the State of New Mexico regarding the nature, quantity and characteristics of any nighttime lighting proposed to be used on the mining operation, which study must identify any and all mitigation steps to be taken to minimize this nuisance;

10. A study performed by an engineer licensed by the State of New Mexico regarding the nature, quantity and characteristics of any ground vibration caused by the mining operation, specifically including whether such vibration would be felt by, or be damaging to the five private properties nearest the proposed permit area, which study must identify any and all mitigation steps to be taken to minimize this nuisance;

11. A study performed by an engineer licensed by the State of New Mexico regarding the nature, decibel level and other pertinent characteristics of any noise or sound likely to be generated by the proposed mining operation, which study must identify any and all mitigation steps to be taken to minimize this nuisance;

12. A study performed by a real estate appraiser licensed by the State of New Mexico regarding the impact of the proposed mining operation on neighboring private property values. If the proposed mining operations are proposed to be located on public lands, then the study should focus on at least the ten private properties nearest the proposed permit area;

13. A study performed by an engineer licensed by the State of New Mexico to determine the impacts of all proposed mining operation transport and vehicle movements on the public roads of Lincoln County and the increased maintenance requirements on said roads likely to be caused thereby;

14. A description of the water that will be used in connection with the activities described in the MOP Application. In all MOP Applications, whether under Section 4.2(B)(1) or Section 4.2(B)(2) of this Ordinance, the Applicant shall be required to project the total amount of water that would be required in the event that the subject mining operation – and all foreseeable extensions, continuations, and/or modifications of the subject mining operation – is approved by the Commission and implemented by the Applicant. The MOP Application should also identify the actual source of water that will be used in each successive stage of mining activities, and demonstrate that the Applicant has acquired a legal right to the use of such water at the designated mine site.

15. A projection of tax revenues generated to Lincoln County by the proposed mining operations;

16. A projection of the economic impact of the proposed mining operations on the economy of Lincoln County; and

17. A projection of the jobs which would be created by the proposed mining operation, including a description of job types and pay scales for each such job type.

C. The MOP Application shall be accompanied by an Application fee of \$8500.00. This fee is to assist the County in defraying its direct and indirect costs of administering this Ordinance, including any funds periodically required to fund its associated costs of staff time and/or consultants necessary to implement and comply with this Ordinance. Any funds remaining after these costs have all been met will be refunded to the Applicant in a timely manner.

4.3 Mining Operations Permit Application Evaluation.

A. Commission Review. Upon receipt of a properly completed and filed MOP Application, the Commission and any consultant(s) retained by the Commission to assist and advise them shall analyze and assess the potential adverse impacts, and the potential benefits, of the proposed mining operations on the health, safety and welfare of the citizens of Lincoln County in accordance with this Ordinance. If the Commission decides that the protection of the health, safety, and welfare of the County's citizens requires the engagement of an expert consultant to review the MOP Application, the Applicant shall have the obligation to pay the reasonable experts fees and costs incurred by the County in such review. This payment shall be in addition to the application fee set out in Section 4.2(c) of this Ordinance. The Commission shall have the right to have the Application reviewed by any and all state or federal agencies having expertise in areas impacted by the proposed mining operations. If the Commission, in conjunction with its consultants, finds that the requirements of the Ordinance have been properly fulfilled by the Application, it shall provide for public review of the MOP Application as set forth below. If the Commission requires any further information from the Applicant in order to properly analyze and assess the Application, it will so inform the Applicant in writing within ninety (90) days of its receipt of the Application.

B. Public Review.

1. No action on any MOP Application will be taken by the Commission until the Applicant has complied with the requirements of notice and opportunity for public hearing contained in this subsection.

2. Applicant shall prepare and tender to the Commission a proposed *Notice of Application for Mining Operations Permit*. The notice shall contain, at a minimum, the following information:

a. The name and address of the Applicant;

b. A description of the location and boundaries of the proposed permit area by (1) statement of the general area wherein it is located; (2) the number of miles and general direction it is from the nearest community; (3) its physical mailing address, if applicable; (4) its township, range, section and quarter section, if applicable; (5) whether it is on private or public lands; and (6) the total number of acres contained within the proposed permit area.

c. A general statement of the purpose of the Application and a general description of the proposed mining operation; and

d. The Commission's address to whom written comments regarding the Application may be submitted and where a copy of the Application is available for public inspection, and a notice that to be considered by the Commission written comments must be received by the Commission prior to the beginning of the Hearing on the Application.

If the Commission finds the proposed Notice is sufficient, it shall place thereon a public hearing date and time at which the Application will be considered by the Commission and the Applicant will be directed to publish the Notice as set forth below. If the Commission requires any modification of the Notice by the Applicant, it will so inform the Applicant in writing within ten (10) days of its receipt of the Notice, in which event the Applicant will so modify the Notice and resubmit the same to the Commission for approval.

3. Ten days prior to the public hearing date identified by the Commission for consideration of the Application Applicant shall provide the Commission with proof that Notice of the Application has been:

a. Provided by certified mail at least thirty (30) days prior to the Commission Meeting to consider the Application to the owners of record, as shown by the most recent property tax schedule, of (1) all properties within 2 miles of the proposed permit area if the proposed permit area is on private lands; or (2) the ten private properties nearest to the proposed permit area if the proposed permit area is on public lands;

b. Provided by certified mail to all municipalities, any judicially or legislatively created districts, and tribal organizations within a 10 mile radius of the proposed permit area at least thirty (30) days prior to the Commission Meeting to consider the Application;

c. Published conspicuously, in at least a 1/8th page sized spot, three times in a newspaper of general circulation in Lincoln County in either the classified or legal advertisements section of the newspaper, and shall be printed in both English and Spanish, the last such publication being at least twenty (20) days prior to the Commission Meeting to consider the Application;

d. Posted in at least four publicly accessible and conspicuous locations within the County for at least thirty (30) days prior to the Commission Meeting to consider the Application;

e. Mailed to all persons who have made a written request to the Commission for notice of MOP Applications at least thirty (30) days prior to the Commission Meeting to consider the Application.

4. Ten days prior to the public hearing date identified by the Commission for consideration of the Application Applicant shall provide the Commission with seven (7) true, correct and complete copies of any correspondence of any kind or character to or from Applicant with any state or federal agency regarding the proposed mining operations which are the subject of the Application.

5. If the Applicant makes any substantial change in the Application after its filing and publication as set forth above, the amended Application must be re-published

as set forth above identifying the change in the Application in detail, after such time as the amended Application is reviewed and evaluated by the Commission pursuant to Section 4.3(A) of this Ordinance.

6. All interested persons may submit written comments regarding the Application to the Commission. To be considered written comments must be received by the Director prior to the beginning of the Hearing on the Application. Applicant shall be given copies of all written comments prior to the beginning of the Hearing on the Application.

7. At the Commission Meeting where Applicant's Application is to be considered by the Commission, Applicant shall be allowed time, not to exceed sixty (60) minutes to make its presentation to the Commission. Thereafter the Commission will hear public comment, limited to five minutes for each member of the public desirous of speaking. The Commission will then direct its questions to the Applicant. These time frames may be expanded at the sole discretion of the Commission.

C. Evaluation.

1. After considering the Application, the findings of its consultants, the written findings and correspondence of any public agency having jurisdiction over any of the proposed mining operations, the presentation of the Applicant at the public hearing, and the comments of the public, the Commission shall grant a MOP if the Commission makes all of the following findings based on the evidence before it:

a. The Application is complete and adequate and the Permit Application fee has been paid;

b. The public participation requirements of this Ordinance have been met;

c. The proposed mining operations are consistent and compliant with any applicable state or federal laws, orders of state or federal agencies having jurisdiction, and applicable court orders; Applicant has provided evidence that all other applicable state and federal permits required under the law to be obtained have been issued; and if the proposed permit area is on federal or state lands, the appropriate federal or state agency has approved the proposed mining operations;

d. The proposed mining operations will not cause any significant adverse impacts on the health, safety and welfare of the citizens of Lincoln County, including, but not limited to, significant adverse environmental impacts;

e. The Secretary of the New Mexico Environment Department has provided a written determination stating that the Applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described

in the Application. This determination shall address applicable standards for air, surface water and ground water protection enforced by the Environment Department, or for which the Environment Department is otherwise responsible; and

f. The Applicant, any person or entity controlled by Applicant, or any person or entity in control of Applicant, is not in violation of any substantial environmental law or substantive environmental regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal; and has not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States. A substantial environmental law or substantive environmental regulation is one which is intended to protect natural resources from degradation and does not include violations of recordkeeping or reporting requirements.

2. The Commission may approve of an Application, and place conditions of approval on the MOP in order to protect the health safety and welfare of surrounding property owners or users. Such conditions could include, but not be limited to, the following:

a. Require mining operations to use the best available technology and practices in order to protect the environment;

b. Impose specific contamination standards for water, air and other environmental components that the mining operations may not exceed;

c. Require water quality monitoring to ensure that acidic drainage and other water quality problems do not develop over time;

d. Require inspections of mining operations, especially water-related facilities, by county staff or consultants at frequent intervals;

e. Require mitigation steps and limitations on the nature, quantity and characteristics of any air quality impairment caused by dust, gas or other airborne substances likely to be generated or dispersed by the proposed mining operation;

f. Require mitigation steps and limitations on the nature, quantity and characteristics of any nighttime lighting used in the proposed mining operation;

g. Require mitigation steps and limitations on the nature, decibel level and other pertinent characteristics of any noise or sound to be generated by the proposed mining operation;

h. Require mitigation steps and limitations on the nature, frequency, severity and other pertinent characteristics of any ground vibration to be generated by the proposed mining operation;

LINCOLN COUNTY-NM
TAMMIE J MADDOX, CLERK
200904633
Book 4 Page 413
10 of 15
06/23/2009 02:38:33 PM
BY LOREE1

i. Require mitigation steps and limitations on the negative impact of the proposed mining operations on property values in its vicinity;

j. Require mitigation steps and limitations on the impacts of the proposed mining operations transport and vehicle movements on the public roads of Lincoln County; and

k. Require any other appropriate mitigation measures and associated monitoring programs so that significant adverse environmental impacts associated with mining operations shall be mitigated to a level of non-significance to the extent feasible without violating or conflicting with applicable federal or state laws.

3. The Commission may also approve an Application in part, and/or approve of an MOP Application in part subject to conditions as specified in Section 4.3(C)(2) of this Ordinance. The Commission will exercise its discretion to approve an MOP Application in part in those instances when the Commission concludes, based on its review of all the evidence, that the phasing of the proposed exploration and/or mining activities is necessary to protect the public health, safety, and welfare of the County's citizens.

4. The Commission retains the discretion to deny an MOP Application if it concludes that granting the Application will harm the public health, safety, and welfare of the County's citizens. In making this determination, the Commission shall take into account the MOP Application, the findings of its consultants, the written findings and correspondence of any public agency having jurisdiction over any of the proposed mining operations, the presentation of the Applicant at the public hearing, and the comments of the public. The Commission shall also take into account the compliance history at other mine sites of the Applicant, all parties with an ownership or controlling interest in the proposed exploration or mining operations, and all parties with responsibility for operating the proposed mining activities.

D. Decision Publication and Appeal. Upon issuing its final decision on the MOP Application, the Commission shall, within fifteen (15) days:

1. Prepare a written decision and a statement of the factual and legal basis for the decision;

2. File the written decision with the Lincoln County Clerk; and

3. Serve a document that includes a copy of the written decision and the requirements for filing an appeal of the final decision on:

a. The Applicant; and

b. Every person or agency who has filed a written request for notice of the final decision in that particular proceeding.

4. A person aggrieved by the final decision may appeal the decision to the District Court of Lincoln County by filing a Notice of Appeal with the Commission and with the Clerk of the District Court of Lincoln County within thirty days of the date of filing of the final decision.

Section 5: Term of Permit and Renewals.

5.1. **Initial Term.** The initial term of a MOP shall be for five (5) years.

5.2. **Renewal Terms.** The term of any renewals of a MOP shall be five (5) years.

5.3. **Renewal Applications.**

A. 120 days prior to the expiration of any term of a MOP, if the Applicant intends to continue its mining operations in Lincoln County, Applicant shall prepare and tender to the Commission an *Application to Renew Mining Operations Permit*. The Application shall state:

1. Whether Applicant has received any notice that it was not in compliance with federal or state law or regulation at any time during the current term of the MOP, and if such notice has been received, copies of all correspondence between the Applicant and the federal and state agencies involved in adjudicating such violation;

2. Whether Applicant anticipates any substantive change in its mining operations in the next five year term and if so, the basis of such anticipated change and a description of the anticipated change;

3. The current annual gross payroll of the Applicant paid to residents of Lincoln County; and

4. The amount of tax paid to Lincoln County for the prior year.

B. The Renewal Application shall be accompanied by a non-refundable Renewal Application fee of \$5000.00. This fee is to assist the County in defraying its direct and indirect costs of administering this Ordinance, including any funds periodically required to fund its associated costs of staff time and/or consultants necessary to implement and comply with this Ordinance. Any funds remaining after these costs have all been met will be refunded to the Applicant in a timely manner.

C. Within 30 days of filing its Renewal Application, Applicant shall prepare and tender a proposed *Notice of Application for Renewal of Mining Operations Permit*. The notice shall be reviewed and approved by the Commission, and shall contain the same information as required by the *Notice of Application for Mining Operations Permit* as set forth in Section 4.3 above.

D. The Renewal Notice shall be published to the public and to neighboring land owners, and proof of such publication shall be made, in the same fashion as is required for the *Notice of Application for Mining Operations Permit* as set forth in Section 4.3 above.

E. A public hearing shall be held on the Renewal Application in the same fashion as is required for the *Application for Mining Operations Permit* as set forth in Section 4.3 above.

F. After considering the Renewal Application, the written findings of any public agency having jurisdiction over any of the Applicant's mining operations, the findings of its consultants, the presentation of the Applicant at the public hearing, and the comments of the public, the Commission shall grant a renewal of the MOP if the Commission makes all of the following findings based on the evidence before it:

1. The Renewal Application is complete and adequate;
2. The public participation requirements have been met;
3. The Applicant's mining operations are consistent and compliant with any applicable state or federal laws, orders of state or federal agencies having jurisdiction, and applicable court orders; and
4. The Applicant's mining operations, have not caused, and will not foreseeably cause, any significant adverse impacts on the health, safety and welfare of the citizens of Lincoln County, and will not foreseeably create such impacts in the renewal term.

G. The Commission may approve of the Renewal Application, and place conditions of approval on the Renewal of the MOP in order to protect the health, safety and welfare of surrounding property owners or users in the same manner as is set forth in Section 4.3 above for the initial MOP.

H. The Commission's final decision on the Application for Renewal shall be published, and may be appealed, in the same manner as set forth in Section 4.3 above for the initial MOP.

Section 6: Enforcement.

6.1 Complaints. Whenever a violation of this Ordinance or any MOP issued hereunder occurs or is alleged to have occurred, any person may file a written and signed complaint with the Commission. Such complaint shall state fully the causes and basis thereof. The Commission shall investigate promptly and take action thereon as is warranted.

6.2 Inspection. Upon receiving a valid complaint the Commission shall cause an inspection of the subject mining operations if there is reasonable grounds to believe that the provisions of this Ordinance or any MOP issued hereunder have been or are being violated.

6.3 Noncompliance. Noncompliance with this Ordinance or with any term or condition of a MOP issued hereunder, shall constitute a misdemeanor and a public nuisance, and shall be grounds for suspension or revocation of the MOP by the Commission. Where an inspection reveals a reasonable likelihood that the provisions of this Ordinance, or the terms of any MOP issued hereunder, are being violated, notification in writing of the same shall be submitted to the Permittee.

6.4 Public Hearing. Before the Commission shall consider revocation or suspension of a MOP, the Commission shall hold a public hearing thereon after giving written notice thereof to the Permittee at least ten days in advance of such hearing.

6.5 Violation Found. If the Commission finds that a violation of the Ordinance or any MOP has occurred, or is occurring:

A. The Commission shall issue written findings to that effect. The findings shall be mailed to the Permittee. The findings shall order the Permittee to take the action necessary to correct the deficiencies found.

B. In addition to any penalty or other remedy provided by law, any person, corporation, entity or organization, found to have committed a violation of any of the provisions of the Ordinance or of any MOP issued hereunder, shall be punished by a fine of up to \$300.00 per day or imprisonment up to ninety (90) days, or both a fine and imprisonment. Each day on which this Ordinance or any MOP issued hereunder is violated shall constitute a separate violation of this Ordinance for the purpose of calculating the fine which may be assessed hereunder.

C. If the Permittee fails to take the corrective action or to pay any fine levied hereunder within thirty (30) days of the issuance of the Commission's written findings, the Commission shall revoke or suspend the MOP until such corrective actions are taken and any assessed fines are paid and the Commission may apply to the District Court for injunctive relief to compel compliance by any person with the provisions of this Ordinance or any MOP issued hereunder and to collect the fines levied hereunder.

Section 7. Severability Clause.

It is hereby declared to be the intention of the Board of County Commissioners that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 8. Conflict.

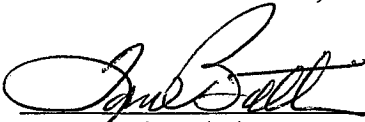
Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Effective Date and Repeal.

This Ordinance shall take effect thirty days after being recorded in the Public Records of Lincoln County, New Mexico.

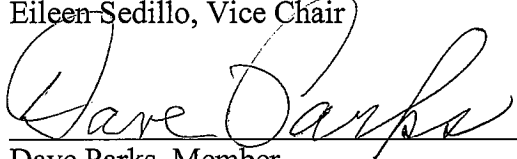
PASSED, APPROVED, and ADOPTED this 16th day of June, 2009.

**BOARD OF COMMISSIONERS OF
LINCOLN COUNTY, NEW MEXICO**



Tom Battin, Chair

Eileen Sedillo, Vice Chair




Dave Parks, Member



Don Williams, Member

Jackie Powell, Member

Attest:



Tammie J. Maddox
Lincoln County Clerk



LINCOLN COUNTY-NM
TAMMIE J MADDOX, CLERK
200904633
Book 4 Page 418
15 of 15
06/23/2009 02:38:33 PM
BY LOREE1