

**MIGUEL COUNTY ORDINANCE NO. SMC-  
MINERAL RESOURCE EXPLORATION, EXTRACTION AND PROCESSING**

An Ordinance relating to the establishment of requirements in regard to mineral resource exploration, extraction and processing within the boundaries of San Miguel County, New Mexico and is titled San Miguel County Ordinance No. SMC-  
No. 0915-2021-P+Z Mineral Resource Exploration, Extraction and Processing.

**TABLE OF CONTENTS**

**INTRODUCTION**

**AUTHORITY**

<b>SECTION 1: PURPOSE AND FINDINGS.....</b>	<b>Page 2</b>
<b>SECTION 2: DEFINITIONS.....</b>	<b>Page 5</b>
<b>SECTION 3: APPLICATION PROCEDURE.....</b>	<b>Page 9</b>
<b>SECTION 4: FINANCIAL ASSURANCE.....</b>	<b>Page 40</b>
<b>SECTION 5: CESSATION OF OPERATIONS – TEMPORARY.....</b>	<b>Page 44</b>
<b>SECTION 6: PERMANENT CESSATION AND RENEWAL OF PERMIT...Page</b>	<b>45</b>
<b>SECTION 7: GENERAL REQUIREMENTS.....</b>	<b>Page 46</b>
<b>SECTION 8: APPROVAL PROCESS.....</b>	<b>Page 47</b>
<b>SECTION 9: PROCEDURE FOR NOTICE AND HEARNG BEFORE THE PLANNING AND ZONING COMMISSION.....</b>	<b>Page 55</b>
<b>SECTION 10: PROCEDURE FOR NOTICE AND HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS.....</b>	<b>Page 56</b>
<b>SECTION 11: APPEAL.....</b>	<b>Page 56</b>
<b>SECTION 12: ENFORCEMENT, VIOLATIONS, PENALTIES AND REMEDIES.....</b>	<b>Page 56</b>
<b>SECTION 13: CONTINUANCE OF EXISTING MINING USES.....</b>	<b>Page 58</b>
<b>SECTION 14: MODIFICATION TO PREVIOUSLY SUBMITTED PLANS..</b>	<b>Page 59</b>

SECTION 15: SEVERABILITY .....Page 59

SECTION 16: EFFECTIVE DATE.....Page 59

SOURCE REFERENCES.....Page 61

INTRODUCTION:

San Miguel County has the potential for mineral resource extraction and processing that may have various positive and negative impacts on the economy and environment of the County, including impacts to the quality of life, archaeological sites, cultural and historical heritage, resources, history, traditions, infrastructure and the natural resources of water, air, wildlife and scenic beauty. Other potential impacts include deforestation, contamination, local streams, wetlands, ground water, surface water, chemicals, air and noise pollution.

The purpose of this ordinance is to protect the citizens and environment of San Miguel County from harmful and hazardous toxic effects, and nuisances that result from mining resource exploration, extraction and processing while recognizing the property rights of mineral estate landholders, and to provide an application process by which such mining resource exploration, extraction, and processing that can be reviewed and adequately addressed by the County.

AUTHORITY:

This ordinance is promulgated pursuant to the authority set forth in the laws of the State of New Mexico, where applicable, including but not limited to Sections 4-37-1 through 4-37-9, NMSA 1978, as amended; Sections 4-57-1 through 4-57-3, NMSA 1978, as amended; Sections 3-21-1 through 3-21-12, NMSA 1978, as amended. The jurisdiction of this ordinance is the unincorporated area of San Miguel County not administered by a municipal extraterritorial zoning ordinance.

SECTION 1: PURPOSE AND FINDINGS.

The Board of County Commission of San Miguel County finds that the purpose of the Mineral Resource Exploration, Extraction and Processing Ordinance is as follows:

- 1.1. To protect the health, safety, and welfare of the citizens of San Miguel County, including the quality of life, economy, cultural, historical and archaeological heritage, resources, history, traditions, infrastructure and the natural resources of water, air, wildlife and scenic beauty.
- 1.2. To protect the citizens and the environment of San Miguel County from harmful and hazardous toxic effects and nuisances that result from mineral resource exploration, extraction and processing, including, but not limited to, degradation of air quality, negative impact to surface and groundwater quality and quantity and the

sources of such surface and groundwater, visual quality, soil erosion and contamination, noise and vibration, fire and explosion hazards and traffic impacts, road and bridge infrastructure deterioration impacts, and other potential effects.

1.3. To protect wildlife, wildlife corridors and habitat that may be impacted by mining affecting water contamination, water loss, habitat, recreation, game management and hunting. The extraction of fossil fuels may also impact climate change by the release of greenhouse gases and including methane as a waste product among other contaminants.

1.4. To protect the scenic quality of the County that may negatively impact the landscape, natural resources and ecology within the County of San Miguel.

1.5. To ensure that public roads and bridges required for and affected by such mineral exploration, extraction and processing are adequately funded, built, maintained, improved and repaired and to ensure that sufficient and adequate financial assurance and guarantees are provided to cover the costs necessary to adequately fund the building, maintenance, improvements and repairs of public roads required and affected by such mineral exploration, extraction and processing. Large commercial motor vehicles (CMV) and other large extraction vehicles are significant factors in road damage including an increase in truck and large CMV traffic, hours of operation, skilled and licensed drivers, and areas that are rural and graveled or non-graveled roads and unpaved roads.

1.6. To ensure compatibility with other uses in the County and provide for the most beneficial relationship between existing land uses and mining activities and minimize conflicts between existing land uses and mining activities as it relates to local, state, and federal laws and ordinances and adjacent counties' ordinances.

1.7. To ensure compatibility with the County's Comprehensive Plan and the County's Sub-Area Plans, as applicable and as may be amended from time to time.

1.8. To assure the reclamation and remediation of affected areas and provide for sufficient financial guarantee which to protect the County and its residents from assuming the financial impact of all potential costs associated with remediation and reclamation of all and any mineral exploration, extraction and processing sites and locations. This includes, but is not limited to the impact and remediation of erosion, sedimentation, vegetation removal, and most importantly the prevention of environmental accidents and disasters.

1.9. To ensure that the assignment of the responsibility of providing for the cost of any and all exploration and mining, both direct and indirect, is with the applicant/operator and not with the County and its residents by ensuring the proper demographic information is collected from the applicant/operator to ensure a streamlined process with proper environmental responsibilities and processes.

1.10. To ensure that the size, design and operational characteristics of mining exploration and processing is compatible with adjoining land uses and with environmentally or culturally sensitive lands.

1.11. To protect citizens' property values, to protect the County's property tax base, and to minimize the consequences of boom and bust cycles.

1.12. The Board of County Commission finds that it is necessary and essential to protect, preserve and promote the health, safety and general welfare of present and future residents and citizens of San Miguel County; and

1.13. To do so, it is necessary to protect the environmental, cultural and natural resources of San Miguel County by adopting land use regulations and permitting regulations and standards for mineral resource extraction and processing to protect the residents and citizens from harmful hazardous toxic effects and nuisances that result from such mineral resource extraction and processing; and

1.14. The Commission finds that in order to do so, such regulations are necessary to ensure that adequate public facilities and services for roads, fire, police, emergency response, storm water retention and water quality protection will be available at the time of project approval and on-going during the process to ensure public safety; and

1.15. The County has an interest in strengthening protection to its historic, archaeological and cultural resources by developing new permitting regulations, and if necessary, put into place greater or absolute protection for highly sensitive and significant historical, cultural and archaeological sites and landscapes; and

1.16. Unregulated mineral resource exploration, extraction and processing may presently, or in the future, cause irreparable harm to the County's water sources, may cause pollution of water and air, may cause a variety of lung or respiratory illness and disease, regulations and an application process shall require the potential community health effects and require how such community health effects will be mitigated; and

1.17. The residents and visitors to the County have an equal right to live and visit in a safe and healthy environment and implementation of the precautionary principle, i.e., regulations, promotes this premise and reduces potential effects on public health resulting from exposure to environmental toxins; and

1.18. The burden of proof of harmlessness or costs of any proposed mineral resource exploration, extraction and processing project lies with the applicant/operator not the County of San Miguel and citizens of San Miguel County; and

1.19. Such mineral resource exploration extraction and processing projects could have a negative effect on tourism, landscapes, public health, quality of life and communities; and

1.20. The County has independent and supplemental authority, in addition to the authority of the State, to reasonably and responsibly regulate the areas of land use and environmental protection; and.

1.21 To ensure that the County does not have to bear costs associated with or as a result of hard rock mining.

## SECTION 2: DEFINITIONS.

Article 2, of Ordinance No. SMC-07-13-99-ORD-3, is hereby amended to include and add the following definitions for potential environmental impacts.

“Acid Mine Drainage” (AMD) is the outflow of acidic, mineral rich water that is discharged from an area that is affected by abandoned mining or current mining activities caused when water flows through sulfur-bearing materials forming solution of net acidity formed from chemical reaction between water and rocks. Furthermore, “Acid Mine Drainage” is water that is discharged from an area affected by mining exploration, mining, or reclamation, with a pH of less than 5.5 and in which total acidity exceeds total alkalinity as defined by the latest addition of standard methods for the examination of water and wastewater.

“Acid Rock Drainage”(ARD) is the outflow of acidic water from metal mines or coal mines. The liquid often contains toxic metals, such as copper or iron. These, combined with reduced pH, have a detrimental impact on the streams aquatic environments.

“Applicant/Operator” means the person, company, corporation, subcontractor, or organization that submits an application for conditional use permit approval and who will be the approved permittee of the conditional use permit charged with the responsibility of the operation of the project. The applicant/operator shall be responsible for all behaviors and misbehaviors by its employees and by any subcontractors.

“Baseline” refers to conditions that exist prior to the commencement of any mining activity.

“Board of County Commissioners” is the Board of County Commissioners of San Miguel County, New Mexico which may also be referred to as the Board, Commission, or Governing Body.

“County” is San Miguel County, New Mexico.

“County Administration Building” is the administration building of San Miguel County located at 500 W. National Avenue, Las Vegas, New Mexico.

“Commission Chair” is the chairperson of the Board of County Commissioners.

“County Clerk” is the County Clerk of San Miguel County, New Mexico.

“County Commission” is the Board of County Commissioners of San Miguel County, New Mexico, also referred to as “Commission”.

“County Manager” is the County Manager of San Miguel County, New Mexico.

“County Roads” are those roads that are listed on the most current San Miguel County Road Log as adopted by the County Commission and the New Mexico Department of Transportation (NMDOT).

“District Court” is the district court of the Fourth Judicial District in San Miguel County, New Mexico.

“Exploration” is the act of searching for or investigating a mineral deposit, sinking shafts, tunneling, drilling core, bore holes, digging pits, making cuts or any other works for the purpose of extracting or removing samples of any kind prior to the commencement of development or extraction process and operations and the construction of roads or other infrastructure, access way, and other types of infrastructure or facilities related to such work. Exploration does not include activities that cause little or no surface disturbance, such as surveys and photographs, the use of instruments or devices that are hand held, hand carried or otherwise transported over the surface of the land to perform magnetic, radioactive or other tests and measurements, including boundary or claim surveying, location work, or other work that causes no greater disturbance that is caused by ordinary lawful use of the area or land by persons not engaged in exploration.

“Hard Rock Minerals” also known as “locatable minerals” include metallic minerals such as gold, silver, lead, zinc, copper and some non-metallic minerals such as gypsum, fluorspar and mica. The law covering locatable minerals is the Mining Law of 1872, as amended. Locatable minerals are addressed in 43 CFR 3800-3870 (BLM) and 36 CFR Part 228, Subpart A (Forest Service).

“Impoundment” means any structure, such as a closed basin whether natural or man-made, which is designed for or used for the storage, containment or retention of water, sediment, mine process water, impacted storm-water or solids settling. A tailings impoundment is excluded. Impoundment does not include a process water or storm-water transfer sump or tank or below grade tank, drum or pit bottom.

“Leach” is defined as how to dissolve out soluble constituents from ash, soil, etc., by percolation. This practice of extracting a substance from a solid material that is dissolved in a liquid. The leaching process for mining operations is carried out other as heap (acid leaching) or insitu (recovery or solution) leaching. Leaching in extractive metallurgy uses aqueous solutions to extract from ores which include: Cyanide, Ammonia, Akali, and Acid. Leach facilities include vats or tanks, dumps, heaps and insitu.

“Leach Stockpile” is a stockpile of ore and all other rock piles associated with mining disturbances that have been leached, are currently being leached or have been placed in a pile or location for the purpose of being leached.

“Metallurgical Solutions” is the fundamental knowledge of the processing of functional materials in a mine site and understanding the properties of the materials, selection, and application which may impact the safety of the mine site.

“Mine” is a hole or tunnel dug into the earth or a surface excavation where the topmost or exposed layer of earth is removed and from which ore or minerals are extracted or removed.

“Mine Influenced Water” (MIW), includes neutral drainage, alkaline drainage, and process water containing leach and/or other chemicals as defined in The Global Acid Rock Drainage Guide (GARD).

“Mine Influenced Water (MIW), is defined as a mining influenced water (MIW) defined as any weather whose chemical composition has been affected by mining or mineral processing. This term includes Acid Mine Drainage (AMD), Neutral Mine Drainage (NMD) Saline Drainage (SD) and metallurgical process waters of potential concern.

“Mine Site” is the approved land use portion of the disturbed area on the property from which ore or minerals are extracted or removed by whatever means.

“Mine Closure” means the cessation of mining activities and final decommissioning of a mine prior to final reclamation.

“Mineral” means a non-living, inorganic commodity that is extracted from the earth for use or conversion into a saleable or usable product. Mineral does not include surface water or subsurface water, geo-thermal resources, oil and natural gas together with other chemicals recovered with them.

“Mineral Resource Extraction and Processing” is the process of obtaining a mineral from the earth’s crust or from previously disposed or abandoned mining waste, including open-cut mining and surface operations. The disposal of refuse from underground and insitu mining, mineral transportation, concentrating, milling, evaporation, leaching, and other processing.

“Mine Unit” means a component of a mining operation, including, but not limited to processing, leaching, excavation, open pit, storage, stockpiles or waste units.

“Mining Activity” any action or behavior related to the mining operation, including exploration, extraction, digging, drilling, trucking, etc..

“Mining Facility” any structures or equipment related to the mining operation including piping, drilling equipment, excavators, office space, specially built housing (“man camps”), roadways, etc.

“Neutral Mine Drainage” is defined as a down-gradient runoff from sulphidic source materials that are undergoing oxidation following the subsequent reaction with neutralizing minerals such as carbonates which results in water with circumneutral pH, high hardness and high sulphate levels

“Open Pit” means a method of mining in which minerals are extracted at or from a level near the earth’s surface.

“Planning and Zoning Commission” is the officially appointed Planning and Zoning Commission of San Miguel County, New Mexico, also referred to as the P&Z Commission.

“Planning and Zoning Supervisor” is the supervisor of the Planning and Zoning Division of San Miguel County, New Mexico.

“Public Roads” means roads generally open to the public for use. A public road is not a County road unless such road has been adopted by the Board of County Commissioners as a County road and appears on the current official County road log and approved by NMDOT. New Mexico Statutes 67-2-1. All roads and highways, except private roads, established in pursuance of any law of New Mexico, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are recognized and maintained by the corporate authorities of any county in New Mexico, are hereby declared to be public highways.

“Reclamation” is the employment during and after a mining or operation of measures designed to mitigate the disturbance of affected areas and permit areas and provide for the stabilization and revegetation of a permitted area following the closure which shall minimize future impact to the environment from the operation and protect, air, water, and biological resources. The New Mexico Mining Act 69-36 states that the employment during and after a mining operation of measures is designed to mitigate the disturbance of affected areas and permit areas and to the extent practicable. In addition, 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.

“Saline Drainage” produced by oxidation of sulphide minerals which contain elevated metals that have leached from surrounding solids.

“State” is the State of New Mexico.

“State Engineer” is the Office of the State Engineer of the State of New Mexico.



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

“Tailings” are finely crushed and ground rock residue and associated fluids discharged from an ore milling, flotation beneficiation and concentrating process. The material left after the process of separating the valuable fraction from the uneconomic fraction. Tailings are also referred to as mine dumps, slimes, tails or refuse.

“Tailings Impoundment” is an impoundment that is the final repository of tailings, may also be referred to as “tailings dams”.

“Traditional Community” as provided under San Miguel County Ordinance No. 86-2, Section 3760. Also, an unincorporated traditional historic community or village within San Miguel County having a distinctive character or traditional quality that can be distinguished from surrounding areas or new developments in the immediate vicinity, community which has been continuously occupied since 1925 and has a village center.

“Visually Sensitive Areas” are areas that are visible along highways and county roads. County, local, state or federally designated scenic areas and byways, areas that are visible from traditional communities and any location, site or structure that is listed on the New Mexico State Historic Register or any location, site or structure that is determined by the New Mexico Department of Cultural Affairs, New Mexico State Historic Preservation Division as being a contributing location, site or structure to any such location, site or structure listed on said Register.

“Waste Rock” means all material excavated from a mine facility that is not ore or clean top soil and is bedrock mined and transported out of the pit and has no mineral or metal concentrations of economic interest.

### SECTION 3: APPLICATION PROCEDURE.

Conditional uses are those uses which have special impact or uniqueness such that their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

No person or entity shall conduct mining activity in San Miguel that disturbs land without having an approved conditional use permit for that activity.

3.1. An application for a conditional use permit shall be filed by an applicant/operator with the Planning and Zoning Supervisor or his/her designee within the Planning and Zoning Division. The application shall include payment of fees (see 3.2), letter of intent (3.3) and submittals (3.4).

3.2. Application fees are as follows:

- Conditional Use Permit: \$40,000 basic fee

- Exploratory Permit: \$5,000 per exploration hole or pit
- Extraction Permit: \$5,000 per extraction hole or pit
- Publication/Notification: \$246.00 per each P&Z Commission meeting
- Publication/Notification: \$246.00 per each County Commission meeting
- Technical Review: \$10,000 minimum fee
- Annual Inspection Fee \$10,000 per year of authorized operations

The applicant/operator may be charged additional reimbursements for reasonable/actual county efforts and expenditures beyond those identified above.

3.3 Letter of Intent with the following items:

3.3.1. Name, address, telephone number, email address of the person(s) authorized to submit such letter.

3.3.2. Name of company or corporation proposing the project, company address, telephone number and email address.

3.3.3. Name, address, telephone number and email address of the relevant surface and subsurface property owner(s) of which property exploration, mining and processing is being proposed.

3.3.4. A notarized statement properly recorded in the office of the San Miguel County Clerk, which notarized statement provides to applicant/operator company or corporation the legal right of entry and use of the property.

3.3.5. Name, telephone number and email address of on-site contact person who will be responsible for the day-to-day operations.

3.3.6. A list of all parties that have an ownership or controlling interest in the proposed project, and must submit the most recent Form 8-K and Form 10K as required by the U.S. Securities and Exchange Commission.

3.3.7. A list of the applicant/operator's owners, officers, directors, executive personnel, and structure of the organization via an organizational chart. As part of this list, the applicant/operator must provide indication of who will monitor the operation's behavior.

3.3.8 The proposed new applicant/operator must be able to certify to the County that it has a history of compliance with any and all states' regulations in the United States and federal regulations and with environmental regulations as relate to exploration, mining and processing.

3.3.9 A proposed permanent easement to the County for access to the entire proposed mining site for the purposes of inspection and remediation. Within thirty days

after approval to proceed, the applicant/operator shall record the easement in the office of the County Clerk.

3.4. Application Submittals: The following items are required at time of application. Upon approval of the conditional use permit, the submitted materials shall become binding on the applicant/operator and subject to enforcement by the County. Any later modifications of the materials must be pre-approved by the County.

3.4.1. A narrative description of the project to include:

- 3.4.1.1. Location of the project.
- 3.4.1.2. Number of exploratory boring holes or pits proposed.
- 3.4.1.3. Type and mineralization of the ore body proposed to be extracted and processed.
- 3.4.1.4. The target minerals proposed.
- 3.4.1.5. Type and method of proposed exploratory process.
- 3.4.1.6. Type and method of proposed mineral extraction method.
- 3.4.1.7. Stockpiling method proposed and number of tons to be stockpiled at any given time during the project.
- 3.4.1.8. Processing method proposed, including required facilities
- 3.4.1.9. The required number of mine units.
- 3.4.1.10. Facilities and infrastructure needed.
- 3.4.1.11. Engineering techniques to be used.
- 3.4.1.12. Total number of tons to be extracted per year and for the duration of the project.
- 3.4.1.13. Total number of tons to be stockpiled, stored or impounded in each mine unit.
- 3.4.1.14. Total number of acres to be disturbed with a description of the current use of such acres. A breakdown of all acreage proposed to be disturbed indicating the type of disturbance, the mine unit, the existing and proposed road infrastructure network, all infrastructure necessary and existing and proposed new structures required.
- 3.4.1.15. Map showing the locations of ore stockpiles, leach stockpiles, waste rock stockpiles and dumps, all impoundments, existing and proposed ponds, existing and planned diversions, disposal systems, existing and proposed pits, mills, water treatment facilities, all storage areas, borrow pits, topsoil and topdressing storage, staging areas and hazardous materials storage method to include cover and fencing of such materials.
- 3.4.1.16. Any other description necessary for the complete understanding and scope of the proposed mining operation.

3.4.2. Maps and Surveys: All required Map(s) must be properly labelled.

- 3.4.2.1. Copies of current survey plat(s) of all proposed properties to be used for the project on 11 x 17 size sheet of paper. Such survey plats must be those that are properly recorded in the Office of the San Miguel County Clerk.

3.4.2.2. Map(s) of the general project location on 11 x 17 size sheet of paper that indicate proximity to any incorporated municipality, village, community and water course within San Miguel County. All Map(s) must be properly labelled.

3.4.2.3. Map(s) that indicate surface and mineral ownership with name, mailing address and telephone number of each owner.

3.4.2.4. Map(s) of the specific project location only on 11 x 17 size sheet of paper that identify and accurately show the location of all existing and proposed mine units, structures, leach pads, ore stockpiles, leach stockpiles, impoundments, waste rock piles or dumps, existing or proposed ponds including current stock ponds as applicable, existing and proposed diversions, disposal systems, pits, tailings impoundments, mills and all processing facilities and equipment, water treatment facilities, all storage areas and type of containment of such, borrow pits, topsoil, topdressing storage, staging areas and any other facilities or structures needed.

3.4.3. Public Notice and Agency Consultation: The following items are required.

3.4.3.1. Public Notice: Published in the legal section of the local newspaper of general circulation of the proposed mine site and of the applicant/operator's main office, the company or corporation's intent to submit an application to San Miguel County for conditional use permit approval for the proposed project. The notice should provide a brief description of the project, its location to include Section, Township and Range, its proximity to the nearest incorporated municipality whether such municipality be located within San Miguel County or not, and how access to the site is provided. The public notice must include the name, address and telephone number of the applicant/operator, company or corporation as well as the name, address, telephone number and e-mail address of the appropriate contact person of such applicant/operator, company or corporation.

3.4.3.2. Agency and Native American Indian Tribe Consultation: The following Agencies and Native American Indian Tribes having possible interest or concerns within San Miguel County must be consulted in regard to possible impact of the project to such interest or concerns. Such consultation must include a project description of sufficient detail so as to allow such Agency and Native American Indian Tribe to properly comment. All concerns or issues provided by such agencies and Native American Indian Tribes must be addressed to the satisfaction of said agency or Indian Tribe. The applicant/operator shall allow agencies and Indian Tribes a thirty (30) day review period to review and return an opinion regarding the application. If any opinion is adverse, applicant/operator shall provide to the County a copy of such adverse opinion and shall respond to the commenting agency or Indian Tribe within thirty (30) days with additional and appropriate information necessary for such agency

and Indian Tribe to address such adverse opinion. Copies of such adverse opinions and responses must be included in the application.

3.4.3.2.1. New Mexico Department of Cultural Affairs, Historic Preservation Division in regard to historic properties.

3.4.3.2.2. Local or County Floodplain Manager or National Resource Conservation Service (NRCS) District Office in regard to flood hazard protection.

3.4.3.2.3. National Resource Conservation Service (NRCS) District Office in regard to wetlands protection.

3.4.3.2.4. New Mexico Environment Department in regard to sole source aquifers, water quality issues, air quality, noise, solid waste disposal, thermal and explosive hazard, lead based paint, and minimum water quality standards that must be maintained. The New Mexico Office of the State Engineer in regard to water availability as it relates to both existing wells on-site or new proposed wells for the site.

3.4.3.2.5. The New Mexico Department of Game & Fish Department and the U. S. Fish & Wildlife Service in regard to endangered threatened species and habitat.

3.4.3.2.6. The New Mexico Department of Transportation, District 4 Offices in regard to the impact on affected state highway(s) located within San Miguel County.

3.4.3.2.7. San Miguel County Public Works Division in regard to impact on affected County road(s) and County solid waste services with a request for determination if such road(s) and solid waste services are adequate to address the needs of the project.

3.4.3.2.8. San Miguel County, Office of Emergency Services in regard to impact on County emergency service capabilities of the County to include a determination as to whether such emergency services are adequate to address the needs of the project.

3.4.3.2.9. Apache Tribe of Oklahoma

3.4.3.2.10. Pueblo of Cochiti

3.4.3.2.11. Comanche Indian Tribe

3.4.3.2.12. Hopi Tribe

3.4.3.2.13. Pueblo of Isleta

3.4.3.2.14. Jicarilla Apache Nation

3.4.3.2.15. Pueblo of Jemez

3.4.3.2.16. Kiowa Tribe

3.4.3.2.17. Mescalero Apache Tribe

3.4.3.2.18. Navajo Nation

3.4.3.2.19. Santo Domingo Pueblo

3.4.3.2.20. Wichita Affiliated Tribes

3.4.3.2.21. Pueblo of Zuni

3.4.3.2.22. Nambe Pueblo

3.4.3.2.23. Ohkay Owingeh Pueblo (San Juan)

3.4.3.2.24. Pojoaque Pueblo

- 3.4.3.2.25. San Ildefonso Pueblo
- 3.4.3.2.26. Santa Clara Pueblo
- 3.4.3.2.27. Tesuque Pueblo
- 3.4.3.2.28. Taos Pueblo
- 3.4.3.2.29. Picuris Pueblo

3.4.4. Protection and Mitigation Maps and Reports: Describing all environmental protection and mitigation measures to be implemented at the site.

- 3.4.4.1. Monitoring well network
- 3.4.4.2. Terrain and storm water management
- 3.4.4.3. Impoundment and stockpile liners
- 3.4.4.4. Leak detection systems
- 3.4.4.5. Secondary containment
- 3.4.4.6. Hazardous materials and waste management plan
- 3.4.4.7. Air quality protection plan
- 3.4.4.8. Nuisance and noise abatement plan
- 3.4.4.9. Fire safety plan
- 3.4.4.10. Plan to recover iron ore, lean ore, low grade ore and other minerals from leftover tailings.
- 3.4.4.11. Location of any existing or abandoned mine sites within five (5) miles of the proposed project to include location and type of pits, stockpiles, adits, shafts, processing facilities, road infrastructure and any other mine facilities and works.

3.4.5. Existing Pollution: A description of existing pollution at the proposed project location with a process of how such existing pollution will be addressed by the applicant/operator to mitigate any new pollution. The description should indicate how such existing pollution will affect the proposed operations, reclamation, environmental monitoring and protection of the proposed project. The applicant/operator shall identify the parties responsible for such pollution and the parties legally liable for reclaiming, remediating, or abating the pollution and its source and how the applicant/operator proposes to work with such parties. Should information not be available to the applicant/operator, San Miguel County may require the applicant/operator to reclaim, contain or abate existing pollution and pollution sources as a condition of conditional use permit approval.

3.4.6. Environmental Impact Report: Shall include the following information.

- 3.4.6.1. Hydrologic and contaminant transport modeling
- 3.4.6.2. Maps, cross sections to fully describe the environmental and site conditions that are expected to occur during and after the discontinuance and closure of the project.
- 3.4.6.3. Information necessary to adequately describe the environmental and site conditions during construction, operations, reclamation, closure and post-closure conditions expected to occur for a period of twenty-five years, using

geological, meteorological, hydrological, geochemical and mineralogical modeling for each condition.

3.4.6.4. The mineral composition of the rock, ore and soil to be extracted, processed, stored, deposited or disposed of.

3.4.6.5. The potential of each mine unit to contaminate the air, soil, surface water and ground water by any means to include leaching, acid mine drainage, percolation, run-on and runoff and surface exposure.

3.4.6.6. A description of the types of contaminants with an explanation as to how each type of contaminant will be prevented or remediated should unpreventable contamination occur.

3.4.6.7. Hydrologic gradient maps that show the effect of each mine unit, dewatering, intended discharges and intended alteration of the subsurface of the water table, confined aquifers and water courses.

3.4.6.8. In addition to the impacts or potential impacts as per 3.4.3.2, information regarding potential impacts to water well contamination, soles bearing strength and stability for development, wildfire hazard, earthquake and landslide hazard, landscape scenic quality, nuisance hazard and visual impacts to commercial, public and institutional uses, and adequacy of roads for the intended project.

3.4.6.9. San Miguel County Comprehensive Plan provides that the dark skies in San Miguel County are a natural asset that residents and visitors enjoy. Scenic quality and visual impacts must be kept to a minimum, therefore the environmental impact report must include a plan that indicates how all lighting shall be limited to the minimum required to meet security and safety standards consistent with the practices of a reasonable and prudent operator.

3.4.6.10 The proposed mine shall provide to the County of San Miguel an environmental assessment on the impact of this proposed mining in combination with any near or proposed mines to determine the impact of property within a two-mile radius.

#### 3.4.7. Terrain Management Plan:

3.4.7.1. Vicinity Map to a scale of not more than 2,000 feet to one inch showing the relationship of the project to its general surroundings with the location of all existing drainage channels, water courses and water bodies within three (3) miles of the site. A mark up of a USGS topographic map is acceptable.

3.4.7.2. Natural Features Map to a scale of not more than 2,000 feet to one inch showing directly or by overlay with narrative where appropriate, showing the boundaries of the site, existing contours, all areas with natural slopes of twenty-five percent (25%) or greater, location of all major rock outcropping and location of the

major vegetation types showing the plant species. The natural features map may be combined with the vicinity map.

3.4.7.3. Soil Survey with a description of the soil types and the interpretations of the limitations for each soil type. This can be an overlay of the natural features map.

3.4.7.4. Grading Plan which may require a series of maps and can be an overlay of the natural features map. It should show the location of all proposed locations for mining, roadways, water and erosion control structures, utilities and utility easements.

3.4.7.5. Erosion and Drainage Plan showing all the upper watershed area draining into or through the project site; storm drainage computation for the 100-year frequency storm event both reaching and leaving the site in the pre-development conditions and storm calculations for mining and post-mining conditions. The plan must show how surface water run-on and run-off from undisturbed areas shall be controlled to prevent contact with and contamination by disturbed areas and from process and waste materials.

3.4.7.6. Grading Plan that adequately describes how all grading and excavating operations, if any, will be performed to blend slopes and fills into the natural contours of the land; indicate whether the applicant/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. Off-site discharge attributable to the exploration or mining activity is prohibited whether the discharge is direct or indirect.

3.4.7.7. Open Pit Closure Plan that indicates how open pits will be backfilled, with what type of material and type of vegetative re-seeding to be used. If backfilling is not the method to be used for open pit closure, the applicant/operator must demonstrate how another method will be more effective.

3.4.7.8. The terrain management plan must indicate how all reclaimed landforms will be geo-morphologically stable and how landforms will blend into the surrounding terrain.

3.4.8. Cultural Resources Protection Plan: In order to preserve and enhance the unique heritage of San Miguel County, exploration, mining and processing 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, landmarks and properties 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.



3.4.8.1. A cultural preservation plan shall be required for each proposed exploration and mining activity and shall consist of the following:

3.4.8.1.1. Detailed description of historic, cultural or archaeological sites that are more than fifty (50) years old on the property.

3.4.8.1.2. Description of how the proposed exploration and mining activity will disturb or adversely impact identified historic, cultural or archaeological sites and artifacts located on the property.

3.4.8.1.3. Description of how adverse impacts will be mitigated, including methods of restoration, preservation and salvage.

3.4.8.2. Unmarked human burials: Any human burial in the State of New Mexico is accorded the protection of law and shall receive appropriate and respectful treatment and disposition. The applicant/operator shall comply with the requirements of §18-6-11.2 NMSA 1978, which prohibits the knowing, willful and intentional excavation, removal, disturbance or destruction of any human burial, buried or entombed or sepulchered in any unmarked burial ground except by permit issued by the state medical investigator or by the state cultural properties review committee with the concurrence of the state archaeologist and state historic preservation officer. In addition, compliance with the Cultural Properties Act §18-6-1 through 18-6-17 NMSA 1978 is required. Additional compliance may be required with federal regulations if the removed mined and extracted materials will be used on federally funded projects.

3.4.9. Environmental Protection Plan: All proposed activity shall utilize standard techniques available in order to minimize such conditions as noise, vibration, smoke and other particulate matter, odorous matter, toxic or noxious matter, fire and explosive hazards, both due to the proposed mining and already existing mining activities in the County. A plan shall be submitted which states how such conditions will be mitigated and shall consist of the following:

3.4.9.1. Air quality performance standards to include a dust abatement plan and dust suppression techniques and control measures to be used so that there are no visible emissions beyond the property boundaries. Truck traffic areas and haul roads going in and out of the property and each site within, shall be watered as necessary, treated with a surface stabilizing agent or paved with an appropriate surface as necessary. The source of water to be used for dust control must be disclosed, provided however, that the County shall not approve a dust control plan which proposes to use potable water for dust control.

3.4.9.1.1. A baseline air quality testing program shall be conducted prior to exploration, drilling and processing activities followed by an ongoing monitoring program to detect changes in air quality.

3.4.9.1.2. The project shall comply with the New Mexico Environment Department's Air Quality Bureau standards pursuant to NMAC 20.2.1 and the U.S. EPA New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews, as applicable.

3.4.9.1.3. The applicant/operator shall indicate the locations within the project site where air monitoring stations will be placed, both downwind and upwind locations within the property. In the event that ongoing monitoring indicates degradation of pollution of ambient air, monitoring of the suspect analyte(s) shall be repeated immediately. If the degradation is confirmed, the applicant/operator shall immediately abate the degradation or pollution at its own expense and maintain a record of such monitoring and abatement.

3.4.9.2. Noise and vibration mitigation performance standards to include impulse noise not to exceed 80dB (unweighted) peak sound pressure level at any time when measured at a distance of three hundred (300) feet from the source of the sound. Average noise level shall not exceed an average of 55dB(A) fast during evening and nighttime hours and an average of 65dB(A) fast during the daytime and evening hours. Noise control methods include, but are not limited to buffer areas, screening, earth berms, vegetative screens and mufflers.

3.4.9.3. Noise 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), the make, model and serial number of instrument used, pre and post-field calibration results, monitored levels and site sketch indicating noise source(s) and measurement location. The County reserves the right to witness noise measurements.

3.4.9.3.1. While noise impacts from project related heavy truck and heavy equipment traffic and vibration impacts from project operations are not specifically addressed in this section, receipt of a complaint with regard to these sources may require corrective action from the applicant/operator. The applicant/operator is expected to take reasonable measures to avoid or minimize the impacts of heavy truck and heavy equipment traffic and vibration.

3.4.9.4. Visual impacts mitigation performance standards. Adverse visual impacts to scenic quality and scenic degradation of visually sensitive areas shall be avoided or minimized to the extent practical through the following location and site design techniques:

3.4.9.4.1. Minimize the area of disturbance pursuant to a phasing program.

3.4.9.4.2. Minimize mining or excavation in visually sensitive areas.

3.4.9.4.3. Avoiding the location of structures, machinery and equipment storage and repair areas, utility lines, access roads, mined material stockpiles and mine waste piles and impoundments in visually sensitive areas.

3.4.9.4.4. Lighting shall be allowed as necessary to enhance the safety of the site. Outdoor lighting shall be designed in a manner that enhances work-site security and public safety as well as a manner that conserves energy and prevents spillover 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 as well as the beam direction. All light sources shall be shielded so that they are not directly visible from adjacent residences. Standards for lighting pollution shall address excessive, misdirected, or obtrusive artificial outdoor light which may impact starlight astronomical research, impact ecosystems, health effects, and wasted energy. The applicant/operator must also abide by the New Mexico Night Sky Protection Act. Night Sky Protection Act [74-12-1 to 74-12-10 NMSA 1978]; its purpose is to regulate outdoor night lighting fixtures to preserve and enhance the state's dark sky while promoting safety, conserving energy and preserving the environment for astronomy. Compliance with the NSPA is required by the New Mexico Electrical Code (NMEC). Enforcement of the NSPA is the responsibility of each county and municipality in New Mexico.

3.4.10. Safety and Traffic Control: The amount of traffic generated by the activity of the project shall not cause public roads or County roads to operate at a level less than what can be met by current capacity and structural conditions or cause deterioration to County roads as a result of the project activity without just compensation to the County. If it is determined by the County that the project will increase the burden, or cause deterioration to any County road, the applicant/operator of the project shall be required to undertake a pro-rata equitable share of the cost of improvements or repairs to the County roads which are shown to be caused by the project related use.

3.4.10.1. The applicant/operator shall submit a traffic route plan that illustrates all allowable private, public and County roads that will be used by the project to transport heavy equipment, supplies and removed material within a ten (10) mile radius of the property or to the nearest paved state road or federal highway.

3.4.10.2. The applicant/operator shall provide perimeter and other on-site and off-site signs and markers advising the public of the exploration, mining and processing activity and related hazards that may be present including but not limited to, warning of large or Commercial Motor Vehicle trucks traffic, mining hazards, open water hazards, operating equipment, blasting, stockpile and waste pile collapse.

3.4.10.3. A signage plan must be submitted that show the number, type, size and location of signs and markers. Signs required shall be posted and maintained during the conduct of all operations and activities; shall be posted at each point of access to the

project area from public roads; be posted on the perimeter of the project area; be of such uniform design that they can be easily seen and read; be constructed of a durable material capable of withstanding wear, tear and decay as well as fluctuations in temperature, be weather resistant and conform to all state and local ordinances.

3.4.11. Storm Water Management Plan: A storm water management plan shall be included in the application that complies with state and federal law. The Plan shall demonstrate how storm water runoff will be managed to prevent clean water from entering areas containing materials that have been extracted, processed, stored, deposited, exposed, or disposed of, and that captures and contains contaminated storm water.

3.4.12. Erosion Management Plan: Sediment shall not be transported or deposited into any water body, including streams, ponds, lakes, springs, acequias, seasonal watercourses, wetlands and riparian areas or any property outside of the boundaries of the project area. The application shall include an erosion management plan that describes the methods to be used to contain sediment and to control sediment during transport. The plan should indicate the location to where sediment will be transported.

3.4.13. Waste Water Management Plan: The application shall include the method to be used for managing domestic waste, including the location of proposed septic and leach field systems, and such systems must comply with the New Mexico Environment Department liquid waste regulations and permitting.

3.4.14. Solid Waste Management Plan: The application must include a plan for managing and disposing of all domestic and project related solid waste. If County solid waste facilities are to be used for the disposal of domestic solid waste, the applicant/operator will be required to register with the County Solid Waste Division.

3.4.15. Wildlife Impact Mitigation Plan: San Miguel County possesses a number of distinct ecoregions which contribute to the rich ecology and high aesthetics of the landscape. The County has significant contiguous forest, wooded hillsides and patches of forests in complex valley systems, savannas, grasslands, and piñon-juniper woodlands and grassland plains as well. All provide habitat to the various wildlife in San Miguel County. The impact of hard rock exploration, mining and processing extends beyond the boundaries of the project area and can contribute to significant habitat fragmentation and abandonment by wildlife. The application must include a wildlife impact mitigation plan prepared by a professional biologist with expertise in wildlife impact mitigation. The plan shall describe how impacts to wildlife (both ground based and airborne) attributable to the proposed project will be eliminated or mitigated to the greatest extent possible, including protections from holding tanks, vehicles, storage ponds, and air pollutants.

3.4.16. Storage, Disposal and Maintenance: This must be a plan, signed and sealed by a professional engineer licensed to conduct business within the State of New

Mexico. This shall be a plan for the handling of each material extracted, processed, stored, deposited, exposed or disposed and include each facility, and its location, proposed for such use. This plan must address ore stockpiles, tailings, waste rock and high walls. The storage, disposal and maintenance must be addressed in a manner that will not cause or contribute to the contamination of surface or groundwater, taking into consideration the amount, intensity, durations, frequency of precipitation and the watershed area, including the topography, geomorphology, soils and vegetation. For all mine units that have the potential to discharge contaminants into the groundwater, liners with secondary containment and leak detection shall be required. Mine units that are determined not to have the potential to discharge contaminants must be certified as such by a licensed professional engineer.

3.4.17. Safety Plan and Reporting: The Mining Operation shall complete an OSHA/MSHA compliant Safety Plan and Protocol for operations. The plan should include safety measures for operations of the mine from beginning of project to end of project and a system of reporting injuries both minor and major which will be submitted to the County of San Miguel within three (3) hours of the incident.

3.4.18. Operation Plan: Describing the procedures for the operation of the facilities.

3.4.18.1. Indicate the hours of operation. Should hours of operation be proposed for evening hours and weekends, then a justification for such evening hours and weekends must be included.

3.4.18.2. Description of the process and protocol for managing all fluids of the project, including the routine inspections of each facility.

3.4.18.3. A written description of the processes for containing leachate and runoff from materials that have been extracted, processed, stored, deposited, exposed and disposed.

3.4.18.4. Provide a schedule indicating periods of temporary cessation, including holidays or anticipated regular maintenance, with the notification process to be used to notify appropriate regulatory authorities of temporary cessations, both scheduled and unscheduled.

3.4.18.5. As unscheduled cessations could be the result of an emergency, a description of the protocol for managing the project and its facilities and fluids during emergencies and non-routine operations, temporary cessations and closing to include:

3.4.18.5.1. Emergency bypass and containment procedures for each project facility, including any treatment facilities damaged or unable to handle demand.

3.4.18.5.2. The procedures that will be used to cease operations during emergencies and non-routine operations.

3.4.18.5.3. The management, security and other labor requirements needed to cease operations and manage the project and its facilities during emergency and non-routine operations.

3.4.18.5.4. Identification of all potential hazards, including the generation and potential release of hazardous materials during emergency and non-routine operations with a monitoring plan to identify and characterize such hazardous materials.

3.4.18.5.5. Pump energy usage.

3.4.18.5.6. The estimated cost to cease operations and manage the facilities during emergencies and non-routine operations.

3.4.18.5.7. A health and safety plan that complies with Mine Safety and Health Administration requirements.

3.4.18.5.8. The procedure that will be used to stabilize the project and its facilities and return such to regular normal operations.

3.4.19. Monitoring Plan: The applicant/operator shall submit a monitoring plan which includes Quality Assurance/Quality Control procedures that describe the collection and evaluation of data to ensure compliance with this Ordinance.

3.4.19.1. Representative samples of each material extracted, processed, stored, deposited, exposed or disposed.

3.4.19.2. Representative samples of ground and surface water, including each point of potential contact with a material that could leach, generate or release a water contaminate.

3.4.19.3. Hydrological tests to evaluate changes in flow, gradient and water table.

3.4.19.4. Monitoring of operations to detect leaks and ensure proper function of project facilities to minimize emergencies and non-routine operations.

3.4.20. Sampling and Analysis Plan: To govern the collection of relevant baseline data for the project site. The sampling and analysis plan can be modeled after the requirements of NMAC 19.10.6.602(D)(12) and shall include the following:

3.4.20.1. Information for each relevant resource: sampling objectives, a list of data to be collected, method of collection, parameters to be analyzed for, maps indicating the proposed sampling locations, sampling frequency, laboratory and field quality assurance plans and a brief discussion supporting the proposals.

3.4.20.2. The applicant/operator may submit a sampling and analysis plan that has been approved by the New Mexico Mining and Minerals Division.

3.4.20.3. The sampling and analysis plan will be distributed by the County to relevant agencies for review and comment, to include the New Mexico Environment Department, the Department of Game and Fish and any other agencies the County deems necessary, with a request to review and comment within thirty (30) days. Written comments received from agencies will be forwarded to the applicant/operator with a request to respond to any concerns.

3.4.20.4. Should the County determine that the sampling and analysis plan is inadequate to address 3.4.19.1, or should reviewing agencies determine that the plan contains deficiencies that are not adequately addressed, then a supplemental plan may be requested.

3.4.21 Baseline Conditions Report: Upon approval of the sampling and analysis plan by the County, the applicant/operator shall commence the baseline conditions report and collecting data in accordance with the sampling and analysis plan for a minimum twelve (12) month period. Should there be unique, site-specific factors; the County may require a longer period than twelve (12) months. The baseline conditions report shall include:

3.4.21.1. Description of the climatological factors representative of the project site including precipitation, prevailing winds, temperatures and current National Oceanic and Atmospheric Administration data defining the one thousand (1,000) year, twenty-four (24) hour storm event.

3.4.21.2. A topographic map that shows the boundaries of the project area, and the location of all buildings within a one-half (1/2) mile area, whether they be occupied or unoccupied, and all other man-made features. Scale should be one (1) inch equals two thousand (2,000) feet or as otherwise indicated by the County.

3.4.21.3. Description and map showing the existing vegetation types including cover, density and productivity within the project area.

3.4.21.4. Description and map showing the existing wildlife and habitat for endangered/threatened and sensitive species of concern under state or federal law. Should include the types, communities and populations and if such habitats within the project area have been adversely impacted by existing or historical development with a map and description identifying such past impacts.

3.4.21.5. A description and map identifying and describing the habitat of state and federally listed sensitive, threatened or endangered plant species within the project area.

3.4.21.6. A description and a map showing cultural and archaeological sites and traditional cultural properties, including sites on or eligible for listing on the National Register of Historic Places or on the State Register of Historic or Cultural Properties, as well as any known cemeteries and human burials within the project area.

3.4.21.7. If revegetation is part of the reclamation plan, a description of the baseline thickness and nature of topsoil, if any, over the proposed project area. Should the applicant/operator propose to use something other than topsoil, an analysis shall be provided to determine the suitability of the proposed materials to be used.

3.4.21.8. The geology and mineralogy of each ore body and surrounding rock, including cross-sections of overburden, mineralized zones and ore bodies, aquifers and springs.

3.4.21.9. Surface water and groundwater information to include the following:

3.4.21.9.1. A map indicating the location of surface water features, including rivers, streams, lakes, reservoirs, springs, watercourses, and riparian and wetland areas. Streams shall be classified as ephemeral, intermittent or perennial, with surface water flows, sources of flow and seasonal variations in flow indicated.

3.4.21.9.2. A description, maps and cross sections describing and characterizing the aquifers and their parameters, water table elevation, groundwater flow, groundwater chemistry interconnection with surface flows, amount of baseline contribution onsite, seasonable variations and existing uses of each aquifer.

3.4.21.9.3. A description and map showing all wells and surface water diversions located within two (2) miles of the project property boundaries and the owners of the corresponding water rights and well permits as provided by the Office of the State Engineer.

3.4.21.9.4. A description and map showing the surface and bedrock geology with cross sections clearly illustrating the geologic units and stratigraphy, structures, faults, fractures and mineralized zones.

3.4.21.9.5. Description, maps and cross sections describing and characterizing all existing manmade sources of pollution, including legacy mining features such as pits, shafts, adits, stockpiles, tailings, and dumps. Description should include their geochemistry, potential to generate acid mine drainage or discharge or otherwise emit toxic contaminants, also the nature and extent of any existing soil contamination and the nature and extent of existing groundwater contamination.

3.4.21.10. Water Availability Assessment to identify any public water system, water supply company, mutual domestic water system or well permitted by the office of the State Engineer.



3.4.21.10.1. The applicant/operator shall identify any public water system, water supply company or mutual domestic water system that has the capacity to supply water for the project and shall submit a written binding commitment issued by such system that indicates water in sufficient quantity can be provided for a fifty (50) year period. If the water supply is from a well, the applicant/operator will need to submit written approval issued by the office of the State Engineer that the well can be used for the purpose of the project.

3.4.21.10.2. The applicant/operator must demonstrate its ability to comply with any necessary regulatory approvals that are required in order to be able to convey or delivery the water supply available from such public water system, water supply company or mutual domestic water system, whether such regulatory approvals be federal or state.

3.4.21.10.3. Supplies to Address Insufficiency: If the available water supplies are insufficient for such fifty (50) year projection, the applicant/operator must identify plans to acquire additional water supplies.

3.4.21.10.4. If a water supply for a proposed project includes ground water, the following information shall be included: (a) groundwater management plan; (b) description of the groundwater basin or basins from which the water will be obtained; (c) appropriate document(s) indicating applicant/operator's legal right to pump water from such basin; (d) analysis of the amount and location of groundwater to be pumped including information that is reasonably available that indicates historic use; (e) an analysis of the sufficiency of the groundwater from such basin that demonstrates water is available to meet the demands of the project for a fifty (50) year period.

3.4.21.10.5. A water quantity monitoring program must be submitted that provides the process to detect changes in water capacity caused by the project regardless of the source of water being used.

3.4.21.11. Water Quality Plan and Standards: To be developed and prepared by a licensed professional engineer or hydrologist licensed to conduct business in the State of New Mexico.

3.4.21.11.1. A baseline groundwater and surface water quality plan to ensure that water quality is not impacted by the project.

3.4.21.11.2. An analysis of all single or multiple wells or aquifers within a two (2) mile radius of the project site.

3.4.21.11.3. An analysis of all contaminant pathways leading from the project site to such wells or aquifers.

3.4.21.11.4. Recommendations for the location and type of groundwater monitoring stations.

3.4.21.11.5. A remediation plan that indicates how negative impacts to groundwater and aquifers will be mitigated.

3.4.21.12 Noise Levels: An analysis of pre-existing noise levels at the borders of the mining property shall be provided to establish baseline conditions. During operations, the applicant/operator shall ensure that the mining operation does not cause the noise level at the property border outside of the proposed mining site to exceed 10 dbm above baseline on average and 30 dbm above baseline momentarily.

3.4.22. Mine Drill Holes That Encounter Water: As provided by 19.27.4.36 NMAC, Well Driller Licensing, Repair and Plugging of Wells. Approval of drill hole plugging is required by the Water Rights Division of the Office of the State Engineer to ensure that water encountered during drilling activities is confined to the aquifer in which it was encountered.

3.4.22.1. Any person drilling a mine hole that encounters a water bearing stratum shall plug that hole in accordance with 19.27.4.29 NMAC.

3.4.22.2. Within thirty (30) days after the date of the discovery of water, a well record shall be filed in accordance with Subsection K of 19.27.4.29 NMAC. If artesian water is encountered in the process of drilling a mine drill hole, the drill hole shall be constructed or plugged in accordance with 19.27.4.31 NMAC.

3.4.22.3. Within ninety (90) days from the date of discovery, the responsible party shall report to the Office of the State Engineer and the Director of the State Bureau of Geology and Mineral Resources the location and depth of the hole and the method and material used in plugging the hole. The report shall be on a form prescribed by the State Engineer with a copy forwarded to the San Miguel County Manager.

3.4.23. Hours of Operation: The hours of operation will be limited to the period between sunrise, or 7:00 a.m. whichever is latest, and sunset or 6:00 p.m. whichever is earliest, Monday through Saturday, unless otherwise determined and approved by the Board of County Commissioners.

3.4.24. Setbacks: The following shall apply to all equipment, structures and facilities of the project.

3.4.24.1. Shall be no closer than three hundred (300) feet to the boundaries of the subject property and five hundred (500) feet from all public road rights-of-way, public recreational easements and one (100) year flood zones.

3.4.24.2. Shall be no closer than one thousand (1,000) feet to the seasonal high water mark of any water body or seasonal water course, and including a minimum one hundred (100) foot buffer zone of natural vegetation measured from the annual high water mark of a surface water, included a perennial, ephemeral and intermittent body of water.

3.4.24.3. Shall be no closer than one-half (1/2) mile to any Traditional Community or single-or-multi-family dwelling, park, recreational facility, institutional facility, church, public building, school and county boundary line adjoining San Miguel County.

3.4.25. Facilities: This section concerns facilities for storage, processing and disposal of ore, spent ore, waste rock, tailings and other geological materials that have the potential to generate water contamination. Such facilities shall be designed, and their construction managed by a professional engineer licensed in the State of New Mexico, who has experience in liner systems and the facilities necessary.

3.4.25.1. A process solution collection system designed to be removed after the operational life of the project facility. It must integrate with an over liner protection structure that protects the primary liner from damage during loading and minimizes the potential for penetration of the primary liner. It should be a system that transmits fluids out the drainage layer of the facility and maintains a hydraulic head less than the thickness of the drainage layer, provided that the drainage layer shall not exceed five (5) feet in thickness. The construction plans and as-built drawings shall indicate any penetration of the primary liner by the collection system through which a pipe or other fixture protrudes and the professional engineer shall certify that such penetration is constructed in accordance with the manufacturer's requirements.

3.4.25.2. The primary liner shall consist of a continuous flexible membrane of suitable synthetic material or other impermeable substance that provides the same or greater level of containment and permeability as a minimum sixty (60) millimeter HPDE geomembrane liner system. The tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with the maximum expected design loads, exposures and conditions and its design shall be based on the following:

3.4.25.2.1. Type, slope and suitability of the foundation.

3.4.25.2.2. Over-liner protection and provisions for hydraulic relief within the liner system.

3.4.25.2.3. Load and the means of applying the load on the liner system.

3.4.25.2.4. The compatibility of the liner material with any process solution to which it may be exposed.

3.4.25.2.5. The ability of the liner to remain functional in perpetuity.

3.4.25.3. The liner system sub-base shall be placed upon a stable foundation, with the prepared sub-base consisting of a minimum of twelve (12) inches of clean soil that has a minimum re-compacted in-place coefficient of permeability of  $1 \times 10^{-7}$  cm/sec.

The top surface of the sub-base shall be smooth and free of rocks or other debris or material that could penetrate the overlying synthetic surface.

3.4.25.4. For the purpose of detecting the loss of process solution, an electronic grid leak detection system installed between the primary and secondary liners is required.

3.4.25.5. For the purpose of managing pumped fluids to protect human health and the environment, a pump back system shall be installed between the primary and secondary liners so as to keep the secondary liner dry in the event of a leak.

3.4.25.6. Tailings are to be dry stacked.

3.4.25.7. All stockpiles and foundations shall be designed with minimum static factor of safety of 1.5 and a minimum seismic factor of safety of 1.1.

3.4.25.8. In the event a leak is discovered in the liner system, operations shall cease immediately and the County shall be notified of such leak. Material shall be removed from the liner and the leak repaired. A professional engineer must certify that the leak has been identified and repaired and should there be a release, such release must be remediated with such remediation certified by the professional engineer. Copies of such certification must be forwarded to San Miguel County.

3.4.26. Explosives: Should the project require the use of explosives, blasting shall be conducted to prevent injury to persons or damage to property not owned by the applicant/operator or property that is not part of the project.

3.4.26.1. A detailed blasting plan must be submitted.

3.4.26.2. The plan will indicate specific hours that blasting will occur.

3.4.26.3. Blasting shall be conducted by an individual who is trained, examined and certified by the Director of the Mining and Minerals Division of the New Mexico Energy, Minerals and Natural Resources Department. Proof of certification must be attached to the blasting plan and be current.

3.4.26.4. The blasting plan shall include the process that will be used to notify the County and all residents within a five (5) mile radius of the project property boundaries of when blasting will occur, such notification to take place at least three (3) days prior to the blasting.

3.4.26.5. The applicant/operator shall conduct a pre-blast survey of all residences and buildings within a one-half (1/2) mile radius of the property boundaries at least three (3) days prior to blasting and shall keep records of such pre-blast surveys and make such surveys available to the County for examination should the County determine the need for such examination.

3.4.26.6. The applicant/operator or if a blasting company is hired to conduct the blasting event(s), shall maintain, and keep current at all times, liability insurance of not less than one million dollars (\$1,000,000) for each blasting event and shall provide copies of the current certificate of insurance to the County.

3.4.26.7. A file of all blasting events shall be maintained with the noise and vibration levels properly recorded in such files which shall be made available to the County for inspection should the County determine the need for such inspection.

3.4.26.8. Ground vibration during blast events shall not exceed 0.50 inches per second peak particle velocity at any property boundary of the project property area. The blast plan shall indicate the equipment that will be used to monitor ground vibration, including the duration of the vibration.

3.4.26.9. The blasting plan must identify maximum weight of explosives to be detonated on each blast occurrence, the type of explosive agent, the maximum pounds per delay, method of packing and the type of ignition device to be used for each blast.

3.4.27. Closure and Post-Closure Plans: The project area may have mines that cease operation and result in an inactive portion of the project, while other mines continue operating, thus resulting in partial closure of the project. The closed mines are subject to all applicable closure standards outlined in the closure and post-closure plans. Each plan shall be certified by a licensed professional engineer and shall demonstrate compliance with the following:

3.4.27.1. All buildings, structures, infrastructure and facilities that are not required for reclamation and environmental protection shall be removed.

3.4.27.2. Liner systems that are not required for reclamation, closure and environmental protection shall be tested for any potentially contaminated materials prior to removal.

3.4.27.3. Materials in leach facilities such as spent ore and lean ore shall be detoxified using rinse/rest cycles and chemical oxidation. Following detoxification, leach facilities shall be closed by covering the materials as specified under 3.4.26.4. Ponds associated with a heap-leach facility shall be closed by folding in the synthetic liners and filling and contouring the pits with inert material. Residual sludge, spent ore, and lean ore shall be removed and disposed of in an approved facility. Piping shall be removed.

3.4.27.4. Cover systems shall be installed on waste rock piles, leach and spent ore facilities, all tailing impoundments, and any other unit that has the potential to yield a contaminant, which unit(s) has the capability to contain the contaminant in perpetuity.

3.4.27.4.1. Cover systems shall be constructed of thirty-six (36) inches or greater earthen materials that are capable of sustaining plant growth without perpetual care and have erosion resistant characteristics. The pile shall be shaped to minimize erosion, maintain slope and vegetation stability. Erosion rates shall be equal to or less than stable slopes in the surrounding area after the vegetation has reached near equilibrium cover levels.

3.4.27.4.2. The cover system shall have the capacity to store with the fine fraction at least ninety-five percent (95%) of the long-term average winter precipitation, the months of December, January and February, or at least thirty-five percent (35%) of the long-term average summer precipitation, the months of July, August and September, whichever is greater. The water holding capacity shall be determined by multiplying the thickness of the cover by the incremental water holding capacity of the fine fraction of the cover. The incremental water holding capacity of the fine fraction of the cover shall be determined by field or laboratory tests or published estimates.

3.4.27.4.3. The cover system shall include monitoring and reporting for surface and groundwater under and adjacent to the unit.

3.4.27.5. Certification of Closure and Survey Plat:

3.4.27.5.1. Upon completion of the closure process of the project, the applicant/operator shall submit to the County a certification of closure prepared and certified by a professional engineer licensed to conduct business in the State of New Mexico. The certification of closure shall be accompanied by a survey plat indicating the location and dimensions of all exploratory holes, mine units, impoundments, leach pad locations, waste rock pile locations, pond locations, stock pile locations, borrow pits and topsoil locations. The survey plat shall be prepared and signed by a surveyor licensed to conduct business in the State of New Mexico. The survey plat shall be signed and stamped by the Planning and Zoning Supervisor and the County Commission Chair and then recorded in the office of the San Miguel County Clerk.

3.4.27.5.2. The survey plat shall contain an access easement granted to the County to the entire site for the purpose of providing the County with access to the project site for inspection of remediation activity well after the project site ceases operation.

3.4.28. Reclamation: The reclamation plan shall be prepared and certified by a professional engineer licensed in the State of New Mexico and must contain the following items. The plan shall indicate how the project site and all disturbed land will be returned to an improved, post mining land use state or to its former or productive use and must indicate what such suitable productive uses the project site is capable of sustaining. After approved closure, San Miguel County will conduct inspections at least each five years for 100 years and any costs associated with inspections and remediation will be paid for by the Mining Company through the bond cited 4.2.2.

3.4.28.1. A soil classification report, if onsite topsoil is required to implement the reclamation plan, the report shall describe the soils within the project area property boundaries based on soil classifications published by the U.S. Soil Conservation Service. The soil classification report shall also describe how onsite topsoil will be salvaged and stored for use in reclamation.

3.4.28.2. A detailed description of the proposed post-mining land use of the project area property boundaries. The description of such use shall include the written approval of each property surface owner for the proposed use.

3.4.28.3. A cost estimate of such reclamation.

3.4.28.4. Description of the methods to be used.

3.4.28.5. A map showing the schedule and acres to be reclaimed.

3.4.28.6. A topographic map of the anticipated surface configuration after the completion of reclamation to include cross sections on one hundred (100) foot centers showing the existing ground and the proposed reclaimed surface.

3.4.28.7. A description of the potential for the generation of water contaminants after reclamation and how such contaminants will be eliminated.

3.4.28.8. A description of the measures for siting, designing, constructing and managing facilities to ensure the success of reclamation.

3.4.28.9. A mass balance table that shows for each phase and year of operation, the quantity of top soil salvaged and replaced, the quantity of top soil estimated to remain, the quantity of ore mined, and the quantity of waste generated and placed in each storage facility.

#### Section 3.4.29: Land and Environmental Suitability Analysis (LESA).

3.4.29.1. The zoning districts selected for Mining projects are located within highly unique and environmentally sensitive areas of the County. Within the Canadian River Basin are unique historical, cultural, and archaeological artifacts and sites; protected wildlife and vegetation habitats; corridors; streams, floodways, floodplains, groundwater aquifers and basins; mountainous slopes and hillsides; highly unusual, fragmented, and fractured sub-surface geological soils, rock, liquids and minerals susceptible to pollution of underground water reservoirs and aquifers; and traditional and historical Indian and community settlements, farms, and ranches, all combined with interspersed residential population growth, a poor transportation road network and limited or nonexistent fire, police, and emergency response services.

3.4.29.2. Land and Environmental Suitability Analysis: The applicant/operator shall prepare a Land and Environmental Suitability Analysis, based upon the factors set forth in Table 1 below, which shall describe areas within the same ownership of the applicant/operator, owner or lessee, that are unsuitable for mining activities.

Mining Unsuitability Factors: Table 1	
Factor 1	Farms/Ranches To Be Protected
1.1	Farm/Ranch size less than 40 acres
1.2	farm/Ranch size less than 40 acres to 100 acres
1.3	farm/ranch size less greater than 100 acres
Factor 2	Lands suitable for protecting native plant and animal species
2.1	Lands with high amphibian species richness
2.2	Lands with high reptilian species richness
2.3	Lands with high bird species richness
2.4	Lands with high mammal species richness
2.5	Lands with undisturbed natural grasslands, including short grass prairie
2.6	Lands with undisturbed Pinon-Juniper Woodlands
2.7	Lands with undisturbed forested areas
Factor 3	Lands suitable for Protecting Surface and groundwater quality
3.1	Lands proximal to natural springs
3.2	Lands proximal permanent water bodies
3.3	Lands proximal to drainage buffers
3.4	Lands within Earth Works Riparian (and wetlands) Inventory
3.5	Lands proximal to quaternary alluvium geology
3.6	Lands soils classified as excessively or somewhat excessively drained
3.7	Lands with reservoir alluvium geology
Factor 4	Lands with Important Physical Characteristics
4.1	Lands within the 100-year floodplain
4.2	Steep slopes (greater than 30%)
Factor 5	Areas of cultural, historical and archaeological importance
5.1	Lands proximal to recorded archaeological, historical, and paleontological sites of demonstrated or potential significance
5.2	Lands proximal to major Pre-Columbian pueblo sites and zones of high archaeological or paleontological potential
5.3	Lands proximal to areas of importance to Native American groups (traditional cultural properties)
Factor 6	Lands with scenic value
6.1	Scenic Highways
6.2	Scenic dirt roads
6.3	Lands within Delphi-based scenic landmarks, outcrops, peaks, gaps and geologic features
Factor 7	Lands unsuitable for mining
7.1	Lands proximal to community/public water system
7.2	Lands proximal to paved highway
7.3	Lands proximal to paved roadway



7.4	Lands proximal to fire station
7.5	Lands proximal to health care facilities
Factor 8	Land use compatibility
8.1	Identify lands proximal to designated conservation areas

3.4.29.3. Limited Mining Activity Areas: Based upon the LESA analysis of the Table 1 factors as applied to the mining zoned areas, the Planning and Zoning Supervisor shall classify the different areas of the applicant/operator’s lands in the same ownership in granting a CUP as:

3.4.29.3.1. High Sensitivity Areas (any application that contains 6-8 of the factors 1 through 8;

3.4.29.3.2. Moderate Sensitivity Areas (any application that contain 4 through 5 of the factors 1 through 8;

3.4.29.3.3. Low Sensitivity Areas (any application that contains 1 through 3 of the factors 1 through 8.

3.4.29.4. High Sensitivity Areas:

3.4.29.4.1. In High Sensitivity Areas mining activity will create severe public nuisance and land use effects and impacts upon the lands of the mining zoned districts. Mining activity will be regulated so that the area of land utilized for the project located in High Sensitive Areas does not exceed ten acres.

3.4.29.4.2. Analysis of the site plan, assessments, studies and reports, may require that less mining area be authorized based upon the unique requirements of the project area’s mitigation requirements to avoid specific adverse public nuisance and/or land use effects and impacts from mining locations.

3.4.29.4.3. Proposed mining projects within High Sensitivity Areas will be permitted to purchase development rights from other proposed mining projects that, after a beneficial use and value determination, would not be allowed any mining sites. For each 10 acre sending area transferring a development right (“TDR”), the High Sensitivity Area receiving the TDR will be permitted to add an additional 3 acre mining area.

3.4.29.5. Moderate Sensitivity Areas:

3.4.29.5.1. In the Moderate Sensitivity Areas mining activity will create moderate public nuisance and land use effects and impacts upon the lands of the mining zoned areas. Mining activity will be regulated so that the area of land does not exceed 40 acres.

3.4.29.5.2. The number of acres permitted under the LESA analysis is a maximum number. Analysis of the site plan, assessments, studies and reports, may require that less mining area be authorized based upon the unique requirements of the project area’s mitigation requirements to avoid specific adverse public nuisance and/or land use effects and impacts from mining activity.

3.4.29.5.3. Proposed mining facilities within Moderate Sensitivity Areas will be permitted to purchase development rights from other proposed mining facilities that after a beneficial use and value determination would not be allowed any mining sites. For each forty (40) acre sending area transferring a development right ("TDR"), the Moderate Sensitivity Area receiving the TDR will be permitted to add an additional 12 acre mining area.

3.4.29.6. Low Sensitivity Areas:

3.4.29.6.1. In the Low Sensitivity Areas mining activity will create lower intensity public nuisance and land use effects and impacts upon the lands of the mining zoned areas. Mining activity will be constrained so that the area of land does not authorize more than 640 acres.

3.4.29.6.2. The number acres permitted under the LESA analysis is a maximum number. Analysis of the additional site plan, assessments, studies and reports, may require that less mining area authorized based upon the unique project mitigation requirements to avoid adverse public nuisance effects and impacts from mining activity.

3.4.29.6.3. Proposed mining projects within Low Sensitivity Areas will be permitted to purchase development rights from proposed mining facilities that after a beneficial use and value determination would not be allowed any mining facilities. For each 640 acre sending area transferring a development right ("TDR"), the Low Sensitivity Area receiving the TDR will be permitted to add an additional 192 acres.

3.4.30. Adequate Public Facilities and Service Assessment

3.4.30.1. Purpose and Findings.

3.4.30.1.1. Mining projects may create a range of potential adverse effects and impacts on and off-site the project and shall be reviewed as if the greatest adverse effect and impact results. The review of adequacy of public facilities and services for the application for a CUP shall compare the capacity of public facilities and services to the maximum projected demand that may result from the proposed project based upon the maximum mining acreage in the project and relevant affected areas. The adequacy of roads and highways shall be considered in relation to the full weight load of trucks and tankers travelling to and from the project sites. Nothing in this section authorizes a development approval that would otherwise be inconsistent with the Comprehensive Plan or any Regional or Area Plan.

3.4.30.1.2. An adequate public facilities and services assessment ("APFA") ties development approval of an application for a CUP to the availability of infrastructure and public service capacity measured by adopted levels of service (LOS) as shown in Table 2 below, or in the Comprehensive Plan or in any subsequently adopted CIP, whichever has greater capacity requirements. The APFA shall be used to approve, approve with conditions and mitigation, or deny CUP applications. Approval with conditions may include timing, phasing and sequencing the mining project based on availability of public facilities and public services as shown in Table 2 below, the Comprehensive Plan or in any subsequently adopted CIP.

3.4.30.2. An APFA is required prior to consideration by the Board of an application for a Conditional Use Permit.

3.4.30.2.1. Adequate public facilities and services (“APF”) include water, stormwater and liquid material management and detention, police, emergency response services, fire protection, solid waste, schools, hospitals and roads.

3.4.30.2.2. Levels of service shall be utilized as shown in Table 2 below, or in the Comprehensive Plan, or any adopted CIP, whichever has greater requirements.

3.4.30.2.3. When determining whether adequate capacity exists, both existing and fully funded and prioritized future facilities and service capacities are counted. Where a CIP has been adopted, the priorities for future facilities and services as shown in the CIP shall be utilized.

3.4.30.2.4. When a mining project is reviewed, the amount of capacity it utilizes must be debited against available capacity for all other approved but unbuilt future projects.

3.4.30.2.5. If the LOS is not met, development approval shall either be denied or approved with the condition that the development shall be timed and sequenced so that future stages of the project are approved only when adequate public facilities and services are available. Mining projects are given the option to voluntarily advance capacity through a development agreement in order to obtain meet the APFA requirements in this section.

#### 3.4.30.3. Determination of Adequacy of Public Facilities and Services.

3.4.30.3.1 The application meets APF standards and requirements where public facilities and services are available at the adopted LOS as shown in Table 2 below, or in the Comprehensive Plan, or any adopted CIP, whichever has greater requirements.

3.4.30.3.2 The application shall be denied where adequate public facilities and services are not available at the adopted LOS; or

3.4.30.3.3 The application may be approved conditioned to timing, sequencing and phasing of development of mining facilities until all public facilities and services are available for the year the CIP shows that facilities and services will be built and available if public facilities and services in the impact area are not presently adequate to meet the adopted LOS for the entire mining project, in the same ownership, consistent with the requirements of Table 2 below.

3.4.30.4. Scope of Adequate Public Facilities and Services Requirement. A determination of adequacy of public facilities and services for a mining project shall find that:

3.4.30.4.1. Public facilities and services are available at the time of issuance of a development order approving the application for a CUP; and

3.4.30.4.2. Public facilities and services are deemed to be available at all stages of the development approval process through approval of the CUP, Grading and Building Permits and the Certificate of Completion. Availability of facilities and services, present

and future, shall be assured for all future permitting processes through a development agreement entered into between the applicant and the County.

3.4.30.5. Duration. A development order determining that public facilities and services are adequate is valid until the earlier of one of the following:

3.4.30.5.1. The expiration of the development order granting CUP approval, or of any concomitant development agreement; or

3.4.30.5.2. If no expiration period is provided in the development order or development agreement, the determination expires unless construction commences within two years after final approval of the last ministerial development approval; and on at least 25 percent of all of the mining area within three years after approval.

3.4.30.6. Advancement of Public Facilities and Services Capacity. In order to avoid denial or phasing of the mining facility under the APF standards and requirements, the applicant may voluntarily propose, through entering into a development agreement with the County, to construct or to secure funding for the public facilities and services necessary to provide capacity to accommodate the proposed development for the life of the project at the adopted LOS and at the time that the impact of the development will occur as an alternative to the denial or deferral of development consistent with the requirements of this section. Such development agreement may require an applicant to pay more than its roughly proportional share of infrastructure needs generated by the proposed mining facility subject to subsequent reimbursement by subsequent mining projects sharing the infrastructure provided by the applicant.

3.4.30.7. Standards and Requirements for Advancement. No advancement of capacity for public facilities and services needed to avoid a deterioration in the adopted LOSs shall be accepted by the County unless:

3.4.30.7.1 The proposed public facility meets the level of service established in Table 2, or identified in the Comprehensive Plan or as shown in prioritized and funded capital improvement shown in any future adopted CIP; or

3.4.30.7.2 Appropriate conditions shall be attached to the CUP development approval included to ensure that the applicant will obtain any necessary approvals for construction of the public facilities from any agency or public improvement or assessment district, other than the County.

3.4.30.8. Construction Commitment. The commitment for construction or advancement of public facilities and services prior to the CUP approval shall be included as a condition of the development approval. The commitment shall contain, at a minimum, the following:

3.4.30.8.1 For planned capital improvements or services, either a finding that the planned capital improvement or service is included within the CIP for the year in which construction of the project is scheduled or the applicant commits to advancing the facilities and services;

3.4.30.8.2 An estimate of the total financial resources needed to construct or expand the proposed public facilities and services, and a description of the incremental cost involved

3.4.30.8.3 A schedule for commencement and completion of construction or expansion of the planned capital improvement and service with specific target dates for completion;

3.4.30.8.4 A statement that the planned capital improvement and service is consistent with the General Plan, any Area Plan and the County's CIP;

3.4.30.8.5 A statement that the planned capital improvement and service is consistent with any ordinances relating to the construction and design of the public facility and service;

3.4.30.8.6 If the planned capital improvement and public service proffered by the applicant will provide capacity exceeding the demand generated by the proposed mining project, but is needed to meet past deficiencies reflected in the overall capacity needed for the project, reimbursement shall be offered to the applicant for the pro rata cost of the excess capacity for the year in which the capital facility or service would have been built as shown in the prioritized CIP or from any funds paid by subsequent mining development projects; and

3.4.30.8.7 The construction or funding of only a portion of a public facility or service by the applicant needed to meet the adopted LOS shall be approved only where the mining project will be able to provide the capacity needed to meet the adopted LOS for a portion of the project; and the construction or funding of the balance of the public facility that is needed to meet the adopted LOS will be generated from other sources, including but not limited to: public improvement or assessment district assessment, rates, taxes or charges; and/or provision in a development agreement. Availability of these alternative sources shall constitute a condition of approval for the financing of the on and off-site infrastructure and public services.

3.4.30.9. Annual Financing of Adequate Public Facilities and Services. The applicant for a mining CUP shall provide a surety mechanism guaranteeing annual funding of all required adequate public facility and services, including maintenance and repair, the need for which is generated by the mining project. Such annual funding shall be provided for in the development agreement to be entered into between the County and the applicant as a condition of development approval of the mining CUP. If additional mining projects are approved, annual funding contribution shall be apportioned among all projects so approved based on the pro-rata need generated by each project.

3.4.30.10. Methodology. No determination as to compliance with this section shall be approved by the Board unless adequate public facilities and services are available at the adopted level of service set forth in Table 2 below, or as shown in the Comprehensive Plan or any future adopted CIP, Adequate public fire, police or emergency response times are calculated for the distance for the distance between the mining facility and the fire, police or emergency response facility.

<b>Table 2: Facilities &amp; Services</b>	<b>Level of Service (LOS) per 1,000 Residents Including Mining Facilities</b>
<b>Fire Department</b>	
Vehicles (Number)	1.55
Building (GSF)	1,977
Personnel (Number, Career & Volunteer)	4.27
Average Response Time	10 min.
Fire Station Service Area	4 miles
Emergency Response Time	10min.
ISO Rating	7/9
<b>Sheriff's Department</b>	
Vehicles (Number)	1.82
Building (GSF)	91
Personnel (Number, Career)	1.44
Average Response Time:	10min.
<b>Roads</b>	
Road Capacity	LOS "C"
Road Design	See Subdivision Regulations
<b>Affordable Housing</b>	
Jobs/Housing Balance	Provide Housing for all Employees with less than 100% of County median family income

3.4.30.10.1. Level of Service Standards. Compliance with LOS standards and requirements shall be measured for each public facility and service set forth in Column (A) of Table 2 in accordance with the corresponding standards and requirements set forth in Column (B) of Table 2.

3.4.30.10.2. Adequacy of Public Facilities. Public facilities and services shall be adequate if it is demonstrated that they have available capacity at the adopted LOS, taking into account the LOS established in Table 2, identified in the Comprehensive Plan or as shown in prioritized and funded capital improvement shown in any future adopted CIP; whichever LOS is greater in order to accommodate the demand generated by the proposed mining project and other residential and non-residential development approvals in accordance with the following calculation methodology:

3.4.30.10.2.1. Calculate total capacity by adding together the total capacity of each public facility and service.

3.4.30.10.2.2. Calculate available capacity by subtracting from the total capacity the sum of: the demand for each public facility and service created by existing mining

projects; and the demand for each public facility created by the anticipated completion of the proposed mining project under consideration for determination.

3.4.30.11. Mitigation. The APFA shall consider mitigation measures for alleviating public facility and service inadequacy which shall include:

3.4.30.11.1. Phasing, timing and sequencing the CUP project so that no CUP or subsequent ministerial development orders are issued before roads, fire, police, water availability, sewer and water delivery systems, emergency service or stormwater drainage facilities needed to achieve the LOS standard are constructed and operable; and

3.4.30.11.2. Measures that allow the road network to function more efficiently by adding sufficient capacity to the off-site road system. Such mitigation measures may include, but are not limited to: surfacing, re-surfacing and/or widening the pavement; providing turn lanes, median islands, access controls, or traffic signalization, road width and turnaround access for fire, police and EMS vehicles. All private roads must meet the same standards and requirements as provided for public roads in the San Miguel Comprehensive Plan. Private roads will only be permitted if the applicant enters into a development agreement for which construction, operation, maintenance standards, requirements and financial terms will be set out in the development agreement.

3.4.30.12. Fire, Police, and Emergency Services Needed fire flow shall be determined in accordance with the Insurance Services Office, "Fire Suppression Rating Schedule" (2010 edition). In determining the effect and impact of the proposed development on achieving fire, police, and emergency service LOS, the Board shall take into consideration response times, and the number and location of available apparatus and fire, police, and emergency service stations that are manned by full time professional service personnel. Calculation of response times shall include the time it takes volunteer emergency personnel to get to the station. Adequacy of fire protection shall also take into account the need for special equipment to handle chemical fires and explosions. All mining vehicles shall be clearly marked with a standard flag describing the vehicle as accessory to a mining project.

3.4.30.13. Availability of Usable Water Supplies.

3.4.30.13.1 Mining CUP applications shall be analyzed with respect to the availability of adequate usable water supplies, and shall be determined pursuant to the following information obtained from the required Water Availability Assessment to determine:

3.4.30.13.1.1. System capacity;

3.4.30.13.1.2. Capacity of mining area or other source of raw water supply;

3.4.30.13.1.3. Historical and last three (3) year average flow of surface water;

3.4.30.13.1.4. Number of hook-ups and the estimated usable water demand per hook up; and

3.4.30.13.1.5. Number of hook-ups for which contractual commitments have been made.

3.4.30.13.2. The CUP development order shall provide findings based on substantial evidence that the project is within a water service area and that there is available usable water capacity to serve the mining project as proposed. If the ability of a provider to serve a proposed development is contingent upon planned facility expansion in accordance with an adopted future CIP, details regarding such planned improvements shall be submitted and the developer shall advance the construction of the improvement in accordance with the provisions of section 2115.6.

3.4.30.13.3. The determinations in this section shall be made a part of the Water Availability Assessment.

#### SECTION 4: FINANCIAL ASSURANCE.

Prior to the issuance of a conditional use permit (CUP), San Miguel County shall require the applicant/operator to provide financial assurances acceptable to the County.

##### 4.1 General Financial Assurance and Insurance.

4.1.1. Kinds of Assurance. Acceptable financial assurances may include: A bond in the principal sum of such amount as may be determined by the Board, but not less than Fifty Thousand Dollars (\$50,000), in an amount representing the actual cost to remediate the site of the mining project after abandonment less the amount of any agreement entered into by and between the applicant/operator and a surface owner pursuant to the Surface Owners' Protection Act. A bond shall be executed by a reliable insurance company authorized to do business in the State of New Mexico, as surety, and the applicant/operator as principal, running to the County for the benefit of the County and all persons concerned, under the condition that the applicant/operator shall comply with the terms and conditions of the development order and accompanying development agreement granting the CUP; or an irrevocable letter of credit issued by a federally-insured financial institution located within the State of New Mexico, backed by cash on deposit at the institution representing the full value of the amount of the letter of credit. The amount shall be set as may be determined by the Board, but in no event shall be for a sum less than Fifty Thousand Dollars (\$50,000). A letter of credit shall be for a term of not less than five (5) years and shall be automatically renewed on similar terms unless the issuer notifies the County in writing of non-renewal at least ninety (90) days prior to the end of the five (5) year period.

4.1.2. Effectivity of Assurances. All financial assurances pursuant to this section shall become effective on or before the date that documentation of such financial assurance is filed with the County.

4.1.3. Release of Assurances. The County shall release the financial assurance deposited pursuant to this section: upon written request of the applicant/operator if the



mine has been abandoned and the location restored and/or remediated pursuant to the terms of this Ordinance; if the mining project has ceased operation and has been similarly restored and/or remediated pursuant to this Ordinance; or if a change of applicant/operator has been approved pursuant to this Ordinance and a new CUP development order has been granted. Release of financial assurance shall be consistent with the long-term provisions of this Ordinance.

4.1.4. **Comprehensive General Liability Insurance.** In addition to the required financial assurance, the applicant/operator shall submit with the application for the CUP, a policy or policies of commercial general liability insurance, including contractual liability, covering bodily injuries and property damage that names the owner, lessee, and applicant/operator as the insureds and the County as an additional insured, issued by an insurance company licensed to do business in the State of New Mexico. The insurance policy must be in a form acceptable to the County and shall further provide a limit of liability of not less than Ten Million Dollars (\$10,000,000) per occurrence. Said policy or policies shall provide that they may not be cancelled without written notice to the County of at least ninety (90) days prior to the effective date of such cancellation.

4.1.5. **Pollution Liability Insurance.** The applicant/operator shall submit, with the application for the CUP, a pollution insurance policy or policies that provide standard pollution liability insurance with a coverage of not less than \$10,000,000 per occurrence, issued by an insurance company authorized to do business in the State, and that names the owner, lessee, and applicant/operator as insureds. Such insurance policy shall be maintained in full force and effect from the date the application is submitted and continuing in force until 10 years after the mine is abandoned in accordance with the applicable State statutes, EMNRD regulations and this Ordinance. A separate policy is not required if pollution coverage is included as a part of the comprehensive general liability insurance policy required by section 4.1.4. The insurance policy or policies shall provide that they may not be cancelled without written notice to the County at least ninety (90) days prior to the effective date of such cancellation.

4.1.6. **Self-Insurance.** An applicant/operator offering a plan of self-insurance shall provide a certificate of insurance with coverage of not less than \$10,000,000.00 per occurrence as required by this section issued pursuant to such plan provided that such plan has been approved by the Public Regulation Commission of the State of New Mexico and the County's Risk Manager. Pollution Liability Insurance as required in section 4.1.5 shall be required to be in force for a period of 10 years after abandonment of the mining project.

4.2. **County and State Road Assurances:** Should the County determine that the project will increase the burden or cause deterioration to any County or State roads, including related infrastructure such as drainage structures, water crossing structures, culverts, guard railing, etc., impacted by project related use due to increase in heavy equipment and vehicle traffic, the applicant/operator of the project shall be required to undertake the cost of improvements or repairs to the County or State roads which are

shown to be caused by the project related use, such improvements or repairs to comply with the road standards provided under San Miguel County Resolution No. 12-13-2002-PW, County Road Standards. Crosscheck resolution number.

4.2.1. The applicant/operator shall deposit into and maintain an irrevocable road damage trust an amount determined by the County equal to or greater than the cost to construct, improve, expand, and maintain all County roads affected by the project. The amount deposited shall be determined by the County's on-call engineer's estimate of probable cost for repairs and improvements based upon estimated daily traffic flow and type of equipment and vehicles used by the project, the cost of preparing such estimate of probable cost to be paid by the applicant/operator. The County shall be the sole beneficiary of the trust and shall name the trust administrator who shall receive the initial deposit.

4.3. Remediation Assurances: It is understood that a period of several years may be necessary and required before determination can be made that reclamation, closure and post closure of the affected lands has been satisfactorily completed. The performance and the completion of reclamation, closure and post closure requirements, as well as periodic or other ongoing environmental protection measures shall be assured by an irrevocable financial guaranty in a financial manner acceptable to the County.

4.3.1. The financial guaranty shall be provided by a company authorized to do business in the State of New Mexico and that is enforceable by San Miguel County in the Fourth Judicial District Court of the State of New Mexico.

4.3.2. The amount of the financial guaranty shall be no less than one hundred twenty-five percent (125%) of the total cost of reclamation, closure and post closure, conduct monitoring and operate and maintain all required and ongoing environmental protection systems and measures during operation and after closure for a one hundred (100) year period after such closure, to remediate any contamination, damage, and impacts arising from or related to the project as well as any legacy contamination to the extent required in the approved conditional use permit. Estimated costs shall be prepared by a professional engineer licensed to conduct business in the State of New Mexico, the cost of such estimate to be paid by the applicant/operator. The financial guaranty shall include the cost associated with hiring contractors to conduct remediation, reclamation and closure.

4.3.3. The County may increase the amount of the financial guaranty in accordance with the appropriate consumer price index, as provided in accordance with an updated cost estimate prepared by a professional engineer licensed to conduct business in the State of New Mexico, the cost of such updated cost estimate to be paid by the applicant/operator. The updated cost estimate shall be provided to the County within ninety (90) days of written request by the County. The applicant/operator shall provide the increased amount of financial guaranty within sixty (60) days after the County provides written notice to the applicant/operator that such additional amount is required.

4.3.4. It is understood that as reclamation, closure and post closure requirements are accomplished, the amount of the financial guaranty may be reduced with the approval of the County so that it reflects the then current estimated cost of the remaining reclamation, closure and post closure requirements. Such reduction in the amount must be requested in writing by the applicant/operator.

4.3.5. The financial guaranty shall be executed under agreement between the County and the applicant/operator separate from the approved conditional use permit and shall be properly recorded in the office of the County Clerk of San Miguel County.

#### 4.4. Existing Financial Assurances:

4.4.1. Non-duplication: The County shall accept and shall duplicate the financial assurance provided by the applicant/operator for the same conditional use permit under federal or state law, provided, however, if the County determines that the form of such other financial assurance is insufficiently secure, inadequate in amount, is not enforceable in San Miguel County, or does not guaranty the performance of the requirements in regard to reclamation, closure and post closure, the County may require a supplemental guaranty be provided to the County in such amount as provided under 4.3.2 herein.

4.4.2. The applicant/operator shall deposit into and maintain an irrevocable road damage trust an amount determined by the County equal to or greater than the cost to construct, improve, expand, and maintain all County roads affected by the project. The amount deposited shall be determined by the County's on-call engineer's estimate of probable cost for repairs and improvements based upon estimated daily traffic flow and type of equipment and vehicles used by the project, the cost of preparing such estimate of probable cost to be paid by the applicant. The County shall be the sole beneficiary of the trust and shall name the trust administrator who shall receive the initial deposit.

4.4.3 General Assurances: It is understood that a period of several years may be necessary and required before determination can be made that reclamation, closure and post closure of the affected lands has been satisfactorily completed. The performance and the completion of reclamation, closure and post closure requirements, as well as periodic or other ongoing environmental protection measures shall be assured by an irrevocable financial guaranty in a financial manner acceptable to the County.

4.4.4. The financial guaranty shall be provided by a company authorized to do business in the State of New Mexico and that is enforceable by San Miguel County in the Fourth Judicial District Court of the State of New Mexico.

4.4.5. The amount of the financial guaranty shall be no less than one hundred twenty-five percent (125%) of the total cost of reclamation, closure and post closure, conduct monitoring and operate and maintain all required and ongoing environmental

protection systems and measures during operation and after closure for a one hundred (100) year period after such closure, to remediate any contamination, damage, and impacts arising from or related to the project as well as any legacy contamination to the extent required in the approved conditional use permit. Estimated costs shall be prepared by a professional engineer licensed to conduct business in the State of New Mexico, the cost of such estimate to be paid by the applicant/operator. The financial guaranty shall include the cost associated with hiring contractors to conduct remediation, reclamation and closure. The County shall perform inspections as specified in 3.4.28.

4.4.6. The County may increase the amount of the financial guaranty in accordance with the appropriate consumer price index, as provided in accordance with an updated cost estimate prepared by a professional engineer licensed to conduct business in the State of New Mexico, the cost of such updated cost estimate to be paid by the applicant/operator. The updated cost estimate shall be provided to the County within ninety (90) days of written request by the County. The applicant/operator shall provide the increased amount of financial guaranty within sixty (60) days after the County provides written notice to the applicant/operator that such additional amount is required.

4.4.7. It is understood that as reclamation, closure and post closure requirements are accomplished, the amount of the financial guaranty may be reduced with the approval of the County so that it reflects the then current estimated cost of the remaining reclamation, closure and post closure requirements. Such reduction in the amount must be requested in writing by the applicant/operator.

4.4.8. The financial guaranty shall be executed under agreement between the County and the applicant/operator separate from the approved conditional use permit and shall be properly recorded in the office of the County Clerk of San Miguel County.

#### 4.4.9 Existing Financial Assurances:

Non-duplication: The County shall accept and shall duplicate the financial assurance provided by the applicant/operator for the same conditional use permit under federal or state law, provided, however, if the County determines that the form of such other financial assurance is insufficiently secure, inadequate in amount, is not enforceable in San Miguel County, or does not guaranty the performance of the requirements in regard to reclamation, closure and post closure, the County may require a supplemental guaranty be provided to the County in such amount as provided under 4.2.2 herein.

### SECTION 5: CESSATION OF OPERATIONS – TEMPORARY.

The applicant/operator shall comply with this section if it temporary cessation of the project occurs for an unplanned period of time greater than five (5) calendar days, provided that the applicant/operator shall comply with all other requirements of this

Ordinance if the County determines that the applicant/operator does not intend to continue operations within a reasonable period of time.

5.1. Not later than twenty-four (24) hours after cessation, the applicant/operator shall notify the County in writing of the temporary cessation, the reason for such cessation, estimated duration of cessation, a location map of the specific area of cessation, a short narrative statement which includes the exact acreage or square footage if less than one (1) acre, of the affected area and the date of the estimated resumption of activity. The written notification to the County shall be a notice of temporary cessation or notice of intent to suspend operation. The State of New Mexico Energy Minerals and Natural Resources Department Form 12, Notice of Intent to Suspend Operations, can be used with the required information as per this part 5.1.

5.2. The applicant/operator shall post said notice at the main entrance of the project operations. The notice shall be laminated so as to be weather resistant. The notice shall be sent by certified mail to all residents, landowners and lessees, owners and lessees of non-residential structures, and organizations that have registered with applicant/operator for such notification, that are located within one (1) mile radius of the property boundaries of the project. Record of such notices shall be kept by the applicant/operator and be made available to the County for inspection.

5.3. Temporary cessation shall not relieve the applicant/operator of any obligation to comply with any conditions or requirements of the conditional use permit or any supplemental agreements by and between the County and the applicant/operator. All structures and facilities shall be maintained. All monitoring and reporting requirements and applicable standards shall be complied with and shall continue.

5.4. The operation shall be secured to prevent unauthorized access during the cessation period.

5.5. Notice of re-commencing of operations after temporary cessation shall be given as provided under part 5.2 herein.

#### SECTION 6: PERMANENT CESSATION AND RENEWAL OF PERMIT.

6.1. Should cessation of the project occur for a continuous period of one year (1) or more than twice in a three (3) year period, the project shall not recommence until such time as a new conditional use permit is issued in compliance with the requirements of this Ordinance.

6.2. If the County determines that the project has permanently ceased, the applicant/operator shall comply with the closure and reclamation requirements of the conditional use permit. The County shall issue proper notice to the applicant/operator that a determination has been made in regard to permanent cessation and closure and reclamation must begin.

6.3. Should the applicant/operator fail to properly notify the County of temporary cessation of the project and cessation of the project has occurred, the County shall consider the project to be in permanent cessation status. County shall then notify applicant/operator of such permanent cessation status and advise applicant/operator that closure activity should begin.

## SECTION 7: GENERAL REQUIREMENTS.

7.1. Assignment or Transfer of Conditional Use Permit: A conditional use permit shall not be assigned or transferred by the applicant/operator to any other applicant/operator without the approval of the Board of County Commissioners. An applicant/operator wishing to transfer its conditional use permit must submit, in writing, to the County Manager or Planning and Zoning Supervisor, a request to transfer the conditional use permit, which request must state the name, address and telephone number of the proposed new applicant/operator to include all relevant background information of such proposed new applicant/operator. The written request must demonstrate the following:

7.1.1. That all financial guarantees provided by and agreed to by the current applicant/operator are fully assignable and transferable to the proposed new applicant/operator, or new comparable financial guaranty can be obtained by the proposed new applicant/operator.

7.1.2. All state and federal approvals have been obtained.

7.1.3. All legal rights of entry and use of the property have been obtained and are properly recorded in the office of the San Miguel County Clerk.

7.1.4. The proposed new applicant/operator must be able to certify to the County that it has a history of compliance with any and all state's regulations in the United States and federal regulations and with environmental regulations as relate to exploration, mining and processing.

7.1.5. Qualifying data: Simply transferring the conditional use permit to a new applicant/operator is not to be taken as an indication that such proposed new applicant/operator has the capability to comply with the requirements of this ordinance. The proposed new applicant/operator shall submit all qualifying data and application requirements as provided in this ordinance.

7.2. Protected Zones: Mining facilities other than roadways may not be placed in Protected Zones. Protected Zones in San Miguel County include:

7.2.1 An area of land and dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means. This includes biodiversity, conservation, and

protection of watersheds, soils, coastlines, safeguarding cultural assets, and homelands for indigenous people.

7.2.2 The watersheds of reservoirs and perennially running streams and their tributaries or 10 miles from reservoirs and perennial running streams or their tributaries, whichever is smaller.

7.2.3 Lands within two miles of Native American tribal lands

7.3 Accident Reporting: The applicant/operator shall report all spills and accidents to the Zoning Administrator who shall place such reports in a publicly accessible database.

**SECTION 8: APPROVAL PROCESS.** The County will observe the following procedures for review of the submitted application.

8.1. Technical Review: The County may contract with the appropriate professional engineer(s) for the purpose of providing technical assistance to the County for the review of submitted applications for deficiencies. The technical review fee paid by the applicant/operator shall be used solely to off-set the costs of such professional engineer(s). The County shall maintain adequate and proper records of such technical review and all expenditures incurred for such technical review and will make such records available for inspection by the applicant/operator upon request.

8.1.1. A technical review fee is required as per Section 3 Application Procedure, Part 3.2, and is a minimum required fee at time of application. Should the cost of technical review exceed the minimum required fee, County will inform the applicant/operator of such additional costs and request reimbursement from applicant/operator. Application will not be considered complete until said reimbursement is received by County from the applicant/operator.

8.2. Review: Upon receipt of the application, fees and supporting documentation, the Planning and Zoning Division shall perform an administrative and a technical review of the application and all materials promptly in order to determine if the application is complete and contains no deficiencies. If there are no deficiencies or if additional information is not required and the application is determined complete, the County shall advise the applicant/operator, in writing, that the application is complete.

8.3. Incomplete Application: If the Planning and Zoning Division, or the County's professional engineer upon consultation with the County, determine that the application is incomplete or additional information is required in regard to any portion of the application, the applicant/operator shall be notified in writing of such deficiencies or additional information required and be given sixty (60) days to correct the deficiencies or provide such additional information. If after sixty (60) days the application remains incomplete or such requested additional information is not provided, the application will be voided and the application fees will be retained by the County. Any portion of the

technical review fee not utilized by the County will be returned to the applicant/operator.

#### 8.4. Transfer of Development Rights (“TDR”).

8.4.1. The County herein adopts these provisions for use of TDRs, in the manner prescribed in this section.

8.4.2. The purposes of this section are to authorize the owner of mining estates or mining leaseholds to seek relief pursuant to a beneficial use and value determination through the transfer of one or more one or more rights to develop oil or gas drill sites and pads from a sending parcel to a receiving parcel to:

8.4.2.1. Conserve agriculture, ranch, open space, forestry and environmentally sensitive lands;

8.4.2.2. Protect lands and structures of cultural, architectural, and historic significance;

8.4.2.3. Ensure that the owners of land that is so preserved, conserved, or protected may make reasonable use of their property rights by transferring their right to develop to other mining estates and leases that can make use of it;

8.4.2.4. Provide a mechanism whereby drill site development rights may be reliably transferred;

8.4.2.5. Ensure that development rights are transferred to mining fee simple estates and leases that have received development approvals for a mining CUP;

8.4.2.6. Authorize the County to create a TDR Bank, whereby mining development rights may be purchased and conveyed by the County, in order to stabilize the market in development rights and to regulate or control the development property that the County intends to protect;

8.4.2.7. Authorize transfers or donations of development rights to the County or the TDR bank.

8.5. Development Agreements. The County and the applicant/operator (including but not limited to, applicants, operators, owners, lessees of subsurface mining estates or leases) shall enter into and adopt a development agreement, in order to implement the requirements and performance standards of Article II, and all conditions and mitigation measures incorporated in the CUP development order approving, or approving with conditions and mitigation measures the application for the CUP. The Development Agreement shall be fully negotiable as to all of its terms by all the parties, provided that failure of the applicant/operator, the applicant/operator and the owners and lessees of subsurface mineral estates and/or mining lessees to consent to those terms of the Development Agreement that require compliance with the mandatory provisions of Article II shall be considered by the Board to be a termination of the CUP application. Such Development Agreement, with regard to the provision of adequate public facilities may be entered into with other governmental units, public improvement districts and public or private utilities with jurisdiction, pursuant to this section. The Development



Agreement shall be approved by the Board concurrently with the final development order granting approval, or conditional approval of the CUP application. A development agreement shall be entered into and adopted only pursuant to this Section and shall have the force and effect of a land development regulation.

8.5.1. Except as provided expressly to the contrary in a development agreement, development and use of the mining property that is the subject of a development agreement shall occur according to the terms, conditions, and other provisions of the agreement, notwithstanding inconsistent land development code regulations and amendments.

8.5.2. Except where the development agreement does not include any term, condition, or other provision concerning a matter that is regulated by one or more land development code regulations as amended, then those land development code regulations shall apply.

8.5.3. A development agreement will not take effect until it is recorded, by either of the parties to the development agreement, with the County Clerk within thirty (30) days after its adoption.

8.5.4. A development agreement may contain terms that:

8.5.4.1. Grant vested rights to the applicant/operator, owners, lessees of subsurface mining estates or leases for the term of the CUP and subsequent grading and building permits and certificates of completions, vesting the approvals from any subsequent amendment of Article II, Ordinance 86-2, or other County ordinances and regulations, the terms of which abrogate rights conferred by the CUP, the development agreement, and subsequent building and grading permits and certificates of completion. Vesting shall also apply for all phases of multiphase projects where the applicant/operator will be seeking supplemental CUPs, building and grading permits, and certificates of completion, over a multiple year period not to exceed fifteen (15) years in duration. Vesting, however, may be abrogated by the adoption of subsequent state or federal statutes and regulations that constitute significant measures providing for the protection of health or safety.

8.5.4.2. Grant consent to the County for the requirement that the applicant/operator, owners, lessees and operator of subsurface mining estates or leases pay monies or dedicate land for the advancement of adequate public facilities that relate to past deficiencies or public facility or service needs that are not proportional to the needs generated by the mining project, provided the County shall endeavor in good faith to reimburse the applicant/operator, owners, lessees of subsurface mining estates or leases from exactions, dedications, impact fees, public improvement district assessments and public or private utility charges, or provisions of reimbursement contained in development agreements imposed on subsequent mining projects sharing the facilities and services that were advanced.

8.5.5. A development agreement shall be:

8.5.5.1. Consistent with the County Comprehensive Plan iand any applicable Regional, or Area Plan, including but not limited to, a Canadian River Basin Plan.

8.5.5.2. Adopted by an ordinance of the Board after notice and hearing as required for the adoption of amendments to Ordinance 86-2.

8.5.5.3. Enforceable by the County and other governmental units, party to the development agreement, in the same manner as enforcement of the provisions of Ordinance 86-2.

8.5.5.4. Enforceable by the owners of subsurface mineral estates and mining lessees who are party to the development agreement and their successors in interest by civil action against the local government or other parties as may be necessary, except that if an enforcement action upon the development agreement by the County has previously been commenced and is still pending, any and all enforcement or disputes shall be determined in the enforcement action.

8.5.5.5. Written and include the following terms:

8.5.5.5.1. The names of all parties to the development agreement.

8.5.5.5.2. A description of the mining project which is the subject of the development agreement.

8.5.5.5.3. A statement detailing how the development agreement is consistent with the Comprehensive Plan and any applicable Regional or Area Plan, including but not limited to a Canadian River Basin Plan.

8.5.5.5.4. The effective date of the development agreement and the duration of the development agreement, which shall not exceed ten (10) years except where the development agreement authorizes phased development, the duration of the agreement shall not exceed fifteen (15) years.

8.5.5.5.5. A development agreement, upon consent of all parties, shall contain a mediation or arbitration procedure by which disputes concerning the development agreement may be decided. The decisions reached under such procedure shall be considered land-use decisions.

8.5.5.5.6. A development agreement may be modified by:

8.5.5.5.6.6.1. The mutual written consent of all parties thereto, with the consent of the Board by adoption of an ordinance after a public hearing; or

8.5.5.5.6.6.2. The County if it finds in writing, after a public hearing with proper notice, that a hazard, unknown to the County at the time the development agreement was adopted, exists on or near the property of the mining project that is the subject of the development agreement that would endanger the public health, safety or general welfare if development were to commence or proceed pursuant to the development agreement.

8.6. Beneficial Use and Value Determination. The purpose of these provisions is to ensure that a denial or conditional approval of a CUP application does not result in an unconstitutional deprivation of private property. The intent of the Board is to provide through this section an administrative variance process to resolve any claims that the application of Article II has created as applied unconstitutional taking of property under

the U.S and New Mexico Constitutions. This section is not intended to provide relief related to regulations or actions promulgated or undertaken by agencies other than the County.

8.6.1. Contents of Application. An application for a beneficial use and or value determination shall be made to the County by filing an application together with an application fee as established by the Board within one year subsequent to the Board's final development order with respect to denying or modifying an application for a mining CUP. The application shall be submitted in a form established by the Planning and Zoning Supervisor and shall include the following:

8.6.1.1. The name, address, and telephone number of the applicant/operator; the name, address and telephone number of the owner of the subsurface mineral estate and/or the mining lessee, if applicable.

8.6.1.2. A legal description and the real estate or parcel number for the subsurface and surface property in the same ownership.

8.6.1.3. If a person other than the applicant/operator is requesting relief pursuant to this division, a notarized letter of agency from the owner of the subsurface mineral estate and/or mining lessee ("Owner") authorizing the person to represent them with respect to filing the application. The owner or lessee will be bound by the representations, obligations, and agreements made by the owner's or lessee's agents in the course of the beneficial use and value determination process.

8.6.1.4. Date of acquisition, offers to purchase, and attempts to sell. Documentation of the date of acquisition of all land acquired in the same ownership, the price incurred to acquire the property, the date and amount of any offers by any person, corporation, governmental entity, or association to acquire the property, and any attempts by the owner or lessee to sell or assign the subsurface mineral estate or mining lease, or to purchase or sell transferable development rights.

8.6.1.5. A statement describing the land development code regulation, general or area plan policy, or other final developmental order or action of the County, which the applicant/operator believes necessitates relief under this Section, including the effective date of the land development code regulation or general or area plan policy and/or the date of the final action by the County related to the property. The application shall identify the land development code regulations or general plan or area plan policies of the County by section and number.

8.6.1.6. A description of the property's physical and environmental features, total acreage, and use at the time of acquisition, on the effective date of the development order and presently.

8.6.1.7. Evidence of any investments made to improve the property, the date the improvements were made, and the cost of the improvements.

8.6.1.8. A description of the type and extent of land uses allowed on the surface and subsurface of property, from the time the applicant/operator acquired the property until the date of application under this section, including allowable density, permitted and

special uses, transfer of development rights permitted, opens space ratios, and other factors affecting the property's development potential.

8.6.1.9. A statement regarding the relief requested by the owner.

8.6.1.10. Maps shall be included in the application, which show the property presently, at the time of acquisition, and upon the effective date of the development order of the County the applicant/operator asserts requires relief under this Section. Maps shall indicate the land use designation, future land use designation, aerial photography, and environmental conditions and habitat, cultural, historical or archaeological artifacts or sites on the property.

8.6.1.11. A description of all efforts to seek approval to develop the property for mining exploration, or for any other use, including dates of applications; names of the local, state, or federal agencies; nature of approvals, denials, or appeals sought; dispositions; and the dates of disposition.

8.6.1.12. Evidence of whether the applicant/operator has received necessary approvals from governmental agencies other than the County, which are required in order to undertake development of the property for mining exploration and drilling, or for other uses.

8.6.1.13. The signature of owner(s), lessee(s) and agent(s), attesting to the accuracy of the statements and representations made in the application.

8.6.1.14. Appraisals, studies, documentary evidence, or additional materials supporting the applicant/operator's contention that relief under this division is appropriate, including appraisals related to any alleged diminution of all or substantially all fair market value of the property.

8.6.1.15. The Planning Commission's and Board's development orders and the findings on all of the assessments, plans, reports and studies required for the application for the application for the CUP.

8.6.1.16. The owner or lessee and the owner's or lessee's agent ("applicant") shall file a memorandum setting forth the legal basis asserted for relief under this Section.

8.6.1.17. The signature upon the application shall constitute a certification that the applicant/operator has undertaken due diligence in the filing of the application, that to the best of its individual knowledge the application is supported by good grounds under applicable laws, and that the application has been filed in good faith, consistent with the purpose and intent of this section.

8.6.1.18. The applicant/operator shall have a continuing obligation throughout the proceedings to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changes circumstances.

8.6.1.19. If a claim for relief pursuant to this section is based upon facts the applicant/operator knew or should have known were not correct or upon assertions of law that were frivolous, the Board shall deny the application.

8.6.2. Completeness.

8.6.2.1. Within fifteen (15) calendar days of the date of filing the application, the Zoning Administrator shall determine if the application is complete and includes the materials and information listed in section 8.6.1.

8.6.2.2. If the Zoning Administrator determines that the application is not complete, the Zoning Administrator shall within fifteen (15) days from the filing of the application send a notice of incompleteness by certified mail return receipt request to the applicant/operator specifying the application's deficiencies and the additional information that needs to be attached to the application. No further action shall be taken on the application until the deficiencies are remedied. If the applicant/operator fails to correct all the deficiencies within thirty (30) calendar days of receipt of the notice of incompleteness, the Zoning Administrator shall within fifteen (15) days prepare a development order specifying in detail the deficiencies that have not been rectified and notifying the owner or lessee in writing by certified mail return receipt request that the application has been denied. The owner or lessee shall have the right to appeal from the Zoning Administrator's development order to the Board within fifteen (15) days after receipt of the notice

8.6.2.3. When the application is determined to be complete, the Zoning Administrator shall notify the applicant/operator in writing and, within fifteen (15) calendar days, forward the application to the Board to set a hearing date and shall prepare the item for consideration by the Board.

### 8.6.3. Beneficial Use and Value Standard and Processing

8.6.3.1. In furtherance of the purpose and intent of this section relief under this section may be granted where a court of competent jurisdiction likely would determine that a final action by the County has caused an as applied regulatory taking of applicant/operator's property and a judicial finding of liability would not be precluded by a cognizable defense, including public nuisance, lack of distinct reasonable investment-backed expectations, failure to establish all or substantially all loss of economic use and value of the property in the same ownership, taking into account the available property interest in transfers of development rights granted by this Ordinance, whether utilized or not, statutes of limitation, laches, or other preclusions to relief. Whether such liability, at the time of application under this section is likely to be established by a court shall be determined based on applicable statutory and case law at the time an application is filed under this Section.

8.6.3.2. The applicant/operator shall have the burden of showing that relief under this section is appropriate.

8.6.3.3. The Board shall schedule and hold a quasi-judicial discretionary public hearing on the beneficial use or value determination application within sixty (60) calendar days of receipt of the complete application from the Zoning Administrator.

8.6.3.4. At the hearing, the applicant/operator shall present the owner's or lessee's case and the County Attorney or County Attorney's representative shall present the County's case. The Board shall accept documentary or testimonial evidence, briefs, reports, or proposed recommendations from the parties. Cross examination of witnesses shall be

allowed through the submission of written questions to the Chair, who shall pose the questions to the witness. Interested parties other than the applicant/operator may be permitted to intervene in the proceedings provided: the intervenor shall be an organization or association registered to receive notice under this Ordinance; any public or governmental agency; any owner of a surface or subsurface estate or lessee of an mining lease within one (1) mile of the site perimeter, or any person aggrieved or with standing to intervene.

8.6.3.5. Within forty-five (45) days after the close of hearing, the Board shall grant a development order by resolution, approving, approving with conditions or denying the application based on the standard of this section. The development order shall state all of the findings of fact and conclusions of law and policy underlying the Board's determination, including but not limited to, that the Board's development order, nor any or evidence submitted by the County constitutes an admission of a taking of property, or other unconstitutional deprivation. If the application be granted in whole or in part, the Board shall spell out all the terms of the remedies afforded to the applicant/operator and direct the Zoning Administrator and County Manager to undertake any additional steps necessary to implement the development order.

#### 8.6.4. Granting Relief

8.6.4.1. If the Board determines that relief is appropriate under this section, relief may be granted consistent with the Comprehensive Plan, or any regional or area plan, including but not limited to, a Canadian River Basin Plan.

8.6.4.2. In order to avoid an unconstitutional as applied taking and to provide the applicant/operator with an economically viable use and value of property pursuant to this section, the Board may allow for the minimum additional use(s), density, area dimensions or relief necessary to alleviate any as applied unconstitutional taking or other unconstitutional deprivation, including:

8.6.4.2.1. Eligibility for real property tax relief, reduction of property assessment or adequate public facility incentives.

8.6.4.2.2. Authorization of additional mining sites.

8.6.4.2.3. Granting a CUP with exploration, mining, storage, transportation and operation of the mining project scheduled for a future time or phase, especially where adequacy of public facilities and services require are not fully available for the entire project at the time of CUP approval and advancement of the facilities is not feasible.

8.6.4.2.4. Granting a use or area variance needed for operation of a mining project, or for any other use of land not associated with mining development, consistent with the Comprehensive Plan.

**SECTION 9: PROCEDURE FOR NOTICE AND HEARING BEFORE THE PLANNING AND ZONING COMMISSION.** When the Planning and Zoning Division deems the application complete, the Planning and Zoning Commission shall, at a public hearing, consider and pass upon the application for conditional use permit with the

following procedure and requirements. All public hearings will be held in the San Miguel County Commission Chambers of the County Administration Building or a suitable site closer to the proposed mine site.

9.1. The public hearing before the Planning and Zoning Commission shall be held within ninety (90) days from the date the application is deemed complete by the Planning and Zoning Division.

9.2. Notice of the time, place and purpose of the hearing shall be given as follows:

9.2.1. By publication not less than fifteen (15) calendar days before the public hearing in a newspaper of general circulation in San Miguel County and in any other newspaper particular to the area affected by the conditional use permit application.

9.2.2. By posting the subject property not less than fifteen (15) calendar days before the public hearing, upon the premises where the project is proposed to be located, and upon the perimeter fences of said property and adjacent to any public road or right-of-way nearest said property.

9.2.3. By notice of such public hearing, not less than fifteen (15) calendar days, to all adjacent landowners sent via certified mail and by notice to all interested parties sent by regular mail and by posting notice of such public hearing on the County website.

9.3. After giving notice as specified above, the Planning and Zoning Commission shall:

9.3.1. Hold and conduct its public hearing on the application for conditional use permit, and accept comment and testimony. Upon the conclusion of the public hearing, the Planning and Zoning Commission shall make and render its decision recommending to the Board of County Commissioners, the approval or denial of the application for conditional use permit.

9.3.2. The decision and recommendation shall be rendered by resolution and shall include the findings of fact relied upon in making such decision and recommendation. If the decision and recommendation is to grant approval of the conditional use permit, the resolution must include the conditions, if any, which should be imposed. The resolution will be signed by the Planning and Zoning Commission Chairperson and recorded in the office of the San Miguel County Clerk within ten (10) days of the date of the conclusion of the public hearing.

#### SECTION 10: PROCEDURE FOR NOTICE AND HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS.

10.1. Not later than sixty (60) days after the decision and recommendation is rendered by the Planning and Zoning Commission, said decision and the application for

conditional use permit at issue, shall be considered *de novo* by the Board of County Commissioners at a public hearing pursuant to and in accordance with the notice requirements set forth in Section 9.2. The Board of County Commissioners shall:

10.1.1. Hold and conduct its public hearing on the application for conditional use permit, and accept comment and testimony. Upon the conclusion of the public hearing, make and render its decision to grant, grant with conditions, or deny the conditional use permit, which decision shall be rendered by resolution and shall include the findings of fact relied upon by the County Commission in making its decision, and shall include the conditions imposed, if any, upon the granting of the application.

10.1.2. The decision by the Board of County Commissioners shall be reduced to writing by resolution within ten (10) days and shall be signed by the Board of County Commission Chair and recorded in the office of the San Miguel County Clerk. Said resolution shall be served upon the applicant/operator by certified mail, return receipt requested and to adjoining property owners and interested parties by regular mail.

10.1.3 Mining activity may not commence until the applicant/operator has received an approval to Proceed from the County Commission only and after the Planning and Zoning Commission has approved the Conditional Use Permit and all applicable forms and information has been provided. If the conditional use permit has been granted, the County Commission shall issue the applicant/operator an Approval to Proceed promptly after the allowable period for appeal (if there is no appeal), or promptly after an appeal has been denied.

SECTION 11: APPEAL. Anyone aggrieved by the decision of the Board of County Commissioners may appeal such decision to the Fourth Judicial District Court within 30 days as provided by law.

SECTION 12: ENFORCEMENT, VIOLATIONS, 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. All plans as approved by the San Miguel County Commission in addition to the application are enforceable and all changes or addendums to those plans are subject to County approval.

12.1. Permits and approvals: Any person, company or corporation of any kind and nature who begins any type of exploration or mining activity without first obtaining the necessary conditional use permit and approvals from the County or any 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.

12.2 Mining Inspector: One if the consultants engaged by the County shall be designated Mining Inspector and shall be the principal contact with the Board, the Planning Commission, the Zoning Administrator and County Staff. The Mining



Inspector shall be a person or firm which, by virtue of education, training and/or experience is qualified to monitor compliance with and advise the Zoning Administrator with regard to enforcement of the provisions of any CUP issued pursuant to this Ordinance. The minimum qualifications for Mining Inspector are: (a) understanding mining operations, (b) understanding health, safety, and environmental protections, (c) understanding the requirements of this ordinance, (d) understanding government contracting processes, and (e) being able to manage a team to effectively handle the complex requirements of this ordinance. The Mining Inspector shall be annually funded by the applicant/operator of the mining project until such project shall be terminated or abandoned.

12.3 Duties of the Mining Inspector: It shall be the duty of the Mining Inspector to monitor compliance with this Ordinance and to advise the Zoning Administrator with regard to enforcement of the provisions of this Ordinance. It shall be the duty of the Mining Gas Inspector to monitor compliance by the applicant/operator with the development order granting the CUP. Funded by the annually collected fee from the applicant/operator, the Oil and Gas Inspector's enforcement duties shall include but not be limited to frequent, unannounced facility inspections and regular monitoring of recorded and reported data. The Mining Inspector shall assist the Zoning Administrator with the technical review of mining CUP applications. The Mining Inspector regular inspection of facilities shall include observation of water uses. If this inspection reveals that any use of water is not consistent with all of the submitted Office of the State Engineer (OSE) permits and requirements of this ordinance, the County shall notify the Office of the State Engineer and coordinate enforcement actions. The Mining Inspector shall confirm or refute any potential violations reported by a private citizen.

12.4 Water Testing: Prior to any mining activity and semi-annually during operations, the Mining Inspector shall require testing of surface and subsurface water resources to determine whether fresh waters have been degraded or polluted as a result of the mining operation, as compared to the baseline established during initial testing. If water resources have been degraded, the applicant/operator contracting with independent, qualified, water specialists approved by the County, shall repeat the water quality monitoring program measurements at the same locations to determine the change to water after the operation of the mining operation. Such results shall be provided to the Zoning Administrator.

12.5 Violations: Violations detected by the Mining Inspector shall be classified by the Mining Inspector to be minor or major, and promptly reported both to the Zoning Administrator and to the applicant/operator. The Zoning Administrator shall place a notice of the violation in a publicly accessible database. Minor violations shall be re-inspected after 30 calendar days. If unremedied they shall be re-classified as a major violation.

12.6. Suspension and revocation: The Planning and Zoning Supervisor or the Board of County Commissioners may suspend or revoke the conditional use permit if the applicant/operator does not take immediate steps for remedy of a major violation.

12.7. Other permits: The Planning and Zoning Supervisor or the Board of County Commissioners may suspend or revoke the conditional use permit if any State or Federal agency permit expires, is suspended or revoked.

12.8. Injunctive relief: The Board of County Commissioners may apply to the District Court for any one or more of the following remedies in connection with violations of this Ordinance:

12.8.1. Injunctive relief to prohibit any exploration, mining, processing or transporting of materials until the person, company, corporation complies with the provisions of this ordinance and the terms of any approved conditional use permit or agreement.

12.8.2. Injunctive relief to compel compliance by any person, company or corporation with the provisions of this ordinance and the terms of any approved conditional use permit or agreement.

12.8.3. Civil penalties.

### SECTION 13: CONTINUANCE OF EXISTING MINING USES.

13.1. Effective date: Exploration, mining and processing activities and 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 applicant/operator shall provide to the Planning and Zoning Supervisor within twelve (12) months after the effective date of this ordinance; (1) a description of current operations which conforms to the requirements of this ordinance; and (2) copies of all of its permits and approvals which it holds from State and Federal regulatory agencies.

13.2. Non-conforming use and abandonment: An existing exploration, mining or processing activity or use shall be permitted to continue 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 exploration, mining or processing site on which no exploration, mining or processing activity has occurred for more than six (6) months. Exploration, mining or processing activity and uses shall be deemed to be in existence on the site on the effective date of this ordinance if actual exploration, mining or processing has commenced.

13.3. Intermittent use: Exploration, mining and processing sites that have a historic pattern of intermittent use shall not be considered as existing uses.

13.4. Expansion: Exploration, mining or processing activity in existence on or prior to the effective date of this ordinance may not be enlarged upon, expanded or extended

without first obtaining conditional use permit approval as per the requirements of this ordinance.

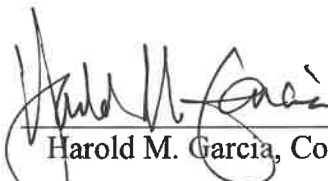
**SECTION 14: MODIFICATION TO PREVIOUSLY SUBMITTED PLANS.**

An applicant/operator wishing to modify or amend previously submitted plans that have been approved under a conditional use permit issued by the County, may do so subject to the provisions of Section 3 and Section 4, herein. All modifications or amendments to such previously submitted plans are subject to approval by the Board of County Commissioners as provided under Section 10, herein.

**SECTION 15: SEVERABILITY.** The provisions of this ordinance are severable. 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 the ordinance or their application to other persons or circumstances.

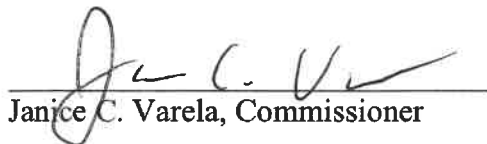
**SECTION 16: EFFECTIVE DATE.** The effective date of this ordinance shall be thirty (30) days after its recording in the office of the San Miguel County Clerk of San Miguel County, New Mexico, as required by Section 4-37-9, NMSA, 1978.

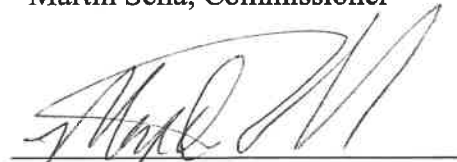
MOVED, SECONDED AND ADOPTED, this 15th day of Sept., 2021, by the Board of County Commissioners of San Miguel County, New Mexico.


  
Harold M. Garcia, Commissioner

  
Kenneth Medina, Commissioner

  
Martin Sena, Commissioner

  
Janice C. Varela, Commissioner

  
Max O. Trujillo, II, Commissioner

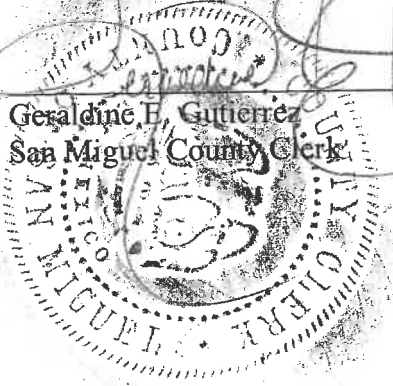
  
Joy Ansley,  
San Miguel County Manager



ATTEST:

*[Handwritten signature]*

Geraldine E. Gutierrez  
San Miguel County Clerk



APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

*[Handwritten signature: Dave Romero]*  
Dave Romero, Jr.  
San Miguel County Attorney

FILED IN MY OFFICE  
AT 2:42 O'CLOCK 4 M.

SEP 16 2021  
Geraldine E. Gutierrez  
COUNTY CLERK & RECORDER  
SAN MIGUEL COUNTY CLERK  
BY Jacora DEPUTY

202103591

SOURCE REFERENCES

“Closure and Post-Closure Care Requirements for Hazardous Waste Treatment, Storage and Disposal Facilities”, United States Environmental Protection Agency (<https://www.epa.gov/hwpermitting/closure-and-post-closure-care-requirements-hazardous>).

Exhibit 2-S Native American Consultations Contact List: New Mexico Historic Preservation Division.

Form 12: Notice of Intent to Suspend Operations: State of New Mexico, Energy, Minerals and Natural Resources Department; Mining and Minerals Division.

Form 8-K: Securities and Exchange Commission.

Form 10-K: Securities and Exchange Commission.

<https://en.wikipedia.org/wiki/Adit>

Instructions for Certificate of Deposit: Minerals Program, Mineral Mining, Mineral Exploration and Mineral Prospecting Operations Public Funds Account. State of Colorado, Division of Reclamation, Mining and Safety, Department of Natural Resources.

“Irrevocable Trust”, Legal Dictionary (<https://legaldictionary.net/irrevocable-trust>).

Lake Tahoe Shore Zone Ordinance Amendments Draft EIS, July 2004.

Mine Closure Planning, ([https://en.wikipedia.org/wiki/Mine\\_closure\\_planning](https://en.wikipedia.org/wiki/Mine_closure_planning)).

Mined Land Financial Security Information: New York, State of Opportunity, Department of Environmental Conservation (<https://www.dec.ny.gov/lands/25001.html>)

Notice of Temporary Cessation: Commonwealth of Virginia, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation.

Ordinance No. 2019-2, Amending the Sustainable Land Development Code, Ordinance No. 2016-9, To Amend and Restate Chapter 11 (Developments of Countywide Impact), Including the Adoption of Regulations for Mineral Resource Exploration, Extraction and Processing, and the Addition of New Definitions to Appendix A. Santa Fe County, New Mexico.

Sections 18-6-1 through 18-6-17 NMSA 1978, “Cultural Properties Act”.

State Wildlife Action Plan for New Mexico, 22 November 2016, p. 41, pp. 46-47.  
“Subpart 4 Exploration Permit Application”: State of New Mexico Energy, Minerals and Natural Resources Department.

Title 40 Part 264, Subpart K: Code of Federal Regulations, §264.221 through §264.228.

Title 40 Part 265 Code of Federal Regulations; §265.35 Required Aisle Space; §265.116 Survey Plat.

What is Acid Mine Drainage, U.S. Environmental Protection Agency  
([https://en.wikipedia.org/wiki/Acid\\_mine\\_drainage](https://en.wikipedia.org/wiki/Acid_mine_drainage))

“What is a Pre-Blast Survey?” Kentucky Division of Mining Reclamation & Enforcement.

19.10.6 NMAC – N, 05-15-2001. Issuing Agency: New Mexico Mining Commission. The objective of this administrative code is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

20.2.2 NMAC; 20.2.3 NMAC; 20.2.7 NMAC., Air Quality (Statewide) Issuing Agency: New Mexico Environmental Improvement Board.

30 CFR §817.131, Cessation of operations: Temporary  
(<https://www.law.cornell.edu/cfr/text/30/817.131>)

“Management and Treatment of Water from Hard Rock Mines” Engineering Issue, United State Environmental Protection Agency.